

D R A F T

FOR DISCUSSION ONLY

# UNIFORM STATUTORY TRUST ENTITY ACT

---

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

---

MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR

PASADENA, CALIFORNIA

JULY 27 - AUGUST 3, 2007

# UNIFORM STATUTORY TRUST ENTITY ACT

*WITH PREFATORY NOTE AND COMMENTS*

Copyright ©2007

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*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.*

## **DRAFTING COMMITTEE ON UNIFORM STATUTORY TRUST ENTITY ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

JUSTIN L. VIGDOR, 2400 Chase Square, Rochester, NY 14604, *Chair*

THOMAS J. BUITEWEG, 200 Renaissance Ct., Mail Code 482-B09-B11, P.O. Box 200,  
Detroit, MI 48265-2000

ANN E. CONAWAY, Widener University School of Law, 4601 Concord Pike, Wilmington, DE  
19803

THOMAS L. JONES, University of Alabama School of Law, P.O. Box 865557, Tuscaloosa, AL  
35486-0050

DIMITRI G. KARCAZES, 55 E. Monroe St., Suite 3700, Chicago, IL 60603

JOHN H. LANGBEIN, Yale Law School, P.O. Box 208215, New Haven, CT 06520-8215

L. GENE LEMON, 1136 W. Butler Dr., Phoenix, AZ 85021-4428

HARRY M. WALSH, 456 Summit Ave. #206, St. Paul, MN 55102

ROBERT H. SITKOFF, Harvard Law School, 1575 Massachusetts Ave., Cambridge, MA  
02138, *Reporter*

## **EX OFFICIO**

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*

LANI LIU EWART, 1099 Alakea St., Suite 1800, Honolulu, HI 96813, *Division Chair*

## **AMERICAN BAR ASSOCIATION ADVISOR**

ELLISA OPSTBAUM HABBART, 300 Martin Luther King Blvd., Suite 200, Wilmington, DE  
19801, *ABA Advisor*

WILLIAM H. CLARK, JR., One Logan Square, 18th and Cherry Streets, Philadelphia, PA  
19103-6996, *ABA Section Advisor*

THOMAS E. RUTLEDGE, 2000 PNC Plaza, 500 W. Jefferson St., Louisville, KY 40202-2874,  
*ABA Section Advisor*

## **EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 211 E. Ontario St., Suite 1300, Chicago, IL 60611, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611  
312/915-0195  
[www.nccusl.org](http://www.nccusl.org)

# **UNIFORM STATUTORY TRUST ENTITY ACT**

## **TABLE OF CONTENTS**

Prefatory Note.....	1
---------------------	---

### **[ARTICLE] 1**

#### **GENERAL PROVISIONS**

SECTION 101. SHORT TITLE .....	5
SECTION 102. DEFINITIONS .....	6
SECTION 103. DEFAULT AND MANDATORY RULES. ....	9
SECTION 104. SCOPE OF GOVERNING INSTRUMENT .....	12
SECTION 105. APPLICABILITY OF TRUST LAW .....	15
SECTION 106. RULES OF CONSTRUCTION .....	16

### **[ARTICLE] 2**

#### **FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS**

SECTION 201. CERTIFICATE OF TRUST .....	17
SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF TRUST .....	18
SECTION 203. SIGNING OF RECORDS.....	19
SECTION 204. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF STATE]; EFFECTIVE TIME AND DATE .....	20
SECTION 205. CORRECTING FILED RECORD.....	22
SECTION 206. CERTIFICATE OF EXISTENCE OR REGISTRATION.....	23
SECTION 207. NAME OF STATUTORY TRUST .....	24
SECTION 208. RESERVATION OF NAME .....	26
SECTION 209. AGENT FOR SERVICE OF PROCESS .....	27
SECTION 210. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS .....	28
SECTION 211. RESIGNATION OF AGENT FOR SERVICE OF PROCESS .....	29
SECTION 212. SERVICE OF PROCESS.....	30
SECTION 213. ANNUAL REPORT FOR [SECRETARY OF STATE]. ....	31

### **[ARTICLE] 3**

#### **AUTHORIZATION; GOVERNING LAW; DURATION; POWERS**

SECTION 301. STATUTORY TRUST AUTHORIZED.....	33
SECTION 302. PERMISSIBLE PURPOSES .....	33
SECTION 303. STATUTORY TRUST SOLELY LIABLE FOR DEBTS, OBLIGATIONS, AND LIABILITIES OF STATUTORY TRUST .....	35
SECTION 304. RIGHTS OF BENEFICIAL OWNER AND TRUSTEE IN TRUST	

PROPERTY .....	36
SECTION 305. GOVERNING LAW .....	37
SECTION 306. DURATION .....	37
SECTION 307. POWER TO SUE AND BE SUED .....	39
SECTION 308. POWER TO HOLD PROPERTY; TITLE TO TRUST PROPERTY .....	39
SECTION 309. SERIES OF STATUTORY TRUST .....	40

#### **[ARTICLE 4]**

##### **TRUSTEES AND TRUST MANAGEMENT**

SECTION 401. MANAGEMENT OF STATUTORY TRUST .....	43
SECTION 402. TRUSTEE POWERS .....	43
SECTION 403. PROTECTION OF PERSON DEALING WITH TRUSTEE .....	44
SECTION 404. STANDARDS OF CONDUCT FOR TRUSTEES .....	45
SECTION 405. DIRECTION OF TRUSTEES .....	46
SECTION 406. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT COMPANY .....	47
SECTION 407. TRUSTEE'S RIGHT TO INFORMATION .....	48
SECTION 408. INTERESTED TRANSACTIONS .....	49
SECTION 409. GOOD-FAITH RELIANCE .....	50
SECTION 410. INDEMNIFICATION, ADVANCEMENT, AND EXONERATION .....	50
SECTION 411. DELEGATION BY TRUSTEE .....	52
SECTION 412. ACTION BY TRUSTEES .....	53

#### **[ARTICLE] 5**

##### **BENEFICIARIES AND BENEFICIAL RIGHTS**

SECTION 501. CONTRIBUTIONS BY BENEFICIAL OWNERS .....	55
SECTION 502. REDEMPTION OF BENEFICIAL INTERESTS .....	56
SECTION 503. BENEFICIAL OWNER'S RIGHT TO INFORMATION .....	57
SECTION 504. BENEFICIAL INTERESTS .....	57
SECTION 505. TRANSACTION WITH BENEFICIAL OWNER .....	58
SECTION 506. VOTING OR CONSENT BY BENEFICIAL OWNERS .....	59
SECTION 507. DERIVATIVE ACTION .....	60

#### **[ARTICLE] 6**

##### **CONVERSION AND MERGER**

SECTION 601. DEFINITIONS .....	62
SECTION 602. CONVERSION .....	63
SECTION 603. ACTION ON PLAN OF CONVERSION BY CONVERTING STATUTORY TRUST .....	64
SECTION 604. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE .....	65
SECTION 605. EFFECT OF CONVERSION .....	66

SECTION 606. MERGER.....	67
SECTION 607. ACTION ON PLAN OF MERGER BY CONSTITUENT STATUTORY TRUST.....	68
SECTION 608. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.....	69
SECTION 609. EFFECT OF MERGER.....	71
SECTION 610. [ARTICLE] NOT EXCLUSIVE.....	73

## [ARTICLE] 7

### DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION .....	74
SECTION 702. WINDING UP.....	74
SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED STATUTORY TRUST .....	76
SECTION 704. OTHER CLAIMS AGAINST DISSOLVED STATUTORY TRUST.....	77
SECTION 705. ADMINISTRATIVE DISSOLUTION.....	78
SECTION 706. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION ....	79
SECTION 707. APPEAL FROM REJECTION OF REINSTATEMENT.....	80
SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP STATUTORY TRUST'S ACTIVITIES .....	80

## [ARTICLE] 8

### FOREIGN STATUTORY TRUSTS

SECTION 801. GOVERNING LAW .....	82
SECTION 802. APPLICATION FOR CERTIFICATE OF QUALIFICATION.....	83
SECTION 803. AMENDMENT OR RESTATEMENT OF CERTIFICATE.....	83
SECTION 804. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.....	84
SECTION 805. APPLICATION FOR CERTIFICATE OF QUALIFICATION.....	86
SECTION 806. CERTIFICATE OF REGISTRATION .....	86
SECTION 807. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.....	87
SECTION 808. REVOCATION OF CERTIFICATE OF QUALIFICATION.....	88
SECTION 809. CANCELLATION OF CERTIFICATE OF QUALIFICATION.....	89
SECTION 810. EFFECT OF FAILURE TO HAVE CERTIFICATE .....	90
SECTION 811. ACTION BY [ATTORNEY GENERAL].....	91

## [ARTICLE] 9

### MISCELLANEOUS PROVISIONS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	92
SECTION 902. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT .....	92
SECTION 903. SAVING CLAUSE.....	92
SECTION 904. RESERVATION OF POWER TO AMEND OR REPEAL.....	93
SECTION 905. APPLICATION TO EXISTING RELATIONSHIPS.....	93

SECTION 906. REPEALS. ....	94
SECTION 907. EFFECTIVE DATE. ....	95

# UNIFORM STATUTORY TRUST ENTITY ACT

## Prefatory Note

**Introduction.** In large part because of uncertainty over the legal status of the business trust at common law, use of the common law trust as a mode of business organization declined over the course of the twentieth century. Today, most commercial enterprises that are not organized as a sole proprietorship make use of the partnership, limited liability company, or corporate form of organization.

To address the legal uncertainty over the common law business trust, at least thirty states have enacted legislation that validates the trust as a permissible form of business organization. See Robert H. Sitkoff, *The Rise of the Statutory Business Trust* [citation] (collecting state statutes). But the entity that arises under the more recent of these statutes is better understood as a “statutory business trust,” “statutory trust entity,” or “statutory trust” than as a common law business trust with statutory validation. See the Comment to Section 101.

Since the 1980s, statutory trust entities have thrived in a variety of niches, particularly in the organization of mutual funds and the practice of asset securitization. See Sitkoff, *supra*; Steven L. Schwarcz, *Commercial Trusts as Business Organizations: Unraveling the Mystery*, 58 *Bus. Law.* 559 (2003); John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 *Yale L.J.* 165 (1997); Sheldon A. Jones, Laura M. Moret, & James M. Storey, *The Massachusetts Business Trust and Registered Investment Companies*, 13 *Del. J. Corp. L.* 421 (1988). The statutory trust has also come to be used in various tax-advantaged real estate transactions. See, e.g., *Rev. Rul. 2004-86*, 2004-33 *IRB* 191.

A statutory trust differs from a common law trust in several important respects. A common law trust, whether its purpose is donative or commercial, arises from private action without the involvement of a public official. See *Uniform Trust Code* §401 (2000); *Restatement (Third) of Trusts* §10 (2003). Because a common law trust is not a juridical entity, it must sue, be sued, and transact over property in the name of the trustee in the trustee’s capacity as such. By contrast, a statutory trust is created by delivering a certificate of trust to a public official, typically the Secretary of State, for filing in the public record. See Section 201. Moreover, a statutory trust is a juridical entity, separate from its trustees and beneficial owners, that has capacity to sue, be sued, and transact over property in its own name. See Sections 301, 307.

Most existing state business trust statutes do not prohibit use of the common law trust for a commercial purpose. Instead, the modern statutes offer transactional planners an additional option, a statutory trust, which is governed by the state’s statutory trust act. Common law trusts, whether donative or commercial, remain subject to the principles of law and equity applicable to private and charitable trusts.

The primary stimulus for the drafting of the Uniform Statutory Trust Entity Act is the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Increasing use of statutory trusts as a mode of business organization has led to a recognition that in many states the status of such trusts is unclear and that much of the existing

legislation is out of date or incomplete. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is surprisingly sparse.

The Uniform Statutory Trust Entity Act validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing approaches into uniformity.

**Models for Drafting.** Although the Uniform Statutory Trust Entity Act is the first Uniform Act on the subject of statutory business trusts, comprehensive statutory trust regimes exist in several states. Notable examples include Connecticut, Delaware, Maryland, New Hampshire, Nevada, South Dakota, Wyoming, and Virginia, all of which were referred to in the drafting process. However, in drafting the substantive provisions of the Uniform Statutory Trust Entity Act, the drafting committee was influenced primarily by the Delaware Statutory Trust Act.

In choosing to follow Delaware, the drafting committee relied on a recent study that presents data on the number of statutory trusts formed in each state. See Sitkoff, *supra*, at \_\_\_\_\_. According to this study, the number of statutory trusts formed under the Delaware Act vastly exceeds the number formed in all other states, surpassing second-place Connecticut by a factor of almost ten to one. *Id.* at \_\_\_\_\_. The study also presents data on new trust formations. The new formation data show that the Delaware statutory trust has come also to dominate the Massachusetts business trust for the organization of business trusts more generally. *Id.* at \_\_\_\_\_. A further reason for following the Delaware model was to ensure that a statutory trust under this act would receive treatment under applicable regulatory law similar to that of a Delaware statutory trust. For a general discussion of the Delaware Statutory Trust Act, see Wendell Fenton & Eric A. Mazie, *Delaware Statutory Trusts*, in 2 R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations & Business Organizations* ch. 19 (3d ed. 2005 Supp.).

Although under Section 105 ordinary trust law supplements this Act, several substantive provisions of this Act were drawn from corporate law, not from trust law. See, e.g., 401 (management by or under the authority of the trustees); 404 (standards of conduct of trustees); 408 (interested transactions). Looking to the corporate law model on these issues is consistent with the hybrid approach of the Delaware Act and reflects the nature of a statutory trust as a juridical entity. The Uniform Statutory Trust Entity Act is an unincorporated entity statute.

In drafting the public filing and other provisions not unique to the statutory trust form, the drafting committee took the Uniform Limited Partnership Act (2001) and the Revised Uniform Limited Liability Company Act (2006) as its starting points. For guidance on the common law of trusts, the drafting committee took the Uniform Trust Code (2000) as its starting point.

**Innovative Provisions.** Although much of the Uniform Statutory Trust Entity Act reflects a reorganization and refinement of provisions found in the Delaware Statutory Trust Act, the Uniform Act contains several innovations including: (1) specification of rules that are not



subject to override in the statutory trust's governing instrument (§103(c)); (2) exclusion of trusts with a prevailingly donative purpose (§302); (3) clearer guidance on the relationship of ordinary trust law to statutory trust entities (§105); (4) clearer guidance on the relationship between the common law trust and statutory trust entities (§905); and (5) systematic treatment of conversion and merger (Article 6), and of dissolution (Article 7).

**Default and Mandatory Rules.** Most of the Uniform Statutory Trust Entity Act consists of default rules that apply only if the governing instrument fails to address or insufficiently covers a particular issue. Pursuant to Section 103(a)-(b), the governing instrument may override a substantial majority of the Act's provisions. The exceptions are scheduled in Section 103(c). Section 104 collects various permissive rules regarding the scope of the governing instrument.

**Relationship to Common Law Trusts and the Uniform Trust Code.** In the culture of American law the common law trust is usually regarded as a vehicle for effecting donative transfers. Indeed, leading compilations of the common law of trusts tend to exclude business trusts from their coverage. See e.g., Restatement (Third) of Trusts §1 cmt. b (2003); Austin Wakeman Scott, William F. Fratcher, & Mark L. Ascher, 1 Scott and Ascher on Trusts §2.1.2 (5th ed. 2006); Restatement (Second) of Trusts §1 cmt. b (1959). The justification stated in the Restatement (Third) of Trusts is representative: "[T]he business trust is a business arrangement that is best dealt with in connection with business associations."

There is, however, no separate body of general business law that rivals ordinary trust law for application to a common law trust that has a business purpose. The common law of trusts applies to all trusts arising under the common law, even those that have a business purpose, to the extent that the common law is not displaced by the trust instrument or specialized legislation. For this reason, although the Uniform Trust Code "is directed primarily at trusts that arise in an estate planning or other donative context," the Code applies to trusts that have a business or commercial purpose to the extent that the trust instrument or other legislation do not displace the Code's provisions. UTC §102 cmt.

Accordingly, the Uniform Statutory Trust Entity Act is not a codification of general business law principles applicable to common law business trusts. Nothing in this Act displaces the common law of trusts, or the Uniform Trust Code, with respect to such trusts. On the contrary, Section 905(a) expressly confirms the continued applicability of the state's laws pertaining to trusts to a common law business trust.

The Uniform Statutory Trust Entity Act more closely resembles a generic corporate code or unincorporated entity law than the Uniform Trust Code. Like a corporation, limited liability company, and limited partnership, but unlike a common law trust, a statutory trust is a juridical entity that may conduct transactions in its own name separate from that of its fiduciary and its beneficial owners. See Sections 301, 307-08. Like those entities, but unlike a common law trust, a statutory trust is formed by delivering a certificate of trust to a public official for filing. Compare Section 201 with Uniform Trust Code §401 (2000) and Restatement (Third) of Trusts §10 (2003). Further, Section 105 provides that ordinary trust law supplements this Act in governing statutory trusts, but only to the extent not modified or displaced by this Act or the governing instrument—and this Act modifies or displaces a host of ordinary trust law principles

including those concerning fiduciary standards of conduct (Section 404) and termination of trusts (Section 306). Section 905(b) allows an existing common law trust that does not have a prevailingly donative purpose to convert into a statutory trust by delivering a certificate of trust for filing under Section 201.

Although the drafting committee contemplated that a statutory trust under this Act will be used primarily as a mode of business organization, Section 501(a) confirms that a person may become a beneficial owner of a statutory trust without an exchange of consideration. It is therefore possible that a statutory trust could be used as a substitute for the common law trust in a variety of commercial and noncommercial contexts. However, to ensure that a statutory trust is not used to evade mandatory rules applicable to common law trusts that enforce public policy limitations on donative transfers, Section 302 provides that a statutory trust may not have a prevailingly donative purpose. For discussion of the nonapplicability to a statutory trust of the mandatory rules applicable to common law trusts (including Uniform Trust Code §105), see the comment to Section 103 under the heading “Relationship to Mandatory Rules Under the Uniform Trust Code” and the comments to Sections 105 and 302.

1                                   **UNIFORM STATUTORY TRUST ENTITY ACT**

2  
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                                   **Comment**

8  
9                   Because this Act provides for the creation and use of a statutory trust as a form of  
10 business organization, it might seem that “Uniform Business Trust Act,” “Uniform Statutory  
11 Business Trust Act,” or “Uniform Statutory Trust Act” would be a better title. However, after  
12 deliberation informed by consultation with experts in the structured finance, bankruptcy, mutual  
13 fund, and estate planning industries, the drafting committee rejected those and other such titles in  
14 favor of “Uniform Statutory Trust Entity Act.”  
15

16                   The drafting committee included the word “entity” in the title for two reasons. First, the  
17 creature of this act is indeed a trust entity. It has the power to sue, be sued, and transact over  
18 property in its own name. A common law trust, by contrast, is not a juridical entity. Second, the  
19 word “entity” in the title differentiates this act from the Uniform Trust Code, which is a  
20 codification of the common law of trusts. However, to conform with prevailing usage under the  
21 Delaware Statutory Trust Act, the entity that arises under this Act is called a “statutory trust,”  
22 not a “statutory trust entity.” See Section 102(14). Further, because the drafting committee  
23 wanted a statutory trust under this act to receive treatment under applicable regulatory law  
24 similar to that of a Delaware statutory trust, the entity features of a statutory trust under this act  
25 closely resemble those of a Delaware statutory trust.  
26

27                   The drafting committee had three reasons for eschewing the phrase “business trust.”  
28 First, under this act a statutory trust need not have a business or commercial purpose. On the  
29 contrary, Section 302 confirms that a statutory trust may have any lawful purpose other than a  
30 prevailingly donative purpose.  
31

32                   Second, the drafting committee endeavored to avoid any implication whether a statutory  
33 trust would qualify as a “business trust” under the bankruptcy code. Under the bankruptcy code,  
34 the definition of a “debtor” eligible for bankruptcy includes a “person,” 11 U.S.C. §101(13), the  
35 definition of “person” includes a “corporation,” id. §101(41), and the definition of “corporation”  
36 includes a “business trust.” Id. §101(9). Hence, a “business trust” might qualify as an eligible  
37 “debtor.” Bankruptcy eligibility is a significant issue for trusts used as special purpose entities  
38 in structured finance transactions, a principal use of the modern statutory trust in practice. Such  
39 trusts are often designed to be “bankruptcy remote.” Thus, as in the leading case of *In re*

1 Secured Equipment Trust of Eastern Airlines, Inc., 38 F.3d 86 (2d Cir. 1994), in certain  
2 configurations trusts used in securitization transactions have indeed been held not to be  
3 “business trusts” under the bankruptcy code.  
4

5 Third, the drafting committee was influenced by the revealed preference for “statutory  
6 trust” over “business trust” among existing users of statutory business trusts as evidenced by the  
7 dominant position of the Delaware Statutory Trust Act relative to the statutory or business trust  
8 acts of the other states. See Robert H. Sitkoff, The Rise of the Statutory Business Trust [in  
9 progress]. In 2002 Delaware recast the “Delaware Business Trust Act” as the “Delaware  
10 Statutory Trust Act,” replacing nearly every reference to “business trust” with “statutory trust.”  
11 See 73 Del. Laws 329. The Connecticut statute, which is the second most popular, is likewise  
12 cast as a Statutory Trust Act. See Connecticut Statutory Trust Act §§34-500, 34-501(2).  
13

## 14 **SECTION 102. DEFINITIONS.**

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

17 (2) “Certificate of trust” means the record that is delivered to the [Secretary of State] for  
18 filing under Section 201 and the record as amended or restated.

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

25 (4) “Designated office” means:

26 (A) with respect to a statutory trust, the mailing address that it is required to  
27 designate under Section 201(a)(2); or

28 (B) with respect to a foreign statutory trust, its principal office.

29 (5) “Foreign statutory trust” means a trust entity that is formed under the laws of a

jurisdiction other than this state and is required by those laws to file a record with a public official in that jurisdiction.

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

(7) “Jurisdiction” means a state or a foreign country.

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

(9) “Qualified foreign statutory trust” means a foreign statutory trust that is authorized to transact business in this state.

(10) “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.

(11) “Related person”, with respect to 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 home 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, incompetent, conservatee, or minor for which the person is a fiduciary; or

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

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

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

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

5 (13) “State” means a State of the United States, the District of Columbia, Puerto Rico, the  
6 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
7 the United States.

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

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

10 (16) “Trust instrument” means an instrument other than the certificate of trust, whether  
11 referred to as a trust agreement, trust instrument, declaration of trust, bylaws, or otherwise, that  
12 provides for the governance of the affairs of the statutory trust and the conduct of its business.

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

## 15 **Comment**

16  
17 **Principal Sources** – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust  
18 Act §34-501; Uniform Limited Partnership Act §102 (2001); SEC Rule 144(a)(1), 17 C.F.R.  
19 §230.144(a)(1).  
20

21 Paragraph (2) defines “common law trust” consistently with Restatement (Third) of  
22 Trusts §2 (2003), except that as defined herein the term expressly includes a common law  
23 business trust. See also Uniform Trust Code §102 cmt. (2000).  
24

25 Paragraphs (2), (6), and (16) define “certificate of trust,” “governing instrument,” and  
26 “trust instrument” respectively. The certificate of trust is the record that must be filed with a  
27 public official under Section 201 to form a statutory trust. The trust instrument is the transaction  
28 document that provides for the governance of the affairs of the statutory trust and that need not  
29 be made part of the public record. Together, the certificate of trust and the trust instrument  
30 compose the governing instrument. The term “governing instrument” is in the singular to  
31 conform with standard commercial usage. Conflicts between the certificate of trust and the  
32 governing instrument are resolved pursuant to Section 201(d). Although Paragraph (15) is

1 phrased in the singular, consistent with current commercial practice the drafting committee  
2 contemplated that there would often be more than one “trust instrument.” Section 104(c) makes  
3 the authorization of multiple instruments explicit.  
4

5 Paragraph (11) defines the term “related person,” which is used in Sections 408 and 505  
6 concerning the legality of certain interested transactions. In using but not defining the term  
7 “substantial” in Paragraph (11)(D), the drafting committee contemplated that a totality of the  
8 circumstances test would apply. Section 406 defines the term “independent trustee” with respect  
9 to a statutory trust that is an investment company under the Investment Company Act of 1940.  
10

11 Paragraph (17) defines trustee as a person designated as such in accordance with the  
12 governing instrument or applicable law. For discussion of trustee appointment, see the Comment  
13 to Section 401.  
14

### 15 **SECTION 103. DEFAULT AND MANDATORY RULES.**

16 (a) Except as otherwise provided in the governing instrument, this [act] governs the  
17 management and affairs of the statutory trust and the rights, interests, duties, obligations, and  
18 powers of, and the relations among, the trustees, beneficial owners, and other persons.

19 (b) Subject to subsection (c), a governing instrument may contain:

- 20 (1) any provision relating to the management and affairs of the statutory trust;  
21 (2) any provision relating to the rights, interests, duties, obligations, and powers  
22 of the trustees, beneficial owners, and other persons; and  
23 (3) any other provision that is not inconsistent with this [act].

24 (c) The terms of the governing instrument prevail over any provision of this [act] except:

- 25 (1) [Articles] 2, 7, 8 and 9;  
26 (2) the exclusion of a prevailingly donative purpose under Section 302;  
27 (3) the choice of governing law as provided in Section 303;  
28 (4) the standards of conduct for trustees under Section 404, but the governing  
29 instrument may prescribe the standards by which good faith, best interests of the statutory trust,  
30 and care that a person in a like position would reasonably believe appropriate under similar

1 circumstances are determined, if the standards are not manifestly unreasonable;

2 (5) the limitations provided in Section 405(b) on direction of trustees that are  
3 manifestly contrary to the terms of the governing instrument or would constitute a serious breach  
4 of trust;

5 (6) the right of a trustee to information under Section 407, but the governing  
6 instrument may prescribe the standards for assessing whether information is reasonably related  
7 to the trustee's discharge of the trustee's duties as trustee if the standards are not manifestly  
8 unreasonable;

9 (7) the prohibition under Section 410 of indemnification, advancement, or  
10 exoneration for conduct involving bad faith, willful misconduct, or reckless indifference;

11 (8) the right of a beneficial owner to information under Section 503, but the  
12 governing instrument may prescribe the standards for assessing whether information is  
13 reasonably related to the beneficial owner's ability to enforce its rights as a beneficial owner if  
14 the standards are not manifestly unreasonable;

15 (9) the right of a beneficial owner to bring a derivative action under Section 508,  
16 but the governing instrument may modify the terms of Section 508 to subject the right to  
17 additional standards and restrictions including the requirement that beneficial owners owning a  
18 specified amount or type of beneficial interest join in bringing the derivative action, if the  
19 additional standards and restrictions are not manifestly unreasonable; and

20 (10) Sections 601, 604, 605, 608, and 609.

## 21 **Comment**

22 **Principal Sources** – Uniform Trust Code §105 (2000); Revised Uniform Limited  
23 Liability Company Act §110 (2006); Uniform Limited Partnership Act §110 (2001); Uniform  
24 Limited Liability Company Act §103 (1996); Revised Uniform Partnership Act §103 (1997);  
25 Uniform Commercial Code §§1-302, 9-603 (2000); Delaware Statutory Trust Act §3806.



1  
2       **Default Rules.** Paragraphs (a) and (b) emphasizes that the Uniform Statutory Trust  
3 Entity Act is primarily a default statute. Most of the Act’s provisions may be overridden by the  
4 terms of the governing instrument.

5  
6       **Mandatory Rules.** Paragraph (c) lists the provisions of this act that are not subject to  
7 override in the governing instrument of a statutory trust. Most concern the rights of nonparties  
8 or public filing and notice requirements. By contrast, with two exceptions all the provisions of  
9 this Act concerning the duties and powers of a trustee, relations among trustees, and the rights  
10 and interests of a beneficial owner may be overridden or at least altered by the terms of the  
11 governing instrument. The first exception is the mandatory prohibition of indemnification,  
12 advancement, or exoneration for conduct involving bad faith, willful misconduct, or reckless  
13 indifference in paragraph (c)(7). This exception is familiar trust law. See Restatement (Second)  
14 of Trusts §222 (1959); George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees*  
15 §542 (rev. 2d ed. 1993); Uniform Trust Code §1008 (2000). See also John H. Langbein,  
16 *Mandatory Rules in the Law of Trusts*, 98 Nw. U.L. Rev. 1105, 1121-25 (2004). The Delaware  
17 Statutory Trust Act likewise limits the permissible scope of exoneration. See Delaware Statutory  
18 Trust Act §3806(e), which provides that the “governing instrument may provide for the  
19 limitation or elimination of any and all liabilities for breach of contract and breach of duty  
20 (including fiduciary duties) of a trustee . . . ; provided, that the governing instrument may not  
21 eliminate the implied contractual covenant of good faith and fair dealing.” Limitations on  
22 permissible exoneration are also familiar business entity law. See, e.g., Delaware General  
23 Corporation Law §102(b)(7).

24  
25       The second exception is contained in paragraph (c)(5), which makes mandatory the  
26 invalidity under Section 405(b) of a direction to a trustee or other person that is manifestly  
27 contrary to the terms of the governing instrument or would constitute a serious breach of  
28 fiduciary duty. The reference to serious breach of fiduciary duty is designed to exclude an  
29 inconsequential, immaterial, or technical breach that does not harm a beneficial owner. For  
30 some purposes, trust law distinguishes between serious and not serious breaches of trust. See,  
31 e.g., Uniform Trust Code §706(b)(1) (2000); Austin W. Scott, William F. Fratcher, & Mark L.  
32 Ascher, 2 *Scott and Ascher on Trusts* §11.10, p. 661 (5th ed. 2006); Restatement (Second) of  
33 Trusts §107 cmt. b (1959). However, the effect of paragraph (c)(5) is limited by paragraph  
34 (c)(4), which allows the trustee’s fiduciary duty to be altered by the governing instrument if the  
35 alteration is not manifestly unreasonable.

36  
37       Paragraphs (c)(4), (c)(6), (c)(8), and (c)(9) allow the governing instrument to alter the  
38 nature of the trustee’s fiduciary obligation, the right of a trustee to information, the right of a  
39 beneficial owner to information, and the right of a beneficial owner to bring a derivative action,  
40 but only if the alteration is not “manifestly unreasonable.” In opting for a “manifestly  
41 unreasonable” standard instead of Delaware’s “good faith and fair dealing” formulation, see  
42 Delaware Statutory Trust Act §3806(c) and (e), the drafting committee took notice of the use of  
43 “manifestly unreasonable” in Revised Uniform Limited Liability Company Act §110(d) (2006);  
44 Uniform Limited Partnership Act §110(b) (2001), Revised Uniform Partnership Act §103(b)  
45 (1997), Uniform Limited Liability Company Act §103(b) (1996), and intended a similar meaning  
46 here. See also Mark J. Loewenstein, *Fiduciary Duties and Unincorporated Business Entities*: In

1 Defense of the “Manifestly Unreasonable” Standard, 41Tulsa L. Rev. 411 (2006).

2  
3 Because paragraph (c) refers specifically to other sections of the Act, enacting  
4 jurisdictions that modify those other sections may also need to modify paragraph (c).

5  
6 **Relationship to Mandatory Rules Under the Uniform Trust Code.** Under Section  
7 105 of this act, the law pertaining to common law trusts supplements this act to the extent it is  
8 not displaced by this act or the governing instrument. Hence, in an enacting jurisdiction that has  
9 also enacted the Uniform Trust Code, the Code will apply to a statutory trust to the extent that  
10 the Code’s provisions are not displaced by this act or the governing instrument. Because  
11 paragraph (c) of this section does not include Section 105, the rules stated in UTC §105 that are  
12 mandatory with respect to a common law trust are not mandatory with respect to a statutory  
13 trust. To prevent evasion of the UTC’s mandatory rules, which enforce public policy limitations  
14 on donative transfers, Section 302 of this Act provides that a statutory trust may not have “a  
15 prevailingly donative purpose.” For further discussion of the relationship between this Act, the  
16 common law, and the Uniform Trust Code, see the Prefatory Note to this Act under the heading  
17 “Relationship to Common Law Trusts and the Uniform Trust Code” and the comments to  
18 Sections 105 and 302.

19  
20 **Registered Investment Companies.** The Investment Company Act of 1940 (the “1940  
21 Act”) trumps this Act with respect to a statutory trust that registers as an investment company.  
22 For such a statutory trust the 1940 Act imposes additional mandatory rules. See, e.g., the  
23 Comments to Sections 207 (name of statutory trust), 408 (interested transactions), 410  
24 (indemnification, advancement, and exoneration), 411 (delegation by trustee), and 412 (action by  
25 trustees).

## 26 27 **SECTION 104. SCOPE OF GOVERNING INSTRUMENT.**

28 (a) Subject to Section 103(c), a governing instrument may:

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

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

32 (3) provide for one or more series under Section 309;

33 (4) if and to the extent that voting rights are granted under the governing  
34 instrument, include provisions relating to:

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

1 (B) waiver of notice;

2 (C) action by consent without a meeting;

3 (D) establishment of record dates, quorum requirements, or voting in

4 person, by proxy, any form of communication that creates a record, telephone, or video

5 conference, or in any other manner; or

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

7 (5) provide for any action to be taken without the vote or approval of any

8 particular trustee or beneficial owner, or any class, group, or series of trustees or beneficial

9 owners, including:

10 (A) amendment of the governing instrument;

11 (B) accomplishment of a merger, conversion, or reorganization;

12 (C) appointment of one or more trustees;

13 (D) sale, lease, exchange, transfer, pledge or other disposition of all or any

14 part of the assets of the statutory trust or the assets of any series; and

15 (E) dissolution of the statutory trust;

16 (6) provide for the present or future creation of more than one statutory trust,

17 including the creation of a future statutory trust to which all or any part of the assets, liabilities,

18 profits, or losses of any existing statutory trust may be transferred or exchanged, and for the

19 conversion of beneficial interests in an existing statutory trust, or series thereof, into beneficial

20 interests in the separate statutory trust, or series thereof;

21 (7) provide for the appointment, election, or engagement of agents or independent

22 contractors of the statutory trust or delegates of the trustees, or agents, officers, employees,

23 managers, committees, or other persons that may manage the business and affairs of the statutory

1 trust, which may have such titles and such relative rights, powers, and duties as the governing  
2 instrument provides;

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

5 (9) provide for the manner in which the governing instrument may be amended,  
6 including by requiring the approval of a person that is not a party to the instrument or the  
7 satisfaction of specified conditions and, to the extent the instrument provides for the manner in  
8 which it may be amended, provide that it may be amended only in that manner or as otherwise  
9 permitted by law, but the approval of any person may be waived by the person and these  
10 conditions may be waived by all persons for whose benefit the conditions were intended;

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

15 (11) provide that a person may comply under paragraph (9) by a representative  
16 authorized by the person orally, in a record, or by conduct;

17 (12) provide that the statutory trust or the trustees, acting for and on behalf of the  
18 statutory trust, are deemed to hold beneficial ownership of any income earned on securities held  
19 by the statutory trust that are issued by any business entity formed, organized, or existing under  
20 the laws of any jurisdiction; and

21 (13) provide for the establishment of record dates for distributions.

22 (b) The governing instrument may include one or more instruments, agreements,  
23 declarations, bylaws, or other records and refer to or incorporate any record containing

1 provisions relating to the governance of the affairs of the statutory trust and the conduct of its  
2 business.

### 3 **Comment**

4 **Principal Sources** – Scattered sections of the Delaware and Connecticut Statutory Trust  
5 Acts.

6  
7 The unusual principal sources citation reflects the drafting committee’s decision to  
8 collect in a single section various permissive rules regarding the scope of the governing  
9 instrument that are scattered throughout the Delaware and Connecticut Statutory Trust Acts. The  
10 main exceptions concern the statement of permissive rules regarding the creation of one or more  
11 series of a statutory trust in Section 309, and the permissive rules regarding the allowable  
12 remedies for a beneficial owner’s breach in Section 501(c).

13  
14 By scheduling a nonexhaustive list of provisions that may validly be included in a  
15 statutory trust’s governing instrument, this section is the permissive rule analogue to Section  
16 103(c), which schedules the mandatory rules that cannot be overridden in the governing  
17 instrument. The drafting committee concluded that the demand of third parties and transactional  
18 planners to see language that expressly authorizes specific terms justified inclusion of a detailed  
19 list in addition to the broad statement of freedom of contract in Sections 103(a)-(b) and 106.  
20 Prior to statutory confirmation, doubts sometimes arose in transactional practice about the  
21 permissibility of such provisions. Similar reasoning underlies the provision of a detailed  
22 schedule of powers in Uniform Trust Code §816 (2000) in addition to the broad general  
23 statement in Uniform Trust Code §815.

24  
25 **SECTION 105. APPLICABILITY OF TRUST LAW.** The law of this state pertaining  
26 to common-law trusts supplements this [act] except to the extent modified or displaced by the  
27 governing instrument.

### 28 **Comment**

29 **Principal Sources** – Uniform Trust Code §106 (2000); Delaware Statutory Trust Act  
30 §3809; Connecticut Statutory Trust Act §34-519.

31  
32 Consistent with the Delaware Statutory Trust Act, the Uniform Statutory Trust Entity Act  
33 provides that state trust law, not corporate law, supplements this Act and the terms of the  
34 governing instrument. Thus, in an enacting jurisdiction that has also enacted the Uniform Trust  
35 Code, the Code will apply to a statutory trust to the extent that the Code’s provisions—including  
36 the mandatory rules scheduled in UTC §105—are not displaced by this act or the governing  
37 instrument. For discussion of why the rules under the UTC that are mandatory with respect to a  
38 common law trust are not mandatory with respect to a statutory trust, see the comment to Section  
39 103 under the heading “Relationship to Mandatory Rules Under the Uniform Trust Code.”

1  
2 In looking to trust law to supply defaults to fill gaps in this act and the governing  
3 instrument, the drafting committee was strongly influenced by the revealed preference for trust  
4 law among existing users of statutory trusts as evidenced by the popularity of the Delaware Act  
5 as compared to the business trust acts (such as those in Arizona, Indiana, Kansas, Mississippi,  
6 Montana, Oregon, Tennessee, Washington, and West Virginia) that look to corporate law. See  
7 Robert H. Sitkoff, *The Rise of the Statutory Business Trust* [in progress].  
8

## 9 **SECTION 106. RULES OF CONSTRUCTION.**

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

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

### 14 **Comment**

15  
16 **Principal Sources** – Delaware Statutory Trust Act §3825; Connecticut Statutory Trust  
17 Act §34-546; Uniform Statute and Rule Construction Act §18 (1995).  
18

19 Paragraph (a) emphasizes the freedom of contract afforded to transactional planners by  
20 the Uniform Statutory Trust Entity Act, which is primarily a default statute.  
21

22 Paragraph (b) admonishes the courts not to apply to this Act the canon of construction  
23 that statutes in derogation of the common law are to be strictly construed. Although Revised  
24 Uniform Partnership Act §104 (1997) does not include a similar admonition on the ground that  
25 the “principle is now so well established that it is not necessary to so state in the Act,” *id.* cmt.,  
26 the drafting committee for the Uniform Statutory Trust Entity Act included this admonition  
27 because several of this Act’s provisions are designed specifically to reject the application to a  
28 statutory trust of one or more common law trust principles. Put differently, several provisions of  
29 this Act derogate the common law. Those provisions should be interpreted in accord with their  
30 purpose.

1 [ARTICLE] 2

2 FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS

3 SECTION 201. CERTIFICATE OF TRUST.

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

6 (b) A certificate of trust must contain:

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

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

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

11 (4) notice if the trust might have one or more series.

12 (c) A certificate of trust may contain any information in addition to that required by  
13 subsection (b) which is not inconsistent with this [act].

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

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

19 (1) the inconsistent provision of the trust instrument prevails as to trustees and  
20 beneficial owners; and

21 (2) the certificate of trust, statement of cancellation, or change or articles of  
22 conversion or merger prevails as to a person, other than a trustee or a beneficial owner, which  
23 reasonably relies to its detriment on the filed record.

1 **Comment**

2  
3 **Principal Sources** – Uniform Limited Partnership Act §201 (2001); Delaware Statutory  
4 Trust Act §3810; Connecticut Statutory Trust Act §34-503.

5  
6 Unlike a common law trust, a statutory trust is a creature of statute that requires a filing  
7 with the state to come into existence. Filing rules are typical of limited liability entities. Such  
8 filing rules serve a notice function, alerting interested parties to creation and existence of a new  
9 limited liability juridical entity. See Section 204(b), which entitles any person to a certified copy  
10 of a filing made pursuant to this act.

11  
12 A statutory trust comes into existence only if (1) a certificate of trust is prepared and  
13 delivered to the specified public official for filing, and (2) the public official files the certificate.  
14 (For more on the meaning of “filing,” see Section 204 and the comment thereto.) The certificate  
15 of trust provides notice to interested third parties of the existence of the statutory trust and the  
16 identification of the statutory trust’s initial agent for service of process. Pursuant to Section  
17 309(b)(2), the certificate of trust also puts third parties on notice if the statutory trust further  
18 segregates its assets and liabilities by creating one or more series.

19  
20 Although formed by making a public filing, a statutory trust is also a creature of contract.  
21 As such, it will be possible, though improper, for the trust instrument to be inconsistent with the  
22 certificate of trust or other public filings relating to the statutory trust. Paragraph (d) provides  
23 the rule for determining which prevails in such circumstances. Under paragraph (d)(1), the  
24 inconsistent provision of the trust instrument prevails as to trustees and beneficial owners.  
25 Under paragraph (d)(2), the terms of the public filings trust prevail as to all other parties that  
26 reasonably rely on the filing. The different rule is justified on the theory that a party other than a  
27 beneficial owner or trustee is entitled to rely on the public record.

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

31  
32 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF**  
33 **TRUST.**

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

36 (1) the name of the trust;

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

38 (3) the changes that any amendment makes 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 owing to changed circumstances 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 certificate of trust may be amended at any time for any purpose as determined by the trustees.

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

(e) Subject to Section 204(c), an amended or restated certificate is effective when filed by the [Secretary of State].

### **Comment**

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

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

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

### **SECTION 203. SIGNING OF RECORDS.**

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

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

### **Comment**

1  
2       **Principal Sources** – Uniform Limited Partnership Act §204 (2001); Delaware Statutory  
3 Trust Act §3811; Connecticut Statutory Trust Act §34-504.

4  
5       Paragraph (b) confirms that the signing of a public record by a trustee is a delegable act.

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

9  
10       **SECTION 204. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY**  
11 **OF STATE]; EFFECTIVE TIME AND DATE.**

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

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

20       (c) Except as otherwise provided in Sections 205 and 212, a record delivered to the  
21 [Secretary of State] for filing under this [act] may specify an effective time and a delayed  
22 effective date. Except as otherwise provided in this [act], a record filed by the [Secretary of  
23 State] is effective:

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

27               (2) if the record specifies an effective time but not a delayed effective date, on the

1 date the record is filed at the time specified in the record;

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

4 (A) the specified date; or

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

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

8 (A) the specified date; or

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

#### 10 **Comment**

11  
12 **Principal Sources** – Uniform Limited Partnership Act §206 (2001); Delaware Statutory  
13 Trust Act §3812; Connecticut Statutory Trust Act §34-505.

14  
15 For a record prepared by a private person to become part of the public record under this  
16 Act, (1) someone must put a properly prepared version of the record into the possession of the  
17 public official specified in the Act as the appropriate filing officer, and (2) the filing officer must  
18 determine that the record complies with the filing requirements of this Act and then officially  
19 make the record part of the public record. This Act refers to the first step as “delivery to the  
20 [Secretary of State] for filing” and refers to the second step as “filing.” Thus, under this Act  
21 “filing” is an official act.

22  
23 Under paragraph (a), the caption need only indicate the title of the record—for example,  
24 Certificate of Trust or Statement of Change for Statutory Trust. Filing officers typically note on  
25 a filed record the fact, date, and time of filing. Copies provided by the filing officer under  
26 paragraph (a) should contain that notation. This Act does not provide a remedy if the filing  
27 officer wrongfully fails or refuses to file a record.

28  
29 Paragraph (c) allows most records to have a delayed effective date, up to 90 days after  
30 the date the record is filed by the filing officer. A record specifying a longer delay will not be  
31 rejected. Instead, under paragraph (c)(3) and (4), the delayed effective date is adjusted by  
32 operation of law to the “90th day after the record is filed.” This Act does not require the filing  
33 officer to notify anyone of the adjustment.

34  
35 Consistent with the existing statutory trust acts, but inconsistent with most corporate  
36 codes, this Act makes no provision for collecting a franchise tax. See generally Marcel Kahan &  
37 Ehud Kamar, Price Discrimination in the Market for Corporate Law, 86 Cornell L. Rev. 1205,

1 1218-33 (2001).

2  
3 Under Section 103(c)(1), this Section is not subject to override by the governing  
4 instrument.  
5

6 **SECTION 205. CORRECTING FILED RECORD.**

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

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

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

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

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

17 (c) When filed by the [Secretary of State], a statement of correction under subsection (a)  
18 is effective:

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

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

23 **Comment**

24  
25 **Principal Source** – Uniform Limited Partnership Act §207 (2001).  
26

27 A statement of correction is appropriate only to correct inaccuracies that existed or  
28 signatures that were defective “at the time of filing.” A statement of correction may not be used

1 to amend or revise a record that was accurate when filed but has become inaccurate as a result of  
2 subsequent events.

3  
4 Under paragraph (c), a statement of correction “relates back” by way of retroactive  
5 application except against persons that have relied on the uncorrected record and would be  
6 adversely affected if the correction related back.

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

## 10 11 **SECTION 206. CERTIFICATE OF EXISTENCE OR REGISTRATION.**

12 (a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish  
13 to the person making the request a certificate of existence for a statutory trust if the records filed  
14 in the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of  
15 trust and has not filed a statement of cancellation. A certificate of existence must state:

16 (1) the name of the trust;

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

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

20 (4) that a statement of cancellation has not been filed by the [Secretary of State];

21 and

22 (5) whether the most recent annual report of the trust required by Section 215 has  
23 been filed by the [Secretary of State].

24 (b) Subject to any qualification stated in the certificate, a certificate of existence or  
25 registration issued by the [Secretary of State] may be relied upon as conclusive evidence that the  
26 statutory trust is in existence.

### 27 **Comment**

28  
29 **Principal Source** – Uniform Limited Partnership Act §209 (2001).

1  
2 A certificate of existence can reveal only information present in the public record. Under  
3 this Act significant information bearing on the status of a statutory trust may be outside the  
4 public record. Section 806 provides for the issuance of a certificate of registration for a qualified  
5 foreign statutory trust.

6  
7 Section 204(b) provides a mechanism for obtaining a certified copy of a certificate of  
8 trust even if the trust has been terminated.

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

## 12 13 **SECTION 207. NAME OF STATUTORY TRUST.**

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

16 (1) the name of any person, other than an individual, that is already incorporated,  
17 organized, or authorized to transact business in this state; and

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

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

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

27 (1) the present user, registrant, or owner of the conflicting name consents in a  
28 signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of  
29 State] to dissolve or to change the conflicting name to a name that complies with subsection (a)

1 and is distinguishable in the records of the [Secretary of State] from the name applied for;

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

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

7 (A) has merged with the applicant;

8 (B) has been converted into the applicant; or

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

11 (d) Subject to Section 807, this section applies to any foreign statutory trust transacting  
12 business in this state, having a certificate of qualification to transact business in this state, or  
13 applying for a certificate of qualification.

#### 14 **Comment**

15  
16 **Principal Sources** – Uniform Limited Partnership Act §108 (2001); Delaware Statutory  
17 Trust Act §3814.

18  
19 The drafting committee opted not to require a traditional limited liability appellation.  
20 Such a requirement would be inconsistent with current practice under the Delaware Act, though  
21 the drafting committee contemplated that enacting jurisdictions with a strong policy regarding  
22 names of limited liability entities might modify this Section accordingly. Moreover, other  
23 regulatory law will sometimes limit the range of permissible names notwithstanding this Section.  
24 For example, the names of mutual funds typically do not contain a limited liability appellation,  
25 but Section 35(d) of the Investment Company Act of 1940, which is applicable to a statutory  
26 trust that is a registered investment company, prohibits “materially deceptive or misleading”  
27 names. 15 U.S.C. §80a-34(d). See also Rule 35d-1, 17 C.F.R. §270.35d-1 (listing types of  
28 names that have been deemed “materially deceptive or misleading”).

29  
30 Under Section 103(c)(1), this Section is not subject to override by the governing  
31 instrument.  
32

1           **SECTION 208. RESERVATION OF NAME.**

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

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

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

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

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

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

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

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

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



1 the current reservation.

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

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

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

8 (e) Subject to Section 204(c), a transfer or termination under subsection (d) is effective  
9 when the [Secretary of State] files the notice of transfer.

#### 10 **Comment**

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

12  
13 Under Section 103(c)(1), this Section is not subject to override by the governing  
14 instrument.  
15

#### 16 **SECTION 209. AGENT FOR SERVICE OF PROCESS.**

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

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

#### 22 **Comment**

23  
24 **Principal Sources** – Uniform Limited Partnership Act §114 (2001); Delaware Statutory  
25 Trust Act §3804; Connecticut Statutory Trust Act §34-507.  
26

27 Under Section 201(a)(3), the initial designation of a statutory trust's agent for service of  
28 process is made in the original certificate of trust. Under Section 702(a)(3), the initial  
29 designation of a foreign statutory trust's agent for service of process is made in the original

1 application for a certificate of qualification. The initial designation may be changed pursuant to  
2 a statement of change under Section 211, by an amendment to the certificate of trust under  
3 Section 202, or by an annual report under Section 214(e).

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

7  
8 **SECTION 210. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**  
9 **SERVICE OF PROCESS.**

10 (a) A statutory trust or qualified foreign statutory trust may change its agent for service of  
11 process, the address of its agent for service of process, or its designated office by delivering to  
12 the [Secretary of State] for filing a statement of change containing:

13 (1) the name of the trust;

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

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

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

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

21 (b) A statement of change is effective as provided in Section 204(c).

22 **Comment**

23  
24 **Principal Source** – Uniform Limited Partnership Act §115 (2001).

25  
26 Paragraph (a) uses “may” rather than “must” because a statutory trust may also change  
27 the information by an amendment to its certificate of trust under Section 202 and a qualified  
28 foreign statutory trust may also change the information by an amendment to its certificate of  
29 qualification under Section 805. Further, if the information currently in the public record is not  
30 inaccurate, a statutory trust or qualified foreign statutory trust may change the information in an  
31 annual report under Section 213(e).

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

5 **SECTION 211. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

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

9 (b) After receiving a statement of resignation under subsection (a), the [Secretary of  
10 State] shall file it and transmit a copy to the designated office of the statutory trust or qualified  
11 foreign statutory trust and another copy to the principal office if the address of the office appears  
12 in the records of the [Secretary of State] and is different from the address of the designated  
13 office.

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

16 **Comment**

17  
18 **Principal Source** – Uniform Limited Partnership Act §116 (2001).  
19

20 This section provides the exclusive means for an agent to resign without cooperation  
21 from the statutory trust or qualified foreign statutory trust and the only way the agent, rather than  
22 the statutory trust or foreign statutory trust, can effect a change in the public record. Unlike most  
23 records authorized or required to be delivered to the filing officer for filing under this Act, a  
24 statement of resignation may not provide for a delayed effective date. Paragraph (c) mandates  
25 the effective date. An effective date included in a statement of resignation is disregarded. To  
26 satisfy Section 212(a), the statutory trust or qualified foreign statutory trust must designate a new  
27 agent for service of process before the effective date. If the statutory trust or foreign statutory  
28 trust fails to do so, under Section 214 service on the statutory trust or foreign statutory trust may  
29 be made on the Secretary of State.  
30

31 Under Section 103(c)(1), this Section is not subject to override by the governing  
32 instrument.  
33

1           **SECTION 212. SERVICE OF PROCESS.**

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

5           (b) If a statutory trust or qualified foreign statutory trust does not appoint or maintain an  
6       agent for service of process in this state or the agent for service of process cannot with  
7       reasonable diligence be found at the agent's address on file with the [Secretary of State], the  
8       [Secretary of State] is an agent of the trust for service of process.

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

14          (d) Service is effected under subsection (c) at the earliest of:

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

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

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

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

23          (f) This section does not affect the right to serve process, notice, or demand in any other

manner provided by law.

## **Comment**

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

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

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

## **SECTION 213. ANNUAL 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 report that contains the name of the trust and:

(1) in the case of a statutory trust:

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

(B) the name and street and mailing addresses 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 706(a);

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

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

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

(b) Information in an annual report under this section must be current as of the date the

1 annual report is delivered to the [Secretary of State] for filing.

2 (c) The first annual report under this section must be delivered to the [Secretary of State]  
3 between [January 1 and April 1] of the year following the calendar year in which a statutory trust  
4 was formed or a qualified foreign statutory trust was authorized to transact business in this State.

5 An annual report must be delivered to the [Secretary of State] between [January 1 and April 1]  
6 of each subsequent calendar year.

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

12 (e) If an annual report under this section contains an address of a designated office or the  
13 name or address of an agent for service of process which differs from the information shown in  
14 the records of the [Secretary of State] immediately before the filing, the differing information in  
15 the annual report is considered a statement of change under Section 212.

16 **Comment**

17 **Source** – Uniform Limited Partnership Act §210 (2001).  
18

19 Under Section 103(c)(1), this Section would not be subject to override by the governing  
20 instrument.

1 [ARTICLE] 3

2 AUTHORIZATION; GOVERNING LAW; DURATION; POWERS

3 SECTION 301. STATUTORY TRUST AUTHORIZED. A statutory trust is an entity  
4 separate from its trustees and beneficial owners.

5 Comment

6  
7 Principal Sources – Delaware Statutory Trust Act §§3810; Connecticut Statutory Trust  
8 Act §§34-502.

9  
10 Because this Section implements an entity conception of the statutory trust, it confirms  
11 that any prior judicial decision that holds that a common law business trust violates the state’s  
12 corporate law, trust law, or public policy is not applicable to a statutory trust created under this  
13 Act. Examples of such decisions, which reflect the now outmoded concern that a business trust  
14 could be used to evade regulatory limitations on the corporate form, are collected in Robert H.  
15 Sitkoff, *The Rise of the Statutory Business Trust* [in progress].  
16

17 SECTION 302. PERMISSIBLE PURPOSES. A statutory trust may have any lawful  
18 purpose except a prevailingly donative purpose.

19 Comment

20  
21 Principal Sources – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust  
22 Act §34-502a.

23  
24 This Section provides that a statutory trust may be formed for “any lawful purpose except  
25 for a prevailingly donative purpose.” Thus, in addition to use in a commercial transaction, a  
26 statutory trust may be used in a custodial or other context that need not be for profit. See Section  
27 307. The limitation to “lawful” activity addresses the concern that some states limit the type of  
28 organizations that may be used in regulated industries such as banking and insurance.  
29

30 The exclusion of “a prevailingly donative purpose” addresses the concern that a statutory  
31 trust might be used in an estate planning or other donative context to evade public policy  
32 limitations on donative transfers and common law trusts. See, e.g., Uniform Trust Code §105  
33 (2000); John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 Nw. U.L. Rev. 1105  
34 (2004). The word “prevailingly” was included to account for the possibility that a donative  
35 transfer might be structured to look otherwise in form but still be a donative transfer in  
36 substance.  
37

38 By prohibiting a statutory trust from having “a prevailingly donative purpose,” the  
39 drafting committee avoided the necessity of designing a comprehensive schedule of mandatory

1 rules applicable only to statutory trusts with such a purpose, a task made more difficult by the  
2 increasing differentiation among the states on these matters, particularly with respect to the  
3 rights of the settlor's creditors in a self-settled trust and the continued application of the Rule  
4 Against Perpetuities to interests held in trust. See Robert H. Sitkoff & Max M. Schanzenbach,  
5 Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes,  
6 115 Yale L.J. 356 (2005).

7  
8 Examples of mandatory rules applicable to common law trusts that drafters might  
9 otherwise try to avoid by using a statutory trust include the following:

- 10 • the duty of a trustee to act in good faith and in accordance with the terms and  
11 purposes of the trust and the interests of the beneficiaries;
- 12 • the requirement that a trust and its terms be for the benefit of one or more  
13 ascertainable beneficiaries, and that the trust have a purpose that is lawful, not  
14 contrary to public policy, and possible to achieve;
- 15 • the power of the court to modify or terminate a trust;
- 16 • the effect of a spendthrift provision and the rights of the settlor's and the  
17 beneficiary's creditors and assignees to reach the assets of a trust;
- 18 • the power of the court to adjust a trustee's compensation specified in the terms of  
19 the trust which is unreasonably low or high;
- 20 • the power of the court to remove a trustee for a serious breach of trust;
- 21 • the duty of the trustee to give information and make reports concerning the  
22 administration of the trust to the beneficiary;
- 23 • the effect of an exoneration clause that purports to limit or eliminate the duties or  
24 liabilities of a trustee to a beneficiary;
- 25 • the rights of a party, other than a trustee or beneficiary, that transacts with the  
26 trustee in the trustee's capacity as such;
- 27 • the rules against perpetuities, accumulations of income, and suspension of the  
28 power of alienation; and
- 29 • the power of the court to take such action and exercise such jurisdiction as may be  
30 necessary in the interests of justice.

31  
32 Most of the foregoing rules are scheduled in Uniform Trust Code §105 (2000), the Code's  
33 schedule of mandatory rules. For discussion of why the rules under the UTC that are mandatory  
34 with respect to a common law trust are not mandatory with respect to a statutory trust, see the  
35 comment to Section 103 under the heading "Relationship to Mandatory Rules Under the  
36 Uniform Trust Code."

37  
38 The drafting committee declined the suggestion to exclude statutory trusts from having a  
39 charitable purpose on the ground that a statutory trust with a charitable purpose would be  
40 covered by existing regulatory law applicable to charitable entities. See Marion R. Fremont-  
41 Smith, *Governing Nonprofit Organizations: Federal and State Law and Regulation* 187-427  
42 (2004).

43  
44 Under Section 103(c)(2), this Section is not subject to override by the governing  
45 instrument.



**SECTION 303. STATUTORY TRUST SOLELY LIABLE FOR DEBTS, OBLIGATIONS, AND LIABILITIES OF STATUTORY TRUST.** A debt, obligation, or other liability of a statutory trust, whether arising in contract, tort, or otherwise, is solely a debt, obligation, or liability of the trust. 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 liability of the trust solely by reason of being or acting as a trustee, beneficiary, agent of the trust, or agent of the trustee.

### Comment

**Principal Sources** – Delaware Statutory Trust Act §3803; Connecticut Statutory trust Act §34-523; Revised Uniform Partnership Act §306 (1994); Uniform Limited Liability Company Act §303; Uniform Limited Partnership Act §§303, 404 (2001); Uniform Trust Code §507 (2000).

This section implements the concept that the statutory trust is a separate legal entity on three margins. First, this section confirms that a trustee, as a manager of the statutory trust, is not liable for the debts, obligations, and liabilities of the statutory trust. As such, this section overrides the outmoded common law rule that held the trustee liable for the debts of the trust but that gave the trustee a right to indemnity out of the trust fund. Compare Restatement (Second) of Trusts §§244, 261 (1959) (stating the old rule), with Uniform Trust Code §1010 (2000) (eliminating the personal liability of the trustee for debts, obligations, and liabilities arising in the trustee's fiduciary capacity). However, nothing in this Section limits the personal liability of the trustee to the statutory trust for breach of duty under Section 404.

Second, this section confirms that the statutory trust, not the agents of the statutory trust or the trustee, is liable for the debts, obligations, and liabilities of the trust incurred by an agent of the trust or the trustee acting on behalf of the trust or the trustee.

Third, this section confirms the limited liability of a beneficial owner by providing that the beneficial owner of a statutory trust is not liable for the debts, obligations, or liabilities of the statutory trust. Accordingly, this section confirms that the “control test” of *Williams v. Inhabitants of Milton*, 102 N.E. 355 (Mass. 1913), and Restatement (Second) of Agency §14B (1958), is not applicable to a statutory trust. Under the control test, if a beneficial owner of a common law business trust had a say in the administration of the trust or the right to remove and replace the trustees, the beneficial owner might be held liable for the debts of the trust. By contrast, under this section a beneficial owner may participate in the management of the statutory trust without exposure to liability for the debts of the statutory trust. For discussion of

1 a beneficial owner's limited liability under the Delaware Statutory Trust Act, see Wendell  
2 Fenton & Eric A. Mazie, Delaware Statutory Trusts, in 2 R. Franklin Balotti & Jesse A.  
3 Finkelstein, The Delaware Law of Corporations & Business Organizations §19.3 (3d ed. 2005  
4 Supp.).  
5

## 6 **SECTION 304. RIGHTS OF BENEFICIAL OWNER AND TRUSTEE IN TRUST** 7 **PROPERTY.**

8 (a) A beneficial owner's beneficial interest in the statutory trust is personal property  
9 regardless of the nature of the property of the trust. A beneficial owner has no interest in  
10 specific property of the trust.

11 (b) A creditor of a beneficial owner or of a trustee does not have the right to obtain  
12 possession of, or otherwise exercise legal or equitable remedies with respect to, the property of  
13 the statutory trust.

### 14 **Comment**

15  
16 **Principal Sources** - Delaware Statutory Trust Act §3805; Connecticut Statutory Trust  
17 Act §34-516; Uniform Trust Code §507 (2000); Revised Uniform Partnership Act §203 (1994);  
18 Uniform Limited Liability Company Act §501 (1996); Uniform Limited Partnership Act §701  
19 (2001).  
20

21 Paragraph (b) implements the concept that a statutory trust is an entity separate from its  
22 trustee and beneficial owners by confirming that a creditor of a trustee or a beneficial owner has  
23 no recourse against the property of the statutory trust. With respect to trustees, the rule of this  
24 paragraph is familiar from the operation of common law trusts. See Uniform Trust Code  
25 Restatement §507 (2000); Restatement (Third) of Trusts §42 cmt. c (2003); Restatement  
26 (Second) of Trusts §308 (1959). The protection afforded by this section is also consistent with  
27 that provided by the Bankruptcy Code. Property in which the trustee holds legal title as trustee  
28 is not part of the trustee's bankruptcy estate. See 11 U.S.C. §541(d). With respect to beneficial  
29 owners, for discussion of the parallel provision in the Delaware Statutory Trust Act, see Wendell  
30 Fenton & Eric A. Mazie, Delaware Statutory Trusts, in 2 R. Franklin Balotti & Jesse A.  
31 Finkelstein, The Delaware Law of Corporations & Business Organizations §19.4, at 19-9 – 19-  
32 10 (3d ed. 2005 Supp.). For a general discussion of asset partitioning rules in organizational law,  
33 see Henry Hansmann & Reinier Kraakman, The Essential Role of Organizational Law, 110 Yale  
34 L.J. 387 (2000); Henry Hansmann & Ugo Mattei, The Functions of Trust Law: A Comparative  
35 Legal and Economic Analysis, 73 N.Y.U. L. Rev. 434 (1998). See also Henry Hansmann,  
36 Reinier Kraakman, & Richard Squire, Law and the Rise of the Firm, 119 Harv. L. Rev. 1333  
37 (2006).

1  
2       **SECTION 305. GOVERNING LAW.** The law of this state governs:

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

4       (2) the liability of a beneficial owner as beneficial owner and a trustee as trustee for a  
5 debt, obligation, or other liability of a statutory trust; and

6       (3) the liability of a series of a statutory trust with respect to the statutory trust and other  
7 series thereof.

8                               **Comment**  
9

10       **Principal Sources** – Connecticut Statutory Trust Act §34-502; Uniform Limited  
11 Partnership Act §106 (2001); Revised Uniform Limited Liability Company Act §106 (2006).  
12

13       Under paragraph (1) the internal affairs of a statutory trust formed under this act are  
14 governed by the laws of this state no matter in which state the statutory trust operates. Although  
15 the term “internal affairs” may be indeterminate at its edges, the concept certainly includes  
16 interpretation and enforcement of the governing instrument and relations among the trustees,  
17 beneficial owners, and the statutory trust. See generally Restatement (Second) of Conflict of  
18 Laws §302 cmt. a(1971) (defining “internal affairs” with reference to corporate law as “the  
19 relations inter se of the corporation, its shareholders, directors, officers or agents”).  
20

21       Paragraph (2) supports Sections 303-04 by confirming that the liability of a beneficial  
22 owner or a trustee for the debts, obligations, or other liabilities of the statutory trust is governed  
23 by the law of this state. This paragraph is stated separately from Paragraph (1) because the  
24 liabilities of a beneficial owner or trustee to third parties is arguably not an internal affair. See,  
25 e.g., Restatement (Second) of Conflict of Laws §307 (1971) (treating shareholders’ liability  
26 separately from the internal affairs doctrine).  
27

28       Section 801(a) states rules for qualified foreign statutory trusts that parallel and are  
29 analogous in scope to those of this section.  
30

31       Under Section 103(c)(3), this Section is not subject to override by the governing  
32 instrument.  
33

34       **SECTION 306. DURATION.**

35       (a) A statutory trust has perpetual existence.

36       (b) A statutory trust, or any series thereof, may not be terminated or revoked by a

beneficial owner or other person except in accordance with this [act] or the terms of the governing instrument of the trust.

(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 does not terminate if the same person is the sole trustee and sole beneficial owner.

### Comment

**Principal Sources** – Delaware Statutory Trust Act §3808; Connecticut Statutory Trust Act §34-518.

Following the corporate default rule of perpetual existence, paragraph (a) provides a default rule of perpetual existence for a statutory trust. See also Section 701, which provides for dissolution of a statutory trust only upon the occurrence of an event or circumstance stated in the governing instrument. The duration of a common law trust, by contrast, is curtailed by the Rule Against Perpetuities. See Restatement (Second) of Property: Donative Transfers § 2.1 (1983). Accordingly, unless the governing instrument provides otherwise, under this section a statutory trust is exempt from the Rule Against Perpetuities. Without taking a position on the policy soundness of the tax-driven movement to abolish the Rule Against Perpetuities with respect to donative trusts, see Max M. Schanzenbach & Robert H. Sitkoff, Perpetuities or Taxes? Explaining the Rise of the Perpetual Trust, 27 Cardozo L. Rev. 2465 (2006), the drafting committee concluded that the dead-hand worries that underpin the Rule does not apply to a statutory trust. Under Section 302, a statutory trust may not have a prevailingly donative purpose.

Paragraph (b) confirms that a statutory trust may only be terminated in accordance with the terms of this Act or the governing instrument. Thus, paragraph (b) overrides the rules of common law trust termination that would otherwise be applicable to a statutory trust pursuant to Section 105. Those rules are concerned with mediating the tension between the donor's intent and subsequent contrary preferences of the beneficiaries, see Robert H. Sitkoff, An Agency Costs Theory of Trust Law, 89 Cornell L. Rev. 621, 658-63 (2004), an issue that is not applicable to a statutory trust inasmuch as a statutory trust under this Act may not have a prevailingly donative purpose. Instead, the drafting committee contemplated that pursuant to Section 104(b)(9) the governing instrument would provide for termination of the statutory trust or modification of the governing instrument if such provisions are desirable.

Paragraph (c) confirms that the rule of partnership law under which a partnership is dissolved upon the death or incapacity of one of the partners does not apply to a statutory trust or any series thereof.

Paragraph (d) overrides the application to a statutory trust under Section 105 of the

1 common law rule of merger whereby the legal and equitable title to the trust property merge and  
2 the trust terminates if the same person is the sole trustee and sole beneficiary. See Restatement  
3 (Third) of Trusts §69 (2003); Restatement (Second) of Trusts §341 (1959).  
4

#### 5 **SECTION 307. POWER TO SUE AND BE SUED.**

6 (a) A statutory trust has the power to sue and be sued in its own name.

7 (b) Except as otherwise provided in Section 309, the property of a statutory trust is  
8 subject to attachment and execution for a debt, obligation, or other liability of the trust.

#### 9 **Comment**

10  
11 **Principal Sources** – Delaware Statutory Trust Act §§3803-3805; Connecticut Statutory  
12 Trust Act §§34-518, 34-523; Uniform Limited Partnership Act §303 (2001).  
13

14 Paragraph (a) implements the concept that a statutory trust is a separate juridical entity by  
15 confirming that a statutory trust has the power to sue and be sued in its own name.  
16

17 Paragraph (b) addresses the attachment and execution of a statutory trust's property  
18 unless the statutory trust has formed one or more series under Section 309.  
19

#### 20 **SECTION 308. POWER TO HOLD PROPERTY; TITLE TO TRUST**

21 **PROPERTY.** A statutory trust has the power to hold or take title to property its own name, or  
22 in the name of a trustee in the trustee's capacity as trustee, whether in an active, passive, or  
23 custodial capacity.

#### 24 **Comment**

25 **Principal Source** – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust  
26 Act §34-502a.  
27

28 This Section implements the concept that a statutory trust is an entity separate from its  
29 trustee and beneficial owners by confirming that a statutory trust may transact over property in  
30 its own name. The property of a common law trust, by contrast, must be held in the name of the  
31 trustee as such.  
32

33 However, this section also permits the statutory trust to take title to property in the name  
34 of the trustee in the trustee's capacity as such even though the statutory trust is a juridical entity  
35 that can hold property in its own name. The drafting committee reasoned that this provision

1 would be useful for a statutory trust that has dealings in a state that has not provided for a  
2 statutory trust entity because property ownership by a trustee in the trustee's capacity as such is  
3 familiar from the use of common law trusts. To police the boundary of the trustee's personal  
4 assets and the assets of the trust, the common law imposes on the trustee duties to earmark trust  
5 property and not to commingle it with the trustee's own. See Uniform Trust Code §810 (2000);  
6 Restatement (Third) of Trusts §84 (T.D. No. 4, 2005); Restatement (Second) of Trusts §179  
7 (1959). The drafting committee contemplated that under appropriate circumstances Section  
8 404(b) would be read to require similar conduct by a trustee of a statutory trust that takes title to  
9 property of the statutory trust in the name of the trustee in the trustee's capacity as such.  
10

### 11 **SECTION 309. SERIES OF STATUTORY TRUST.**

12 (a) The governing instrument may:

13 (1) provide for classes, groups, or series of trustees, beneficial owners, or  
14 beneficial interests, having such relative rights, powers, and duties as the governing instrument  
15 may provide, and provide for the creation of additional classes, groups, or series of trustees,  
16 beneficial owners, or beneficial interests, having such relative rights, powers, and duties as may  
17 be established, including rights, powers, and duties senior or subordinate to existing classes,  
18 groups or series of trustees, beneficial owners, or beneficial interests;

19 (2) provide for designated series of trustees, beneficial owners, or beneficial  
20 interests having separate rights, powers, or duties with respect to profits and losses associated  
21 with specified property or obligations, and permit the series to have a separate business purpose  
22 or investment objective; and

23 (3) grant to, or withhold from, all or certain trustees or beneficial owners, or a  
24 specified class, group, or series of trustees or beneficial owners, the right to vote, separately or  
25 with any or all other classes, groups, or series of the trustees or beneficial owners, on any matter.

26 (b) If the governing instrument of a statutory trust creates one or more series as provided  
27 in subsection (a), a debt, obligation, or other liability incurred, contracted for, or otherwise  
28 existing with respect to a particular series is enforceable against the assets of the series only, and

1 not against the assets of the trust generally or any other series thereof, and none of the debts,  
2 obligations, or other liabilities incurred, contracted for, or otherwise existing with respect to the  
3 trust generally or any other series thereof is enforceable against the assets of the series if:

4 (1) separate and distinct records are maintained for the series and the assets  
5 associated with the series are held in separate and distinct records, directly or indirectly,  
6 including through a nominee or otherwise, and accounted for in separate and distinct records  
7 separately from the other assets of the trust, or any other series thereof; and

8 (2) notice of the limitation on liabilities of a series is set forth in the certificate of  
9 trust.

10 (c) If a statutory trust is a registered investment company under the Investment Company  
11 Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [and any regulations issued  
12 thereunder,] any class, group, or series of beneficial interests established by the governing  
13 instrument of the trust is a class, group, or series preferred as to distribution of assets or payment  
14 of dividends over all other classes, groups, or series in respect to assets specifically allocated to  
15 the class, group, or series under Section 18, or any amendment or successor provision, of the  
16 Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [and any  
17 regulations issued thereunder,].

## 18 **Comment**

19  
20 **Principal Sources** – Delaware Statutory Trust Act §3804; Connecticut Statutory Trust  
21 Act §34-518.

22  
23 Paragraph (a) confirms that a statutory trust may be organized with one or more series.  
24 The organization of a master statutory trust with several series is particularly common among  
25 statutory trusts that are registered investment companies under the Investment Company Act of  
26 1940, as amended, 15 U.S.C. Sections 80a-1 et seq. (the “1940 Act”). Rule 18f-2 under the  
27 1940 Act permits an investment company to have multiple series, provided that any matter  
28 required by the 1940 Act or other applicable law to be submitted to the holders of the  
29 outstanding voting securities of a series company shall not be deemed to have been effectively

1 acted upon unless approved by the holders of a majority of the outstanding voting securities of  
2 each series of stock affected by such matter. Rule 18f-2 also specifies certain instances where  
3 the vote is required by all of the security holders of the investment company and other instances  
4 where only the security holders of a series are required to vote.

5  
6 Paragraph (b) provides that if a statutory trust that has created separate series under  
7 paragraph (a), the debts, liabilities, and other obligations of a particular series are enforceable  
8 against the assets of that series only, but only if (1) separate records are maintained for each  
9 series and (2) notice of the limitation on liabilities of a series is set forth in the certificate of trust.

10 Under Section 201 the certificate of trust is made part of the public record and must indicate  
11 whether the statutory trust might create one or more series.

12  
13 Paragraph (c) addresses Section 18 of the 1940 Act, which governs the capital structure  
14 of an investment company. The 1940 Act was intended to prevent inequitable or discriminatory  
15 provisions that fail to protect the preferences and privileges of the holders of shares and  
16 excessive borrowing or issuance of senior securities (where there are preferences of rights  
17 among classes) that expose the fund and its shareholders to additional risk. Accordingly, Section  
18 18 defines and places restrictions on “senior securities” while at the same time allowing  
19 segregated pools of assets (i.e., separate funds or series) to be created under a single trust, and  
20 separate classes of shares representing interests in the same pool of assets with certain limited  
21 instances where there are different voting rights or dividend preferences.



1 [ARTICLE 4]

2 TRUSTEES AND TRUST MANAGEMENT

3 SECTION 401. MANAGEMENT OF STATUTORY TRUST. The business and  
4 affairs of a statutory trust must be managed by or under the authority of its trustees.

5 Comment

6 Principal Sources – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust  
7 Act §34-517; Uniform Limited Partnership Act §105 (2001); Delaware General Corporation Law  
8 §141; Revised Model Business Corporation Act §8.01 (2002).

9  
10 Section 102(16) defines trustee as a person designated as such in accordance with the  
11 governing instrument or applicable law. Section 104(b)(5)(C) confirms that the governing  
12 instrument may provide for trustee appointment. However, because no provision in this Act  
13 provides default rules for trustee appointment, if the governing instrument does not provide for  
14 trustee appointment, then under Section 105 the applicable law is the state's law pertaining to  
15 trustee appointment in common law trusts. For treatment of the default rules of trustee  
16 appointment, removal, and succession in common law trusts, see Restatement (Third) of Trusts  
17 §§31-37 (2003); Uniform Trust Code §§701-02, 704-06 (2000); Restatement (Second) of Trusts  
18 §§101, 106-08 (1959).

19  
20 SECTION 402. TRUSTEE POWERS. A trustee may exercise:

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

25 Comment

26 Principal Source –Uniform Trust Code §815 (2000).

27  
28 This section is intended to grant trustees the broadest possible powers, but to be exercised  
29 always in accordance with the duties of the trustee and any limitations stated in the terms of the  
30 trust. Hence, paragraph (a) overrides the application to a statutory trust under Section 105 of the  
31 outmoded common law rule that a trustee has only those powers granted by the trust instrument.  
32 See Uniform Trust Code §815 (2000); Restatement (Third) of Trusts §85 cmt. a (T.D. No. 4,  
33 2005).

1           However, the existence of a power, regardless of its source, does not speak to the  
2 question whether in a particular case it is consistent with the trustee's fiduciary obligation to  
3 exercise that power. The trustee's exercise of the broad powers conferred by this section is  
4 always subject to the trustee's fiduciary obligations. See Uniform Trust Code §815 cmt.  
5 (2000); Restatement (Third) of Trusts §§70, 86 (T.D. No. 4, 2005); John H. Langbein, The  
6 Contractarian Basis of the Law of Trusts, 105 Yale L.J. 625, 640-43 (1995).

#### 8           **SECTION 403. PROTECTION OF PERSON DEALING WITH TRUSTEE.**

9           (a) A person, other than a beneficial owner, that in good faith assists a trustee, or that in  
10 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or  
11 improperly exercising the trustee's power is protected from liability as if the trustee properly  
12 exercised the power.

13           (b) A person, other than a beneficial owner, that in good faith deals with a trustee is not  
14 required to inquire into the extent of a trustee's power or the propriety of its exercise.

15           (c) A person that in good faith delivers assets to a trustee need not ensure their proper  
16 application.

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

#### 21           **Comment**

22           **Principal Source** – Uniform Trust Code §1012 (2000).

23  
24           Paragraph (a) protects two different classes of persons: (1) a person other than a  
25 beneficial owner that assists a trustee with a transaction, and (2) a person other than a beneficial  
26 owner that deals with the trustee for value. As long as the assistance was provided or the  
27 transaction was entered into in good faith and without knowledge, a third person in either  
28 category is protected in the transaction even if the trustee was exceeding or improperly  
29 exercising the power.  
30

Paragraph (b) confirms that a third party that is acting in good faith is not charged with a duty to inquire into the extent of a trustee's power or the propriety of its exercise. The third party may assume that the trustee has the necessary power. Thus, paragraph (b) overrides the application to a statutory trust under Section 105 of the common law rule that a third party is charged with constructive notice of the trust instrument and its contents. See George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* §897 (Rev. 2d ed. 1995); 4 Austin W. Scott & William F. Fratcher, *The Law of Trusts* Section §297 (4th ed. 1989).

Paragraph (c) protects any person, including a beneficial owner, that in good faith delivers property to a trustee. The standard of protection in Restatement (Second) of Trusts §321 (1959) is phrased differently, but the result is similar. Under the Restatement Second, the person delivering property to a trustee is liable if at the time of the delivery the person had notice that the trustee was misapplying or intending to misapply the property.

Paragraph (d) extends the protections afforded by this section to assistance provided to or dealings for value with a former trustee. The third party is protected as if the former trustee still held the office if the third party acted in good faith.

#### **SECTION 404. STANDARDS OF CONDUCT FOR TRUSTEES.**

(a) In discharging the duties of trusteeship, a trustee shall act in good faith and in a manner that 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 similarly situated would reasonably believe appropriate under similar circumstances.

#### **Comment**

**Principal Source** – Revised Model Business Corporation Act §8.30 (2002).

To police the exercise of the trustee's broad powers under Section 402, this section subjects the trustee to fiduciary duties of loyalty (paragraph (a)) and care (paragraph (b)) akin to those of a corporate director.

Under Section 103(c), the trustee's standards of conduct under this section are mandatory rules that are not subject to override by the governing instrument. However, the governing instrument may prescribe the standards by which "good faith," "best interests of the statutory trust," and "care that a person in a like position would reasonable believe appropriate under similar circumstances" are determined provided that the standards are not "manifestly unreasonable." See also Delaware Statutory Trust Act §3806(c), which provides that a trustee's fiduciary duties "may be expanded or restricted or eliminated by provisions in the governing instrument; provided, that the governing instrument may not eliminate the implied contractual covenant of good faith and fair dealing," and §3806(e), which provides that a "governing

1 instrument may provide for the limitation or elimination of any and all liabilities for . . . breach  
2 of duties (including fiduciary duties) . . .; provided, that a governing instrument may not limit or  
3 eliminate liability for any act or omission that constitutes a bad faith violation of the implied  
4 contractual covenant of good faith and fair dealing.”

5  
6 The drafting committee opted to model the trustee’s duties on the corporate fiduciary  
7 obligation as stated in Revised Model Business Corporation Act §8.30 (2002) rather than the  
8 more restrictive trust law fiduciary obligation because the statutory trust is used chiefly as a  
9 mode of business organization. Unlike the trust law fiduciary obligation, which evolved in the  
10 context of donative transfers, the corporate law fiduciary obligation evolved to serve the needs of  
11 commercial actors. For a statement of the duties of loyalty and prudence in trust law, see  
12 Restatement (Third) of Trusts §§77-78 (T.D. No. 4, 2005). For a comparison, see Robert H.  
13 Sitkoff, Trust Law, Corporate Law, and Capital Market Efficiency, 28 J. Corp. L. 565, 572-82  
14 (2003). See also sources cited in the Comment to Section 408.  
15

## 16 **SECTION 405. DIRECTION OF TRUSTEES.**

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

19 (b) If the terms of a statutory trust confer upon a person a power to direct certain actions  
20 of a trustee or other person, the trustee or other person shall act in accordance with an exercise of  
21 the power unless the direction is manifestly contrary to the terms of the governing instrument or  
22 the trustee knows or has reason to know that following the direction would constitute a serious  
23 breach of fiduciary duty by the trustee.

24 (c) Neither the power to direct a trustee or other person nor the exercise of the power by  
25 any person, including a beneficial owner, causes the person to be a trustee or imposes on the  
26 person duties, including fiduciary duties, or liabilities relating thereto, to a statutory trust or to a  
27 beneficial owner thereof.

## 28 **Comment**

29 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust  
30 Act §34-517; Uniform Trust Code §808 (2000).  
31

32 Paragraph (a) ratifies the use of a directed trustee, meaning a trustee that must act in

1 accordance with the directions of another person. Under paragraph (b), however, the trustee  
2 must not follow a direction that is manifestly contrary to the terms of the governing instrument  
3 or that the trustee knows or has reason to know would constitute a serious breach of fiduciary  
4 duty. Cf. Restatement (Third) of Trusts §75 (T.D. No. 4, 2005); Restatement (Second) of Trusts  
5 §185 (1959).

6  
7 The reference in paragraph (b) to “serious” breach of fiduciary duty is designed to  
8 exclude an inconsequential, immaterial, or technical breach that does not harm a beneficial  
9 owner. For some purposes, trust law distinguishes between “serious” and not serious breaches of  
10 trust. See, e.g., Uniform Trust Code §706(b)(1) (2000); Austin Wakeman Scott, William F.  
11 Fratcher, & Mark L. Ascher, 2 Scott and Ascher on Trusts §11.10, p. 661 (5th ed. 2006);  
12 Restatement (Second) of Trusts §107 cmt. b (1959).

13  
14 The trustee’s determination whether a direction is “manifestly contrary to the terms of the  
15 governing instrument” or “would constitute a serious breach of fiduciary duty by the trustee” is  
16 subject to the trustee’s fiduciary obligations. The drafting committee contemplated that, in  
17 accord with conventional trust practice, a trustee could seek judicial resolution of whether an  
18 instruction falls within the exclusion of paragraph (b) by applying to the appropriate court for  
19 instructions. See Restatement (Second) of Trusts §259 (1959); Restatement (Third) of Trusts  
20 §71 (T.D. No. 4, 2005).

21  
22 Under Section 103(c)(5), the limitation on direction of trustees stated in paragraph (b) is  
23 not subject to override by the governing instrument.

24  
25 Under paragraph (c), unless the governing instrument provides otherwise, a person that  
26 has the power to direct the trustee is not a trustee and owes no duties, fiduciary or otherwise, to  
27 the statutory trust or the beneficial owners.

28  
29 In conjunction with Section 411, this section facilitates the current practice in existing  
30 statutory trusts of creating a trusteeship with respect to some, but not all, aspects of the trust—  
31 for example, in a mutual fund with an investment advisor or in a securitization transaction with a  
32 person whose consent is required before the statutory trust can petition for bankruptcy.  
33

## 34 **SECTION 406. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT** 35 **COMPANY.**

36 (a) In this section, the terms “affiliated person” and “interested person” have the  
37 meanings set forth in the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section  
38 80a-1 et seq., [and any regulations issued thereunder].

39 (b) If a statutory trust is registered as an investment company under the Investment

1 Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [and any regulations  
2 issued thereunder,] [or any successor statute thereto,] a trustee is an independent trustee for all  
3 purposes under this [act] if the trustee is not an interested person of the trust. The receipt of  
4 compensation for service as an independent trustee of the trust and for service as an independent  
5 trustee of one or more other investment companies managed by a single investment adviser or an  
6 affiliated person of an investment adviser, does not affect the status of the trustee as an  
7 independent trustee under this section.

#### 8 **Comment**

9  
10 **Principal Source** – Delaware Statutory Trust Act §3801.  
11

12 It is not uncommon for a director of a mutual fund to serve on multiple mutual fund  
13 boards. Section 403 addresses the question of trustee independence in such circumstances,  
14 rejecting *Strougo v. Scudder, Stevens & Clark*, 964 F. Supp. 783 (S.D.N.Y. 1997) (applying  
15 Maryland law). In *Strougo* the plaintiffs claimed that directors serving on multiple boards within  
16 a mutual fund complex became “interested” by virtue of their close financial relationship with  
17 the investment advisor. The plaintiffs brought a derivative suit against a fund’s investment  
18 advisor alleging excessive fees. The plaintiffs did not, however, make a demand on the directors  
19 prior to filing suit. The court held that the plaintiffs were excused from the demand requirement  
20 because the fund’s directors served on multiple boards within the same fund complex, receiving  
21 “substantial remuneration,” and hence were not independent from the adviser. *Id.* at 793-95.  
22

23 In 1998 the Maryland legislature effectively overruled *Strougo* by amending the  
24 Maryland corporate code to provide that directors who are not “interested persons” under the  
25 Investment Company Act of 1940 also would be deemed disinterested under Maryland law. See  
26 Md. Code (Corporations & Associations) §2-405.3. A similar provision took effect in  
27 Massachusetts in 1999, see Mass. Laws. 182, § 2B, and in Delaware in 2000, see Delaware  
28 Statutory Trust Act §3801(h). Almost all mutual funds are organized as Maryland corporations,  
29 Massachusetts trusts, or Delaware statutory trusts. See Robert H. Sitkoff, *The Rise of the*  
30 *Statutory Business Trust* [in progress]. Consistent with the Maryland, Massachusetts, and  
31 Delaware legislation, this section rejects *Strougo* by deeming a trustee to be independent if he or  
32 she is not an interested person under the Investment Company Act of 1940, as amended.  
33

34 **SECTION 407. TRUSTEE’S RIGHT TO INFORMATION.** A trustee has the right  
35 to information relating to the affairs of the statutory trust reasonably related to the trustee’s  
36 discharge of the trustee’s duties as trustee.

1 **Comment**

2 Under Section 103(c)(6), the trustee’s right to information under this section is not  
3 subject to override by the governing instrument. However, the trustee’s right to information is  
4 limited to information “reasonably related to” the trustee’s discharge of its duties as trustee, and  
5 under Section 103(c)(6) the governing instrument may prescribe the standards by which  
6 “reasonably related” is determined provided that those standards are not “manifestly  
7 unreasonable.”  
8

9 By linking the trustee’s information rights to the scope of the trustee’s duties as trustee,  
10 this section makes the trustee’s right to information function specific. This section therefore  
11 allows for the creation of a limited-role or directed trustee that will not have access to  
12 confidential information unrelated to the trustee’s limited role. At the same time, this section  
13 ensures that such a trustee will have access to information reasonably related to discharging the  
14 trustee’s duties in connection with the trustee’s limited role.  
15

16 Section 503 provides a comparable rule for a beneficial owner’s right to information.  
17

18 **SECTION 408. INTERESTED TRANSACTIONS.**

19 (a) Subject to subsection (b), a trustee, officer, employee, or manager of a statutory trust,  
20 or a related person of a trustee, officer, employee, or manager, may lend money to, borrow  
21 money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more  
22 obligations of, provide collateral for, and transact other business with the trust and has the same  
23 rights and obligations with respect to any such matter as a person that is not a trustee, officer,  
24 employee, manager, or related person of a trustee, officer, employee, or manager.

25 (b) A transaction under subsection (a) is voidable by the statutory trust unless the related  
26 party shows that the transaction is fair to the trust.

27 **Comment**

28 **Principal Sources** – Delaware Statutory Trust Act §3806; Delaware General Corporation  
29 Law §144.  
30

31 Consistent with the use of the term “best interests” instead of “sole interest” in Section  
32 404(a), this section abrogates the no-further-inquiry rule of the common law of trusts, which  
33 forbids self-dealing transactions. See Restatement (Third) of Trusts §78 (T.D. No. 5, 2005);  
34 Restatement (Second) of Trusts §170 (1959); John H. Langbein, Questioning the Trust Law Duty

1 of Loyalty: Sole Interest or Best Interest?, 114 Yale L.J. 929 (2005); Melanie B. Leslie, Trusting  
2 Trustees: Fiduciary Duties and the Limits of Default Rules, 94 Georgetown L.J. 67 (2005).

3  
4 The application of this section to a statutory trust that is registered as an investment  
5 company is preempted by the Investment Company Act of 1940, which generally prohibits a  
6 trustee, officer, employee, manager, and their related persons from lending money to, borrowing  
7 money from, and engaging in other transactions with the mutual fund without exemptive relief  
8 from the Securities and Exchange Commission. See 15 U.S.C. §80a-17(a), (d).  
9

10 **SECTION 409. GOOD-FAITH RELIANCE.** A trustee, officer, employee, manager,  
11 or committee of a statutory trust, or other person designated pursuant to Section 104(b)(7) is not  
12 liable to the trust or to a beneficial owner for breach of any duty, including a fiduciary duty, to  
13 the extent the breach resulted from the good-faith reliance on:

- 14 (1) the terms of the governing instrument;  
15 (2) the records of the statutory trust; or  
16 (3) the opinions, reports, or statements of another person in the other person's  
17 professional or expert competence.

18 **Comment**

19 **Principal Source** – Uniform Trust Code §1006 (2000); Delaware Statutory Trust Act  
20 §3806; Connecticut Statutory Trust Act §34-517.  
21

22 A trustee, officer, employee, manager, committee, or other such person or persons should  
23 be able to administer a statutory trust with dispatch and without concern that a reasonable  
24 reliance on the terms of the governing instrument, the records of the statutory trust, or the  
25 opinions of experts is misplaced. This section protects a person that so relies, but only to the  
26 extent the breach of trust resulted from such reliance and only if the person's reliance was in  
27 good faith.  
28

29  
30 **SECTION 410. INDEMNIFICATION, ADVANCEMENT, AND EXONERATION.**

31 (a) A statutory trust may indemnify and hold harmless any trustee or beneficial owner or  
32 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 with or to a statutory trust may be paid by the trust in advance of 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 the trustee from liability for conduct involving bad faith, willful misconduct, or reckless indifference.

#### **Comment**

**Principal Sources** – Delaware Statutory Trust Act §3817; Connecticut Statutory Trust Act §34-524; Delaware General Corporation Law §145; Uniform Trust Code §§105, 1008 (2000).

In *Nakahara v. The NS 1991 American Trust*, 739 A.2d 770 (Del. Ch. 1998), the court held that a Delaware statutory trust had the power to advance litigation expenses, but denied the trustees' request for indemnification on the ground of unclean hands.

Under Section 103(c)(7), this section's prohibition of indemnification, advancement, or exoneration for conduct involving bad faith, willful misconduct, or reckless indifference is not subject to override by the governing instrument. Prohibiting indemnification, advancement, or exoneration for such conduct is consistent with traditional trust doctrine. See Restatement (Second) of Trusts §222 (1959); George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* §542 (rev. 2d ed. 1993); Uniform Trust Code §1008. See also John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 Nw. U.L. Rev. 1105, 1121-25 (2004). It is also consistent with the Delaware Statutory Trust Act. See Delaware Statutory Trust Act §3806(e), which provides that the "governing instrument may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duty (including fiduciary duties) of a trustee . . . ; provided, that the governing instrument may not eliminate the implied contractual covenant of good faith and fair dealing." Limitations on permissible exoneration are also familiar business entity law. See, e.g., Delaware General Corporation Law §102(b)(7).

1 Any indemnification provision in the governing instrument of a statutory trust operating  
2 as a mutual fund is subject to Section 17(h) of the Investment Company Act of 1940, which  
3 generally prohibits a fund from including in its organizational documents any provision that  
4 protects a trustee or officer of a fund against liability to the fund or its shareholders by reason of  
5 “willful misfeasance, bad faith, gross negligence, or reckless disregard” of the person’s duties as  
6 trustee or officer. 15 U.S.C. § 80a-17(h).

7  
8 The SEC has taken the position that, before advancing legal fees to a trustee of a mutual  
9 fund, the fund’s “board must either (1) obtain assurances, such as by obtaining insurance or  
10 receiving collateral provided by the [trustee], that the advance will be repaid if the trustee is  
11 found to have engaged in disabling conduct, or (2) have a reasonable belief that the [trustee] has  
12 not engaged in disabling conduct and ultimately will be entitled to indemnification.” SEC  
13 Interpretation: Matters Concerning Independent Directors of Investment Companies, Investment  
14 Company Act Rel. No. 24083 (Oct. 14, 1999), 1999 WL 820629, \*10. The SEC has also taken  
15 the position that there is a rebuttable presumption that an independent trustee (see Section 406)  
16 has not engaged in disabling conduct. Id.

#### 17 18 **SECTION 411. DELEGATION BY TRUSTEE.**

19 (a) A trustee may delegate duties and powers that a prudent trustee of comparable skills  
20 could properly delegate under the circumstances. The trustee shall exercise reasonable care,  
21 skill, and caution in:

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

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

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

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

(e) An agent submits to the jurisdiction of the courts of this State by accepting a delegation of powers or duties from the trustee of a statutory trust that is subject to the law of this state.

#### Comment

**Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust Act §34-517; Uniform Trust Code §807 .

This section reverses the outmoded common law rule against delegation by a trustee. In reversing the common law rule against delegation, the drafting committee followed both the Delaware Statutory Trust Act and the modern trend with respect to common law trusts. Most states have abrogated the common law nondelegation rule with legislation based on the Uniform Prudent Investor Act, Uniform Trust Code, or the Restatement (Third) of Trusts. See Uniform Trust Code §807 (2000); Uniform Prudent Investor Act §9 (1994); Restatement (Third) of Trusts: Prudent Investor Rule §171 (1992). See also Restatement (Third) of Trusts §80 (T.D. No. 4, 2005). See generally John H. Langbein, Reversing the Nondelegation Rule of Trust-Investment Law, 59 Mo. L. Rev. 105 (1994).

Paragraphs (a), (c), (d), and (e) track the language of Uniform Trust Code §807 (2000), which is derived from Uniform Prudent Investor Act §9 (1994). Following the Delaware Statutory Trust Act, paragraph (b) treats delegation to a co-trustee in the same manner as delegation to another person. By contrast, traditional trust law disfavors delegation by one co-trustee to another. See Restatement (Second) of Trusts §184 (1959). See also Uniform Trust Code §703(e) (2000); Restatement (Third) of Trusts §81 cmt. c(1) (T.D. No. 4, 2005).

Mutual funds often receive a common set of services from an organization that specializes in operating mutual funds, which is typically the investment adviser or an affiliate. The trustees monitor the service providers and the Investment Company Act of 1940 requires the trustees to approve the contracts with the adviser and distributor. See 15 U.S.C. § 80a-15.

**SECTION 412. ACTION BY TRUSTEES.** On any matter that is to be acted on by trustees:

- (1) the trustees may act by majority of their number;
- (2) the trustees may act without a meeting, without previous notice, and without a vote, if a consent or consents, in a record, setting forth the action so taken, are signed by trustees having at least the minimum number of trustees necessary to authorize or take the action at a meeting at

1 which all trustees entitled to vote thereon were present and voted, but prompt notice of the action  
2 must be given to those trustees that did not consent; and

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

### 5 **Comment**

6  
7 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust  
8 Act § 34-517; Delaware General Corporation law §228; Uniform Trust Code §703 (2000).  
9

10 In accord with Uniform Trust Code §703(a) (2000) and Restatement (Third) of Trusts  
11 §39 (2003), paragraph (a)(1) rejects the common law rule requiring unanimity among the  
12 trustees of a private trust, replacing it with a default rule requiring a majority of the trustees.  
13

14 The remainder of this section allows for maximum flexibility in the mechanics of  
15 allowing the trustees to act or vote on actions. Section 104(b)(4) confirms that the rules stated in  
16 this Section are subject to override by the governing instrument.  
17

18 The Investment Company Act of 1940 requires a mutual fund's investment advisory  
19 contract, underwriting contract, fidelity bond, independent public accountants, and other such  
20 matters to be approved by the trustees of the mutual fund. See 15 U.S.C. § 80a-15(a); 15 U.S.C.  
21 80a-31(a); 17 C.F.R. § 270.17g-1. Investment advisory and underwriting contracts, and  
22 selection of independent public accountants, must be approved by the noninterested trustees at an  
23 in-person meeting. See 15 U.S.C. §80a-15(c); 15 U.S.C. 80a-31(a).

1 [ARTICLE] 5

2 BENEFICIARIES AND BENEFICIAL RIGHTS

3 SECTION 501. CONTRIBUTIONS BY BENEFICIAL OWNERS.

4 (a) A contribution of a beneficial owner to a statutory trust may be in cash, property, or  
5 services rendered or a promissory note or other obligation to contribute cash or property or to  
6 perform services. A person may become a beneficial owner of a statutory trust and may receive  
7 a beneficial interest in a statutory trust without making a contribution or being obligated to make  
8 a contribution to the trust.

9 (b) A beneficial owner is liable to the statutory trust for failure to perform any promise to  
10 contribute cash or property or to perform services, even if the beneficial owner is unable to  
11 perform because of death, disability, or any other reason. If a beneficial owner does not make  
12 the required contribution of property or services, the beneficial owner is obligated, at the option  
13 of the trust, to contribute cash equal to that portion of the value of the contribution that has not  
14 been made. This option is in addition to, and not in place of, any other rights, including the right  
15 to specific performance, that the trust may have against the beneficial owner under the governing  
16 instrument or applicable law.

17 (c) The governing instrument may provide that a beneficial owner that fails to make a  
18 contribution that the beneficial owner is obligated to make or fails to perform in accordance  
19 with, or to comply with the terms and conditions of, the governing instrument is subject to  
20 specified penalties or consequences of the failure, including:

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

23 (2) subordination of the defaulting beneficial owner's beneficial interest to that of

1 nondefaulting beneficial owners;

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

3 (4) forfeiture of the defaulting beneficial owner's beneficial interest;

4 (5) imposing an obligation to repay a loan to the statutory trust by another

5 beneficial owner of the amount necessary to meet the defaulting beneficial owner's commitment;

6 and

7 (6) fixing the value of the defaulting beneficial owner's beneficial interest by

8 appraisal or by formula and redemption or sale of the defaulting beneficial owner's beneficial

9 interest at that value.

#### 10 **Comment**

11

12 **Principal Sources** – Delaware Statutory Trust Act §3802; Connecticut Statutory Trust

13 Act §34-515.

14

15 Although statutory trusts are used primarily as a mode of business organization in

16 commercial transactions, paragraph (a) acknowledges that a beneficial owner may obtain a

17 beneficial interest without an exchange of consideration, an event that is not uncommon in

18 existing commercial practice. However, a statutory trust may not be used to effect a donative

19 transfer because Section 302 prohibits a statutory trust from having a “prevailingly donative

20 purpose.”

21

22 Paragraph (c) repudiates the hostility of traditional law to penalties, thereby resolving the

23 doubts that arose prior to statutory confirmation about the validity of particular remedies for a

24 beneficial owner's breach.

25

26 Under Section 104(b)(1), the governing instrument may provide the means by which

27 beneficial ownership is determined and evidenced. Under Section 104(b)(10)-(11), the

28 governing instrument may specify the conditions under which a person becomes a beneficial

29 owner.

30

31 **SECTION 502. REDEMPTION OF BENEFICIAL INTERESTS.** A statutory trust

32 may acquire, by purchase, redemption, or otherwise, any beneficial interest in the statutory trust.

33 A beneficial interest so acquired by the trust is canceled.

1 **Comment**

2  
3 **Principal Source** – Delaware Statutory Trust Act §3818.  
4

5 A registered investment company organized as an open-end mutual fund generally is  
6 obligated to honor redemption requests by its shareholders at the net asset value per share next  
7 calculated after receipt of the request, with payment to be made in cash (or, in some cases, in  
8 kind) within seven days of the request. See 15 U.S.C. §80a-22(e); 17 CFR §270.22c-1. In  
9 narrowly defined circumstances, this redemption right and obligation may be postponed. See 15  
10 U.S.C. §80a-22(e). The redemption proceeds may be reduced by various fees retained by the  
11 fund and/or its selling agent (i.e., sales loads and redemption fees). See 17 CFR §§270.22c-2;  
12 270.6c-10.  
13

14 **SECTION 503. BENEFICIAL OWNER’S RIGHT TO INFORMATION. A**

15 beneficial owner has the right to information relating to the affairs of the statutory trust  
16 reasonably related to the beneficial owner’s ability to enforce its rights as beneficial owner.

17 **Comment**

18 **Principal Source** – Delaware Statutory Trust Act §3819.  
19

20 Under Section 103(c)(8), a beneficial owner’s right to information under this section is  
21 not subject to override by the governing instrument. However, a beneficial owner’s right to  
22 information under this section is limited to information “necessary” for the beneficial owner to  
23 enforce its rights as such, and under Section 103(c)(8) the governing instrument may prescribe  
24 the standards by which “necessary” is determined if those standards are not “manifestly  
25 unreasonable.” Imposing a mandatory right to information critical to the beneficiary’s ability to  
26 enforce the trust is familiar law. See Restatement (Second) of Trusts §173 cmt. c (1959).  
27

28 Section 404 provides a comparable rule for a trustee’s right to information.  
29

30 **SECTION 504. BENEFICIAL INTERESTS.**

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

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

35 (c) Unless the statutory trust is a registered investment company under the Investment

1 Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [and any regulations  
2 issued thereunder,] a beneficial owner does not have a right to demand or to receive a  
3 distribution from the trust in any form other than money, except that the trust may distribute an  
4 asset in-kind if each part of the asset is fungible with each other part and each beneficial owner  
5 receives a percentage of the asset equal in value to the beneficial owner's share of the  
6 distribution.

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

#### 9 **Comment**

10  
11 **Principal Source** – Delaware Statutory Trust Act §3805; Connecticut Statutory Trust  
12 Act §34-516; Revised Uniform Limited Liability Company Act §404 (2006).

13  
14  
15 Paragraph (a) provides as a default rule that a beneficial owner's interest in the statutory  
16 trust is freely transferable. This paragraph therefore overrides the rule in some states, which  
17 would otherwise be applicable to a statutory trust pursuant to Section 105, that makes a common law  
18 trust spendthrift by default. See Jeffrey A. Schoenblum, 2007 Multistate Guide to Estate Planning  
19 Table 9.05, Part 1, Column 2 (collecting authority). However, because the rule stated in paragraph  
20 (a) is not scheduled in Section 103(c), it is subject to override by the governing instrument. Section  
21 104(b)(2) confirms that the governing instrument may limit a beneficial owner's right to transfer  
22 its beneficial interest.

23  
24 Under Section 104(b)(13), the governing instrument may provide for the establishment of  
25 record dates for distributions.  
26

27 **SECTION 505. TRANSACTION WITH BENEFICIAL OWNER.** A beneficial  
28 owner or related person of a beneficial owner may lend money to, borrow money from, act as a  
29 surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide  
30 collateral for, or transact other business with the statutory trust and, subject to law other than this  
31 [act], has the same rights and obligations with respect to those matters as a person that is not a  
32 beneficial owner.



1 **Comment**

2  
3 **Principal Source** – Delaware Statutory Trust Act §3806.  
4

5 **SECTION 506. VOTING OR CONSENT BY BENEFICIAL OWNERS.** On any  
6 matter that is to be acted on by beneficial owners, the following rules apply:

7 (1) The beneficial owners may act by majority of their number.

8 (2) The beneficial owners may take the action without a meeting, without notice, and  
9 without a vote, if a consent, or consents, in a record, setting forth the action so taken, are signed  
10 by beneficial owners having at least the minimum number of votes necessary to authorize or take  
11 the action at a meeting at which all beneficial owners entitled to vote thereon were present and  
12 voted, but prompt notice of the action must be given to those beneficial owners that did not  
13 consent.

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

16 **Comment**

17  
18 **Principal Source** – Delaware Statutory Trust Act §3806; Delaware General Corporation  
19 Law §228.  
20

21 Except for a conversion, merger, or dissolution under Article 6, nothing in this act  
22 provides for the beneficial owners to act on any matter. However, because the beneficial owners  
23 may be given such a right by the terms of the governing instrument, this paragraph supplies a  
24 default rule requiring a majority of the number of beneficial owners. Although the drafting  
25 committee contemplated that the governing instrument typically will address voting rules by  
26 providing a per capital or other share-based allocation of voting rights, the drafting committee  
27 declined the suggestion to try to incorporate such a rule as a default because such rules are  
28 necessarily transaction-specific and hence infeasible to specify in a one-size-fits-all default.  
29 Compare Revised Uniform Partnership Act §401(f) (1997), which provides that “[e]ach partner  
30 has equal rights in the management and conduct of the partnership business.”  
31

32 The Investment Company Act of 1940, as amended, specifies the percentage of vote  
33 necessary to approve certain actions related to the investment company. In other instances, 1940  
34 Act requires the action to be approved at a shareholders’ meeting called for that purpose. In such

1 instances, approval of the action by written consent without notice would not be valid. For  
2 example, Section 16(a) of the 1940 Act provides that “no person shall serve as a director of an  
3 investment company unless elected to that office by the holders of the outstanding voting  
4 securities of such company, at an annual or a special meeting duly called for that purpose.” In  
5 addition, investment companies seeking the vote of shareholders on specific actions must comply  
6 with rules governing the communication to, and solicitation of, their shareholders. See Rules  
7 14a-1 to 14b-2 under the Securities Exchange Act of 1934, as amended. These rules are  
8 significantly more comprehensive than most state statutes and rules governing communications  
9 to shareholders and other aspects of a shareholder meeting.

10  
11 Section 104(b)(4) confirms that the rules stated in this Section are subject to override by  
12 the governing instrument.  
13

#### 14 **SECTION 507. DERIVATIVE ACTION.**

15 (a) A beneficial owner may maintain a derivative action in the [appropriate court] to  
16 enforce a right of the statutory trust if:

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

20 (2) a demand would be futile.

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

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

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

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

29 (1) the date and content of the derivative plaintiff’s demand and the trustees’

1 response to the demand; or

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

3 (d) Except as otherwise provided in subsection (e):

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

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

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

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

#### 14 **Comment**

15  
16 **Principal Sources** - Uniform Limited Partnership Act §§1002-1005 (2001); Delaware  
17 Statutory Trust Act §3816; Connecticut Statutory Trust Act §34-522.

18  
19 Under Section 103(c)(9), the right of a beneficial owner to bring a derivative action under  
20 this Section may not be eliminated by the governing instrument. However, Section 103(c)(9)  
21 permits the governing instrument to subject the right to additional standards and restrictions,  
22 including the requirement that beneficial owners owning a specified amount or type of beneficial  
23 interest join in bringing the derivative action, provided that the additional standards and  
24 restrictions are not manifestly unreasonable.

25  
26 In preserving a mandatory right to bring a derivative action, but allowing that right to be  
27 subjected to additional standards and restrictions that are not manifestly unreasonable, this  
28 section balances two policy aims that are in tension. On the one hand, without the right to bring  
29 a derivative action, a beneficial owner might have no recourse in the event of trustee misconduct.  
30 On the other hand, without appropriate safeguards, a meritless derivative action might be  
31 brought with the aim of extracting a quick settlement. See, e.g., Reinier Kraakman, Hyun Park,  
32 & Steven Shavell, When Are Shareholder Suits in Shareholder Interests?, 82 Georgetown L.J.  
33 1733 (1994).

1 [ARTICLE] 6

2 CONVERSION AND MERGER

3 SECTION 601. DEFINITIONS. In this [article]:

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

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

6 (3) “Converted organization” means the organization into which a converting  
7 organization converts pursuant to Sections 602 through 605.

8 (4) “Converting organization” means an organization that converts into another  
9 organization pursuant to Section 602.

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

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

12 (7) “Organization” means a general partnership, including a limited liability partnership;  
13 limited partnership, including a limited liability limited partnership; limited liability company;  
14 corporation; foreign statutory trust; or any other person having a governing statute. The term  
15 includes a domestic or foreign organization whether or not organized for profit.

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

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

22 Comment

23 Principal Source – Uniform Limited Partnership Act §1101 (2001).  
24

1           This section contains definitions specific to this Article. Under Section 103(c)(10), this  
2 Section is not subject to override by the governing instrument.  
3

#### 4           **SECTION 602. CONVERSION.**

5           (a) An organization other than a statutory trust may convert to a statutory trust, and a  
6 statutory trust may convert to another organization pursuant to this section and Sections 603  
7 through 605 and a plan of conversion, if:

8                   (1) the conversion is not prohibited by the law of the jurisdiction that enacted the  
9 other organization's governing statute; and

10                   (2) the other organization complies with its governing statute in effecting the  
11 conversion.

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

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

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

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

18                   (4) the organizational documents of the converted organization.

#### 19                                   **Comment**

20           **Principal Sources** – Uniform Limited Partnership Act §1102 (2001).  
21

22           In a statutory conversion an existing entity changes its form, the jurisdiction of its  
23 governing statute, or both. For example, a statutory trust formed under the laws of one  
24 jurisdiction might convert to a corporation, limited liability company, or limited partnership  
25 under the laws of the same or another jurisdiction (referred to in some statutes as  
26 “domestication”).  
27

28           In contrast to a merger, which involves at least two entities, a conversion involves only  
29 one. The converting and converted organization are the same entity. See Section 605(a). For

1 this Act to apply to a conversion, either the converting or converted organization must be a  
2 statutory trust subject to this Act.

3  
4 A plan of conversion may provide that some persons with interests in the converting  
5 organization will receive interests in the converted organization while other persons with  
6 interests in the converting organization will receive some other form of consideration. Thus, a  
7 “squeeze out” conversion is possible.

8  
9 For a general discussion of conversion and its effect, see Model Entity Transactions Act  
10 §406 (2006) and comment 1 thereto.  
11

## 12 **SECTION 603. ACTION ON PLAN OF CONVERSION BY CONVERTING** 13 **STATUTORY TRUST.**

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

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

18 (1) as provided in the plan; and

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

### 21 **Comment**

22 **Principal Source** – Uniform Limited Partnership Act §1103 (2001).  
23

24 The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries  
25 is a default rule that may be overridden by the governing instrument. See Section 104(b)(5)(B).  
26 Hence, the governing instrument may state a different quantum of consent or provide a different  
27 approval mechanism. Varying this subsection’s rule means that a beneficial owner might be  
28 subject to a conversion (including a “squeeze out” conversion) without consent and with no  
29 appraisal remedy. If the converting organization is a statutory trust subject to this Act, the  
30 trustee of the converting organization is subject to the duties and obligations stated in this Act.  
31 Those duties would apply to the process and terms under which the conversion occurs.  
32 However, if the governing instrument allows for a conversion with less than unanimous consent,  
33 the mere fact that a beneficial owner objects to a conversion does not mean that a trustee that is  
34 favoring, arranging, consenting to, or effecting the conversation has breached a duty under this  
35 Act.

1  
2 In the case of a statutory trust that is a registered investment company organized as an  
3 open-end mutual fund, a shareholder may elect to redeem any or all beneficial interests in the  
4 statutory trust at the current net asset value per share, see 17 C.F.R. §270.22c-1, which is a price  
5 that is akin to an appraisal value. Except for limited circumstances, a mutual fund is required to  
6 pay proceeds to the redeeming shareholder within seven days of the date of redemption request.  
7 See 15 U.S.C. §80a-22(e). Thus, a mutual fund generally does not afford dissenting rights to its  
8 shareholders because any shareholder of a mutual fund being converted may redeem fund shares  
9 at net asset value prior to the closing date of the proposed conversion.  
10

11 **SECTION 604. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

12 (a) After a conversion is approved:

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

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

16 (B) the name and form of the converting organization and the jurisdiction  
17 of its governing statute;

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

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

21 (E) if the converted organization is a foreign organization not authorized  
22 to transact business in this state, the street and mailing addresses of an office that the [Secretary  
23 of State] may use for the purposes of Section 605(c); and

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

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

28 (B) the name and form of the converting organization and the jurisdiction

1 of its governing statute; and

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

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

6 **Comment**

7 **Principal Source** – Uniform Limited Partnership Act §1104 (2001).

8  
9 Under paragraph (b) the effective date of a conversion is determined under the governing  
10 statute of the converted organization.

11  
12 Under Section 103(c)(10), this Section is not subject to override by the governing  
13 instrument.  
14

15 **SECTION 605. EFFECT OF CONVERSION.**

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

18 (b) When a conversion takes effect:

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

21 (2) all debts, obligations, and other liabilities of the converting organization  
22 continue as debts, obligations, or other liabilities of the converted organization;

23 (3) an action or proceeding pending by or against the converting organization may  
24 be continued as if the conversion had not occurred;

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



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

3 (6) except as otherwise agreed, the conversion does not dissolve a converting  
4 statutory trust or any series thereof for the purposes of Section 701.

5 (c) A converted organization that is a foreign organization consents to the jurisdiction of  
6 the courts of this state to enforce any debt, obligation, or other liability for which the converting  
7 statutory trust is liable, if, before the conversion, the converting statutory trust was subject to suit  
8 in this state on the debt, obligation, or other liability. A converted organization that is a foreign  
9 organization and not authorized to transact business in this state appoints the [Secretary of State]  
10 as its agent for service of process for purposes of enforcing a debt, obligation, or other liability  
11 under this subsection. Service on the [Secretary of State] under this subsection is made in the  
12 same manner and with the same consequences as in Section 214(c) and (d).

### 13 **Comment**

14 Principal Source – Uniform Limited Partnership Act §1105 (2001).  
15

16 Paragraph (a) confirms that conversion changes an entity's legal type, but does not create  
17 a new entity. Unlike a merger, a conversion involves a single entity. Therefore under paragraph  
18 (b) a conversion does not transfer any of the entity's rights or obligations. For further  
19 discussion, see Model Entity Transactions Act §406 (2006) and comment 1 thereto.  
20

21 Under Section 103(c)(10), this Section is not subject to override by the governing  
22 instrument.  
23

### 24 **SECTION 606. MERGER.**

25 (a) A statutory trust may merge with one or more other constituent organizations  
26 pursuant to this section and Sections 607 through 609 and a plan of merger if:

27 (1) the governing statute of each of the other organizations authorizes the merger;

28 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the

governing statutes; and

(3) each of the other organizations complies with its governing statute 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.

#### **Comment**

**Principal Source** – Uniform Limited Partnership Act §1106 (2001).

For this Act to apply to a merger, at least one of the constituent organizations must be a statutory trust subject to this Act.

A plan of merger may provide that some persons with interests in a constituent organization will receive interests in the surviving organization, while other persons with interests in the same constituent organization will receive some other form of consideration. Thus, a "squeeze out" merger is possible. As noted in the comment to Section 603, the duties and obligations stated in this Act apply to a trustee of a constituent organization that is a statutory trust subject to this Act. Those duties would apply to the process and terms under which a "squeeze out" merger occurs.

#### **SECTION 607. ACTION ON PLAN OF MERGER BY CONSTITUENT**

1     **STATUTORY TRUST.**

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

4             (b) After a merger is approved, and at any time before a filing is made under Section 608,  
5     a constituent statutory trust may amend the plan or abandon the planned merger:

6                 (1) as provided in the plan; and

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

9                             **Comment**

10            **Principal Sources** – Uniform Limited Partnership Act §1107 (2001).

11  
12            The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries  
13     is a default rule that may be overridden by the governing instrument. See Section 104(b)(5)(B).  
14     Hence, the governing instrument may state a different quantum of consent or provide a  
15     completely different approval mechanism. Varying this subsection’s rule means that a beneficial  
16     owner might be subject to a merger (including a “squeeze out” merger) without consent and with  
17     no appraisal remedy. The trustee of a constituent statutory trust is subject to the duties and  
18     obligations stated in this Act, and those duties would apply to the process and terms under which  
19     the merger occurs. However, if the governing instrument allows for a merger with less than  
20     unanimous consent, the mere fact a beneficial owner objects to a merger does not mean that a  
21     trustee that is favoring, arranging, consenting to, or effecting the merger has breached a duty  
22     under this Act.

23  
24            For the reasons discussed in the comment to Section 603, a mutual fund generally does  
25     not afford dissenting rights to its shareholders because any shareholder of an acquired mutual  
26     fund may redeem acquired fund shares at net asset value prior to the closing date of the proposed  
27     reorganization of the acquired fund.

28  
29            **SECTION 608. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

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

32                 (1) each constituent statutory trust, by one or more trustees or other authorized

1 representative; and

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

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

4 (1) the name and form of each constituent organization and the jurisdiction of its  
5 governing statute;

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

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

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

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

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

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

17 (6) if the surviving organization is a foreign organization not authorized to  
18 transact business in this state, the street and mailing addresses of an office that the [Secretary of  
19 State] may use for the purposes of Section 609(b); and

20 (7) any additional information required by the governing statute of any  
21 constituent organization.

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

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

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

3 (A) compliance with subsection (c); or

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

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

8 **Comment**

9 **Principal Source** – Uniform Limited Partnership Act §1108 (2001).

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

14 **SECTION 609. EFFECT OF MERGER.**

15 (a) When a merger becomes effective:

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

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

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

21 (4) all debts, obligations, and other liabilities of each constituent organization that  
22 ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

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

25 (6) except as prohibited by other law, all of the rights, privileges, immunities,

1 powers, and purposes of each constituent organization that ceases to exist vest in the surviving  
2 organization;

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

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

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

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

9 (9) if the surviving organization preexisted the merger, any amendments provided  
10 for in the articles of merger for the organizational document that created the organization  
11 become effective.

12 (b) A surviving organization that is a foreign organization consents to the jurisdiction of  
13 the courts of this state to enforce any debt, obligation, or other liability owed by a constituent  
14 organization, if before the merger the constituent organization was subject to suit in this state on  
15 the obligation. A surviving organization that is a foreign organization and not authorized to  
16 transact business in this state appoints the [Secretary of State] as its agent for service of process  
17 for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service  
18 on the [Secretary of State] under this subsection is made in the same manner and with the same  
19 consequences as in Section 213(c) and (d).

## 20 **Comment**

21 **Principal Source** – Uniform Limited Partnership Act §1109 (2001).

22  
23 Under Section 103(c)(10), this Section is not subject to override by the governing  
24 instrument.  
25

**SECTION 610. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an entity from being converted or merged under law other than this [act].

### Comment

**Principal Source** – Uniform Limited Partnership Act §1113 (2001).

1 [ARTICLE] 7

2 DISSOLUTION AND WINDING UP

3  
4 **SECTION 701. EVENTS CAUSING DISSOLUTION.** A statutory trust is dissolved,

5 and its activities must be wound up, upon the occurrence of:

6 (1) an event or circumstance that the governing instrument states causes dissolution; or

7 (2) an administrative dissolution under Section 705.

8 **Comment**

9 **Principal Source** – Revised Uniform Limited Liability Company Act §701 (2006).

10  
11 Consistent with Section 304, which provides as a default rule that a statutory trust has  
12 perpetual existence, this Section provides that a statutory trust is dissolved only upon the  
13 occurrence of an event or circumstance stated in the governing instrument. Thus, in contrast  
14 with almost all other unincorporated business organizations, in a statutory trust dissolution is not  
15 available as a remedy for alleged oppressive conduct.

16  
17 Under Section 103(c)(1), the provisions of this section are not subject to override by the  
18 governing instrument. However, the governing instrument need not provide for an event or  
19 circumstance that causes dissolution. See Section 306.

20  
21 **SECTION 702. WINDING UP.**

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

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

25 (1) shall discharge the trust's debts, obligations, and other liabilities, settle and  
26 close the trust's activities, and marshal and distribute the assets of the trust; and

27 (2) may:

28 (A) deliver to the [Secretary of State] for filing a statement of dissolution  
29 stating the name of the trust and that the trust is dissolved;



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

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

(D) transfer the trust’s property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the [Secretary of State] for filing a statement of termination stating the name of the trust and that the trust is terminated; and

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

(c) 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 unfinished business of the trust.

#### **Comment**

**Principal Source** – Revised Uniform Limited Liability Company Act §702 (2006); Delaware Limited Liability Company Act §18-805.

If the governing instrument of a statutory trust provides for the dissolution of the trust, then from the event or circumstance that triggers dissolution, the statutory trust may continue only for the purpose of winding up.

In winding up the statutory trust within a reasonable time, the trustees are neither required to undertake a fire sale of the assets of the statutory trust on unfavorable terms nor permitted to continue the trust endlessly under the guise of winding down. Thus, the question of what period of time is “reasonable” under paragraph (b)(2)(B) turns on the totality of the circumstances.

Paragraph (c) provides for the possibility that after dissolution additional unfinished business of the statutory trust is discovered.

Under Section 103(c)(1), the provisions of this section are not subject to override by the governing instrument.

1

2           **SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED STATUTORY**

3   **TRUST.**

4           (a) Except as otherwise provided in subsection (d), a dissolved statutory trust may give  
5 notice of a known claim under subsection (b), which has the effect as provided in subsection (c).

6           (b) A dissolved statutory trust may in a record notify its known claimants of the  
7 dissolution. The notice must:

- 8                   (1) specify the information required to be included in a claim;
- 9                   (2) provide a mailing address to which the claim is to be sent;
- 10                  (3) state the deadline for receipt of the claim, which may not be less than 120 days  
11 after the date the notice is received by the claimant; and
- 12                  (4) state that the claim will be barred if not received by the deadline.

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

- 15                   (1) the claim is not received by the specified deadline; or
- 16                   (2) if the claim is timely received but rejected by the trust:
- 17                           (A) the trust causes the claimant to receive a notice in a record stating that  
18 the claim is rejected and will be barred unless the claimant commences an action against the trust  
19 to enforce the claim within 90 days after the claimant receives the notice; and
- 20                           (B) the claimant does not commence the required action within the 90  
21 days.

22           (d) This section does not apply to a claim based on an event occurring after the effective  
23 date of dissolution or a liability that on that date is contingent.

1 **Comment**

2 **Principal Source** – Revised Uniform Limited Liability Company Act §703 (2006).  
3 Under Section 103(c)(1), the provisions of this section are not subject to override by the  
4 governing instrument.  
5

6 **SECTION 704. OTHER CLAIMS AGAINST DISSOLVED STATUTORY TRUST.**

7 (a) A dissolved statutory trust may publish notice of its dissolution and request persons  
8 having claims against the trust to present them in accordance with the notice.

9 (b) The notice authorized by subsection (a) must:

10 (1) be published at least once in a newspaper of general circulation in the [county]  
11 in this state in which the dissolved statutory trust's principal office is located or, if it has none in  
12 this state, in the [county] in which the trust's designated office is or was last located;

13 (2) describe the information required to be contained in a claim and provide a  
14 mailing address to which the claim is to be sent; and

15 (3) state that a claim against the trust is barred unless an action to enforce the  
16 claim is commenced within [five] years after publication of the notice.

17 (c) If a dissolved statutory trust publishes a notice in accordance with subsection (b),  
18 unless the claimant commences an action to enforce the claim against the trust within five years  
19 after the publication date of the notice, the claim of each of the following claimants is barred:

20 (1) a claimant that did not receive notice in a record under Section 703;

21 (2) a claimant whose claim was timely sent to the trust but not acted on; and

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

24 (d) A claim not barred under this section may be enforced:

25 (1) against a dissolved statutory trust, to the extent of its undistributed assets; and

1 (2) if assets of the trust have been distributed after dissolution, against a beneficial  
2 owner to the extent of that person's proportionate share of the assets distributed to the beneficial  
3 owner after dissolution, but a beneficial owner's total liability for all claims under this paragraph  
4 does not exceed the total amount of assets distributed to the beneficial owner after dissolution.

5 **Comment**

6 **Principal Source** – Revised Uniform Limited Liability Company Act §704 (2006).

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

10  
11  
12 **SECTION 705. ADMINISTRATIVE DISSOLUTION.**

13 (a) The [Secretary of State] may dissolve a statutory trust administratively if the trust  
14 does not:

15 (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the  
16 [Secretary of State]; or

17 (2) deliver, within 60 days after the due date, its annual report to the [Secretary of  
18 State].

19 (b) If the [Secretary of State] determines that a ground exists for administratively  
20 dissolving a statutory trust, the [Secretary of State] shall file a record of the determination and  
21 serve the trust with a copy of the filed record.

22 (c) If within 60 days after service of the copy pursuant to subsection (b) a statutory trust  
23 does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the  
24 [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the  
25 [Secretary of State] shall dissolve the trust administratively by preparing, signing, and filing a  
26 declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall

1 serve the trust with a copy of the filed declaration.

2 (d) A statutory trust that has been administratively dissolved continues in existence but,  
3 subject to Section 706, may carry on only activities necessary to wind up its activities and  
4 liquidate its assets under Sections 702 and 708 and to notify claimants under Sections 703 and  
5 704.

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

### 8 **Comment**

9 **Principal Source** – Revised Uniform Limited Liability Company Act §705 (2006).

10  
11 Under Section 103(c)(1), the provisions of this section are not subject to override by the  
12 governing instrument.  
13

## 14 **SECTION 706. REINSTATEMENT FOLLOWING ADMINISTRATIVE** 15 **DISSOLUTION.**

16 (a) A statutory trust that has been administratively dissolved may apply to the [Secretary  
17 of State] for reinstatement within [two] years after the effective date of dissolution. The  
18 application must be delivered to the [Secretary of State] for filing and state:

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

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

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

22 (b) If the [Secretary of State] determines that an application under subsection (a) contains  
23 the required information and that the information is correct, the [Secretary of State] shall prepare  
24 a declaration of reinstatement that states this determination, sign and file the original of the  
25 declaration of reinstatement, and serve the statutory trust with a copy.

1 (c) When a reinstatement becomes effective, it relates back to and takes effect as of the  
2 effective date of the administrative dissolution and the statutory trust may resume its activities as  
3 if the dissolution had not occurred.

4 **Comment**

5 **Principal Source** – Revised Uniform Limited Liability Company Act §706 (2006).

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

10 **SECTION 707. APPEAL FROM REJECTION OF REINSTATEMENT.**

11 (a) If the [Secretary of State] rejects a statutory trust’s application for reinstatement  
12 following administrative dissolution, the [Secretary of State] shall prepare, sign, and file a notice  
13 that explains the reason for rejection and serve the trust with a copy of the notice.

14 (b) Within 30 days after service of a notice of rejection of reinstatement under subsection  
15 (a), a statutory trust may appeal from the rejection by petitioning the [appropriate court] to set  
16 aside the dissolution. The petition must be served on the [Secretary of State] and contain a copy  
17 of the [Secretary of State’s] declaration of dissolution, the trust’s application for reinstatement,  
18 and the [Secretary of State’s] notice of rejection.

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

21 **Comment**

22 **Principal Source** – Revised Uniform Limited Liability Company Act §707 (2006).

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

27 **SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP STATUTORY**

1    **TRUST’S ACTIVITIES.**

2           (a) In winding up its activities, a statutory trust shall first apply its assets to discharge its  
3 obligations to creditors.

4           (b) After a statutory trust complies with subsection (a), any surplus must be distributed to  
5 the beneficial owners in proportion to their beneficial interests.

6   **Comment**

7           **Principal Source** – Revised Uniform Limited Liability Company Act §708 (2006).

8  
9           Under Section 103(c)(1), the provisions this section are not subject to override by the  
10 governing instrument.

1 [ARTICLE] 8

2 FOREIGN STATUTORY TRUSTS

3 SECTION 801. GOVERNING LAW.

4 (a) The law of the state or other jurisdiction under which a foreign statutory trust is  
5 formed 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 the debts, obligations, or other liabilities of the trust; and

9 (3) the liability of a series of a foreign statutory trust with respect to the trust and  
10 other series thereof.

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

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

17 Comment

18  
19 **Principal Sources** – Revised Uniform Limited Liability Company §801 (2006); Uniform  
20 Limited Partnership Act §901 (2001); Delaware Statutory Trust Act §3851; Connecticut  
21 Statutory Trust Act §34-530.

22  
23 Paragraph (a) parallels and is analogous in scope and effect to Section 305 for a domestic  
24 statutory trust. Paragraph (b) allows for a foreign statutory trust to operate domestically even if  
25 the law governing it is different from the laws governing domestic statutory trusts, but under  
26 paragraph (c) a foreign statutory trust cannot engage in any business or exercise any power that a  
27 domestic statutory trust could not.

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



1

2           **SECTION 802. APPLICATION FOR CERTIFICATE OF QUALIFICATION.**

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

6                   (1) the name of the trust and, if the name does not comply with Section 209, an  
7 alternate name adopted pursuant to Section 807(a).

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

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

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

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

18                                   **Comment**

19  
20           **Principal Source** – Uniform Limited Partnership Act §902 (2001).

21  
22           A certificate of qualification applied for under this section is different than a certificate of  
23 existence or registration furnished under Section 207.

24  
25           Under Section 103(c)(1), this Section is not subject to override by the governing  
26 instrument.  
27

28           **SECTION 803. AMENDMENT OR RESTATEMENT OF CERTIFICATE.**

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

3 (1) the name of the trust;

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

5 (3) the changes that the amendment makes to the certificate as most recently  
6 amended or restated.

7 (b) A trustee that knows or has reason to know that any information in a filed certificate  
8 of qualification was incorrect when the certificate was filed or has become incorrect due to  
9 changed circumstances shall promptly:

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

11 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of  
12 correction pursuant to Section 206.

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

15 (d) An amendment or restated certificate of qualification of a foreign statutory trust is  
16 effective as provided in Section 204(c).

17 **Comment**

18  
19 **Principal Source** – Uniform Limited Partnership Act §202 (2001).

20  
21 Paragraph (a) provides a mechanism for updating a statutory trust's certificate of  
22 qualification. Paragraph (b) imposes an obligation directly on the trustee rather than on the  
23 statutory trust.

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

27  
28 **SECTION 804. ACTIVITIES NOT CONSTITUTING TRANSACTING**

1    **BUSINESS.**

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

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

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

7                   (3) maintaining accounts in financial institutions;

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

11                  (5) selling through independent contractors;

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

15                  (7) creating or acquiring indebtedness, mortgages, or security interests in real or  
16   personal property;

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

19                  (9) conducting an isolated transaction that is completed within 30 days and is not  
20   in the course of similar transactions; and

21                  (10) transacting business in interstate commerce.

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

1 than this [act].

2 (c) A person is not deemed to be doing business in the state solely by reason of being a  
3 trustee or a beneficial owner of a foreign statutory trust.

4 **Comment**

5  
6 **Principal Sources** – Uniform Limited Partnership Act §903 (2001).  
7

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

12  
13 Under Section 103(c)(1), this Section is not subject to override by the governing  
14 instrument.  
15

16 **SECTION 805. APPLICATION FOR CERTIFICATE OF QUALIFICATION.** If  
17 all filing fees have been paid, unless the [Secretary of State] determines that an application for a  
18 certificate of qualification of a foreign statutory trust does not comply with the filing  
19 requirements of this [act], the [Secretary of State] shall file the application.

20 **Comment**

21  
22 **Principal Source** –Uniform Limited Partnership Act §904 (2001).  
23

24 A certificate of qualification filed under this section is different than a certificate of  
25 registration under Section 806.

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

30 **SECTION 806. CERTIFICATE OF REGISTRATION.**

31 (a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish a  
32 certificate of registration for a foreign statutory trust if the records filed in the [office of the  
33 Secretary of State] show that the [Secretary of State] has filed a certificate of qualification, has

not revoked the certificate of qualification, and has not filed a notice of cancellation. A certificate of registration must state:

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

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

(3) that the [Secretary of State] has not revoked its certificate of qualification and has not filed a notice of cancellation; and

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

(b) Subject to any qualification stated in the certificate, a 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.

### **Comment**

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

The provisions of this section, which concern the issuance of a certificate of registration for a qualified foreign statutory trust, are analogous to the provisions of Section 206 concerning the issuance of a certificate of existence for a statutory trust.

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

### **SECTION 807. 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 qualification 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 qualification with the name need

not comply with [fictitious or assumed name statute]. After obtaining a certificate of qualification with an alternate name, a foreign statutory trust shall transact business in this state under the name unless the trust is authorized under [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 107, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of qualification.

#### **Comment**

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

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

### **SECTION 808. REVOCATION OF CERTIFICATE OF QUALIFICATION.**

(a) A certificate of qualification of a qualified foreign statutory trust to transact business in this state may be revoked by the [Secretary of State] in the manner provided in subsections (b) and (c) if the trust does not:

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

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

(3) file an annual report; or

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

(b) To revoke a certificate of qualification 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

1 service of process in this state, or if the trust does not appoint and maintain a proper agent in this  
2 state, to the trust's designated office. The notice must state:

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

5 (2) the basis for the revocation.

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

9 (d) If a foreign statutory trust cures the failures stated in the notice of revocation under  
10 subsection (c), the [Secretary of State] shall indicate that the trust is reinstated on the filed  
11 notice. The reinstatement of the trust relates back for all purposes to the date of the notice of  
12 revocation.

### 13 **Comment**

14  
15 **Principal Source** – Uniform Limited Partnership Act §906 (2001).

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

## 19 20 **SECTION 809. CANCELLATION OF CERTIFICATE OF QUALIFICATION.**

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

24 (1) the name of the trust;

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

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

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

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

4 **Comment**

5  
6 **Principal Source** – Uniform Limited Partnership Act §907 (2001).

7  
8 Under Section 103(c)(1), this Section is not subject to override by the governing  
9 instrument.  
10

11 **SECTION 810. EFFECT OF FAILURE TO HAVE CERTIFICATE.**

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

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

18 (c) A trustee or beneficial owner of a foreign limited liability company is not liable for  
19 the debts, obligations, or other liabilities of the company solely because the company transacted  
20 business in this state without a certificate of qualification.

21 (d) If a foreign statutory trust transacts business in this state without a certificate of  
22 qualification or cancels its certificate of qualification, the trust appoints the [Secretary of State]  
23 as its agent for service of process for actions arising out of the transaction of business in this  
24 state.

25 **Comment**

26  
27 **Principal Source** – Uniform Limited Partnership Act §907 (2001).  
28



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

4 **SECTION 811. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]  
5 may maintain an action to enjoin a foreign statutory trust from transacting business in this state  
6 in violation of this [article].

7 **Comment**  
8

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

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

1 [ARTICLE] 9

2 MISCELLANEOUS PROVISIONS

3 SECTION 901. 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 Comment

7  
8 Principal Source – Uniform Limited Partnership Act §1201 (2001).

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

12  
13 SECTION 902. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

14 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the federal  
15 Electronic Signatures in Global and National Commerce Act[, 15 U.S.C. Section 7001 et seq.],  
16 but this [act] does not modify, limit, or supersede Section 101(c) of that act or authorize  
17 electronic delivery of any of the notices described in Section 103(c) of that act.

18 Comment

19  
20 Principal Source – Uniform Limited Partnership Act §1203 (2001).

21  
22 Under Section 103(c)(1), this Section is not subject to override by the governing  
23 instrument.

24  
25  
26 SECTION 903. SAVING CLAUSE. This [act] does not affect an action commenced,

27 proceeding brought, or right accrued before this [act] takes effect.

28 Comment

29  
30 Principal Source – Uniform Limited Partnership Act §1207 (2001).

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

4 **SECTION 904. RESERVATION OF POWER TO AMEND OR REPEAL.** The  
5 [name of state legislature] has power to amend or repeal all or part of this [act] at any time and  
6 all statutory trusts and foreign statutory trusts subject to this [act] are governed by the  
7 amendment or repeal.

8 **Comment**  
9

10 **Principal Source** – Revised Model Business Corporation Act §1.02 (2002).  
11

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

15 **SECTION 905. APPLICATION TO EXISTING RELATIONSHIPS.**

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

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

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

27 [(d) On [two years] after the effective date of this [act], this [act] governs the

1 organization and internal affairs of all trusts created pursuant to a statute of this state that was  
2 required by that statute to file a certificate of trust with the [Secretary of State] before the  
3 effective date of this [act].]

#### 4 **Comment**

5  
6 **Principal Source** – Uniform Limited Partnership Act §1206 (2001).

7 This Act governs all statutory trusts formed on or after the Act’s effective date. For pre-  
8 existing statutory trusts, this section establishes an optional “elect in” period and a mandatory,  
9 all-inclusive date of two years following the effective date. Beginning on the all-inclusive date,  
10 each pre-existing statutory trust that has not previously elected in becomes subject to this Act—  
11 including the schedule of mandatory rules in Section 103(c)—by operation of law.  
12

13 Paragraph (a) confirms that this act does not govern a common law trust unless the trust  
14 elects to be governed by the terms of this act by filing a certificate of trust under Section 201.  
15 However, consistent with Section 302, paragraph (b) of this Section prohibits a common law  
16 trust with a prevailingly donative purpose from becoming a statutory trust.  
17

18 The drafting committee contemplated that some enacting jurisdictions might modify this  
19 section—particularly paragraphs (c) and (d), which are bracketed to signal that uniformity is not  
20 expected—to address other transition problems arising from differences between this Act and  
21 prior law. For example, an enacting jurisdiction might choose to allow trusts formed under a  
22 prior statute to remain governed by the prior statute for longer than the two years suggested in  
23 paragraph (d).  
24

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

28 **SECTION 906. REPEALS.** On [all-inclusive date], the following acts are repealed:

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

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

33 (3) [the State Real Estate Investment Trust Act as amended an in effect immediately  
34 before the effective date of this [act]].

1 **Comment**

2 **Principal Sources** – Uniform Limited Partnership Act §1205 (2001).

3  
4 Paragraphs (1) and (2) supply model language for enacting jurisdictions that have  
5 previously enacted a Statutory Trust Act or a Business Trust Act.

6  
7 Paragraph (3) supplies model language for enacting jurisdictions that have previously  
8 enacted a Real Estate Investment Trust statute. A real estate investment trust, also known as a  
9 REIT, is not a type of trust but rather is a tax status awarded to any business entity that qualifies  
10 under 26 U.S.C. §§856 et seq., or that qualifies as a real estate mortgage investment conduit  
11 under 26 U.S.C. §860D. In spite of the use of the word “trust” in its title, there is no reason why  
12 a REIT must be organized as a trust, whether statutory or common law. Indeed, in contemporary  
13 practice nearly all publicly-traded REITs are organized as Maryland corporations, not as trusts.  
14 See Robert H. Sitkoff, The Rise of the Statutory Business Trust \_\_ [citation]. Nonetheless, a  
15 number of states have enacted REIT statutes that authorize the creation of a REIT-specific entity  
16 designed to qualify as a REIT under the Internal Revenue Code. Because a statutory trust under  
17 this Act could serve the same purpose, the drafting committee contemplated that enacting  
18 jurisdictions might take the occasion of enacting this act to repeal their REIT statutes.

19  
20 Under Section 103(c)(1), this Section is not subject to override by the governing  
21 instrument.

22  
23 **SECTION 907. EFFECTIVE DATE.** This [act] takes effect . . . .

24 **Comment**

25  
26 **Principal Source** – Uniform Limited Partnership Act §1204 (2001).

27  
28 Section 804 specifies how this Act affects statutory trusts, with special provisions  
29 pertaining to statutory trusts formed before the Act’s effective date. Section 804 contains no  
30 comparable provisions for foreign statutory trusts. Therefore, once this Act is effective, it  
31 applies immediately to all foreign statutory trusts, whether formed before or after the Act’s  
32 effective date.

33  
34 Under Section 103(c)(1), this Section is not subject to override by the governing  
35 instrument.