

DRAFT
FOR DISCUSSION ONLY

UNIFORM STATUTORY TRUST ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For April 2006 Drafting Committee Meeting

With Prefatory Notes and Comments

Copyright ©2006
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 ACT

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

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

THOMAS J. BUTEWEG, 200 Renaissance Ct., P.O. Box 200, Detroit, MI 48265-2000

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

STANLEY M. FISHER, Commerce Park IV, 23240 Chagrin Blvd., Suite 450, Beachwood, OH 44122

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

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

THOMAS J. MCCracken, JR., 134 N. LaSalle St., Suite 600, Chicago, IL 60602, *Enactment Plan Coordinator*

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

ROBERT H. SITKOFF, New York University School of Law, 40 Washington Square South, New York, NY 10012, *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, *American Bar Association Advisor*

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

THOMAS E. RUTLEDGE, 1700 PNC Plaza, 500 West Jefferson St., Louisville, KY 40202-2874, *American Bar Association Section Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *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

UNIFORM STATUTORY TRUST ACT

TABLE OF CONTENTS

Prefatory Note	6
----------------------	---

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE	10
SECTION 102. DEFINITIONS	11
SECTION 103. KNOWLEDGE	14
SECTION 104. DEFAULT AND MANDATORY RULES	15
SECTION 105. SCOPE OF GOVERNING INSTRUMENT	19
SECTION 106. APPLICABILITY OF TRUST LAW	23
SECTION 107. RULES OF CONSTRUCTION	24
[SECTION 108. TAX CLASSIFICATION	24

ARTICLE 2

FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS

SECTION 201. CERTIFICATE OF TRUST	26
SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE	27
SECTION 203. STATEMENT OF CANCELLATION	28
SECTION 204. SIGNING OF RECORDS	29
SECTION 205. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF STATE]; EFFECTIVE TIME AND DATE	29
SECTION 206. CORRECTING FILED RECORD	31
SECTION 207. CERTIFICATE OF EXISTENCE OR REGISTRATION	32
SECTION 208. CANCELLATION OF CERTIFICATE OF EXISTENCE	34
SECTION 209. NAME OF STATUTORY TRUST	35
SECTION 210. RESERVATION OF NAME	36
SECTION 211. ANNUAL REPORT FOR [SECRETARY OF STATE]	38
SECTION 212. OFFICE AND AGENT FOR SERVICE OF PROCESS	39
SECTION 213. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS	40
SECTION 214. RESIGNATION OF AGENT FOR SERVICE OF PROCESS	41
SECTION 215. SERVICE OF PROCESS	41

ARTICLE 3

STATUTORY TRUSTS

SECTION 301. STATUTORY TRUSTS AUTHORIZED	44
SECTION 302. LAW OF INTERNAL AFFAIRS	44
SECTION 303. DURATION OF STATUTORY TRUST	45

SECTION 304. POWER TO SUE AND BE SUED.....	46
SECTION 305. POWER TO HOLD PROPERTY	47

ARTICLE 4

TRUSTEES AND TRUST MANAGEMENT

SECTION 401. MANAGEMENT OF STATUTORY TRUSTS	49
SECTION 402. STANDARDS OF CONDUCT FOR TRUSTEES	50
SECTION 403. TRUSTEE’S RIGHT TO INFORMATION	51
SECTION 404. INTERESTED TRANSACTIONS	51
SECTION 405. NONLIABILITY FOR GOOD FAITH RELIANCE ON GOVERNING INSTRUMENT	52
SECTION 406. INDEMNIFICATION, ADVANCEMENT, AND EXCLUPATION	53
SECTION 407. TITLE TO TRUST PROPERTY	54
SECTION 408. DIRECTION OF TRUSTEES	55
SECTION 409. DELEGATION BY TRUSTEE	56
SECTION 410. ACTION BY TRUSTEES	57
SECTION 411. RIGHTS OF TRUSTEE IN TRUST PROPERTY	58
SECTION 412. NONLIABILITY OF TRUSTEE FOR DEBTS OF STATUTORY TRUST	58
SECTION 413. NONLIABILITY OF OFFICERS, EMPLOYEES, MANAGERS, AND AGENTS	59

ARTICLE 5

BENEFICIARIES AND BENEFICIAL RIGHTS

SECTION 501. CONTRIBUTIONS BY BENEFICIAL OWNERS	60
SECTION 502. REDEMPTION OF BENEFICIAL INTERESTS	61
SECTION 503. RIGHTS OF BENEFICIAL OWNERS IN TRUST PROPERTY	62
SECTION 504. TRANSACTION WITH A BENEFICIAL OWNER	63
SECTION 505. LIMITED LIABILITY OF BENEFICIAL OWNERS	64
SECTION 506. ACTION BY BENEFICIAL OWNERS	64
SECTION 507. DERIVATIVE ACTIONS	65
SECTION 508. BENEFICIAL OWNER’S RIGHT TO INFORMATION	66

ARTICLE 6

MERGER, CONSOLIDATION, AND DISSOLUTION

SECTION 601. DEFINITIONS	68
SECTION 602. CONVERSION	69
SECTION 603. ACTION ON PLAN OF CONVERSION BY CONVERTING STATUTORY TRUST	70
SECTION 604. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE	71
SECTION 605. EFFECT OF CONVERSION	73

SECTION 606. MERGER	74
SECTION 607. ACTION ON PLAN OF MERGER BY CONSTITUENT STATUTORY TRUST	75
SECTION 608. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE	76
SECTION 609. EFFECT OF MERGER	78
SECTION 610. [ARTICLE] NOT EXCLUSIVE	79
SECTION 611. DISSOLUTION OF A STATUTORY TRUST	79
SECTION 612. DISSOLUTION OF A SERIES	81

ARTICLE 7

FOREIGN STATUTORY TRUSTS

SECTION 701. GOVERNING LAW	84
SECTION 702. APPLICATION FOR CERTIFICATE OF AUTHORITY	84
SECTION 703. AMENDMENT OR RESTATEMENT OF CERTIFICATE	85
SECTION 704. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS	86
SECTION 705. FILING OF CERTIFICATE OF AUTHORITY	88
SECTION 706. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST	88
SECTION 707. REVOCATION OF CERTIFICATE OF AUTHORITY	89
SECTION 708. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE	90
SECTION 709. ACTION BY [ATTORNEY GENERAL]	91

ARTICLE 8

MISCELLANEOUS PROVISIONS

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION	92
SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	92
SECTION 803. SAVING CLAUSE	92
SECTION 804. APPLICATION TO EXISTING RELATIONSHIPS	93
SECTION 805. SEVERABILITY CLAUSE	94
SECTION 806. REPEALS	94
SECTION 807. EFFECTIVE DATE	94

UNIFORM STATUTORY TRUST 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 enterprise that is not organized as a sole proprietorship makes use of a partnership, a corporation, or a limited liability company.

Responding to the legal uncertainty over the status of the business trust at common law, legislatures in at least twenty-nine states have enacted legislation to validate the trust as a permissible form of business organization. But the entity that arises under the more recent of these statutes is better understood as the “statutory business trust” or “statutory trust entity.”

Since the 1980s, statutory trust entities have thrived in a variety of niches, particularly in the mutual fund industry and the practice of asset securitization. See 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); see also Sheldon A. Jones, Laura M. Moret, & James M. Storey, *The Massachusetts Business Trust and Registered Investment Companies*, 13 *Del. J. Corp. L.* 421 (1988). In addition, the Employee Retirement Income Security Act of 1974 imposes a mandatory trust paradigm on employee pension funds, making pension funds in effect federal statutory trust entities. See Langbein, *supra*, at 168-70.

A statutory business trust differs from the common law trust in several important respects. A common law trust, whether its purpose is prevalently donative or commercial, arises from private action. Such a trust is not a juridical entity and hence 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 making a filing with a state registry office. Like a corporation, a statutory trust is deemed 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.

Most existing business trust acts do not foreclose the use of the common law trust for a commercial purpose. Instead, the statutes offer transactional planners an additional option, a statutory trust entity, which is governed by the state’s business trust act. The common law trust, whether donative or commercial, remains 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 Act is the increasing popularity of the statutory business trust, chiefly in the structured finance and mutual fund industries. Increasing use of statutory trust entities as a mode of business organization has led to a recognition that the status of such trusts in many states 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 trust entities; simple questions concerning in which state to organize a trust for business purposes are often difficult to answer; and the case law on statutory trust entities is surprisingly sparse.

The Uniform Statutory Trust Act validates the statutory business 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 Act is the first Uniform Act of the subject of statutory business trusts, comprehensive statutory trust regimes exist in several states. Notable examples are Delaware, Connecticut, 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 Act, the drafting committee was influenced primarily by the Delaware Statutory Trust Act and secondarily by the Connecticut Statutory Trust Act.

In choosing to follow the Delaware and, to a lesser extent, the Connecticut models, the drafting committee relied on a recent study that presented data on the number of statutory trusts organized in each state. See Robert H. Sitkoff, *The Rise of the Statutory Trust* [in progress]. According to this study, the number of statutory trusts organized under the Delaware Act vastly exceeds the number organized in all other states, surpassing second-place Connecticut by a factor of ten to one. *Id.* at ___. For a discussion of the Delaware Act, see Wendell Fenton & Eric A. Mazie, *Delaware Statutory Trusts*, in *The Delaware Law of Corporations & Business Organizations* ch. 19 (3d ed. 2005 Supp.).

In drafting the public filing and other provisions not unique to the trust form, the drafting committee took the Uniform Limited Partnership Act (2001) as its starting point.

Innovative Provisions. Although much of the Uniform Statutory Trust 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 the statutory provisions that are not subject to override in the statutory trust's governing instrument (§104(b)); (2) specification of the rules of ordinary trust law that apply to a statutory trust with a prevaillingly donative purpose (§104(c)); (3) clearer guidance on the relationship of ordinary trust law to statutory trust entities (§106); (4) clearer guidance on the relationship between the common law trust and statutory trust entities (§804); and (5) systematic treatment of consolidations, mergers, and dissolutions (Article 6).

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

Relationship to Common Law Trusts and the Uniform Trust Code. In the culture of

American law it is typical to treat the common law trust as a vehicle for effecting donative transfers. The leading compilations of the common law of trusts typically exclude business trusts from their coverage. See Restatement (Third) of Trusts §1 cmt. b (2003); 1 Austin W. Scott & William F. Fratcher, *The Law of Trusts* §2.2 (4th ed. 1987); Restatement (Second) of Trusts §1 cmt. b (1959). The justification stated in the Restatement Third is representative: “[T]he business trust is a business arrangement that is best dealt with in connection with business associations.” Restatement (Third) of Trusts, *supra*. But there is 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 created under the common law, even if the trust has a prevailing 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 with a business or commercial purpose to the extent that the Code’s provisions are not displaced by the trust instrument or other legislation. UTC §102 cmt.

The Uniform Statutory Trust 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. Section 804(a) expressly confirms the continued applicability of the state’s laws pertaining to trusts to a common law business trust.

As an unincorporated limited liability entity law, the Uniform Statutory Trust Act is more like a limited liability company or limited partnership act than the Uniform Trust Code. Like a limited liability company and a 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. Section 804(b) this Act allows for the conversion of an existing common law trust into a statutory trust governed by this Act by filing a certificate of trust under Section 201.

Although the drafting committee contemplated that the statutory trust entity created under this Act will be used primarily as a mode of business organization, nothing in this Act prohibits the use of a statutory trust for other purposes. On the contrary, Section 301 provides that a statutory trust may be created “for the conduct of lawful activity.” Hence, it is possible that a statutory trust could be used as a substitute for the common law trust in an estate planning or other donative context. Section 501(a) confirms that a person may become a beneficial owner of a statutory trust without an exchange of consideration.

To ensure that a statutory trust is not used to evade mandatory rules applicable to a common law trust that enforce public policy limitations on donative transfers, Section 104(c) confirms the applicability of those limitations to a statutory trust that has a prevailing donative purpose. The drafting committee looked to the schedule of mandatory rules in Uniform Trust Code §105(b) for guidance in drafting Section 104(c) of this Act.

Relationship to Real Estate Investment Trusts and state Real Estate Investment

Trust Acts. A real estate investment trust, also known as a REIT, is not a type of trust but rather is a tax status awarded to any business entity that qualifies under I.R.C. §§856 et seq., or that qualifies as a real estate mortgage investment conduit under I.R.C. §860D. In spite of the use of the word “trust” in its title, there is no reason why a REIT must be organized as a trust, whether statutory or common law. In fact, based on data culled from filings with the SEC, a recent study found that nearly all new, publicly-traded REITs formed between 1998 and 2004 were organized as Maryland corporations, not as trusts. Sitkoff, *supra*, at __ [in progress]. **[For discussion: At least 12 states have enacted some form of specialized REIT-entity legislation. Because a statutory trust created under this Act can be structured to qualify as a REIT under the federal tax laws, the question arises whether the Uniform Statutory Trust Act would supersede such legislation (see Section 806).]**

UNIFORM STATUTORY TRUST ACT

ARTICLE 1

GENERAL PROVISIONS

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

Comment

[Reporter's Note to the drafting committee: At the last meeting we discussed the possibility of changing the title to Uniform Statutory Trust Entity Act or Uniform Statutory Entity Trust Act. We did not reach a consensus, however, opting instead to let the matter stew until this meeting. I suggest that we move to change the name to Uniform Statutory Trust Entity Act.

First, like Uniform Statutory Trust Act, Uniform Statutory Trust Entity Act continues to omit the phrase “business trust,” which our friends in the structured finance and bankruptcy industries have requested. Uniform Statutory Trust Entity Act also continues to employ the phrase “statutory trust,” which preserves the marketing synergy with the dominant Delaware act.

Second, Uniform Statutory Trust Entity Act is a more descriptive title than Uniform Statutory Trust Act. The creature of this act is indeed a trust entity: It has the power to sue, be sued, and transact over property in its own name, and it may be created for any purpose, not only a business or commercial purpose. That a statutory trust need not have a business or commercial purpose supplies reason independent of bankruptcy considerations for eschewing “business” or “commercial” in the title.

Third, because Uniform Statutory Trust Entity Act invokes the term “entity,” it is less likely than Uniform Statutory Trust Act to cause confusion with the Uniform Trust Code.

If the drafting committee agrees, this Section, its commentary (I have not altered the following comment since the last draft), and the prefatory note to the Act will need to be revised accordingly. Even if the title is not changed, I propose that the comment below be revised to reflect the point that a statutory trust need not have a business purpose. **End of note.]**

[Start of comment to Section 101 from the last draft: Because this Act provides for the creation and use of a statutory business trust, it might seem that “Uniform Business Trust Act” or “Uniform Statutory Business Trust Act” would be a better title. However, after

1 deliberation informed by consultation with practitioners in the structured finance and bankruptcy
2 industries, the drafting committee rejected those and other such titles in favor of “Uniform
3 Statutory Trust Act.” The drafting committee’s purpose in doing so was to avoid any
4 implication that a statutory trust created under this Act would necessarily qualify as a “business
5 trust” under the bankruptcy code. On similar reasoning the entity that arises under this act is
6 called a “statutory trust,” see Section 102(a), not a “business trust” or “statutory business trust.”
7

8 Under the bankruptcy code, the definition of a “debtor” eligible for bankruptcy includes a
9 “person,” 11 U.S.C. §101(13), the definition of “person” includes a “corporation,” id. §101(41),
10 and the definition of “corporation” includes a “business trust.” Id. §101(41). Hence, a “business
11 trust” might qualify as an eligible “debtor.” Bankruptcy eligibility is a significant issue for trusts
12 used as special purpose entities in structured finance transactions, a principal use of the modern
13 statutory trust in practice. Such trusts are often designed to be “bankruptcy remote,” the ultimate
14 form of which is an entity that is not an eligible debtor under the bankruptcy code. As in the
15 leading case of *In re Secured Equipment Trust of Eastern Airlines, Inc.*, 38 F.3d 86 (2d Cir.
16 1994), in certain configurations trusts used in securitization transactions have indeed been held
17 not to be “business trusts” under the bankruptcy code.
18

19 In eschewing the phrase “business trust” in favor of “statutory trust,” the drafters
20 followed the lead of Delaware, which in 2002 recast the “Delaware Business Trust Act” as the
21 “Delaware Statutory Trust Act,” replacing nearly every reference of “business trust” with
22 “statutory trust.” See 73 Del. Laws c. 329. According to a recent study of statutory business
23 trusts, more statutory business trusts are organized under the Delaware Act than in all other
24 states combined. Robert H. Sitkoff, *The Rise of the Statutory Business Trust* [in progress]. The
25 Connecticut statute, which is the second most popular, is likewise cast as a statutory trust, not a
26 business trust, act. **End of prior draft’s comment.]**
27

28 **SECTION 102. DEFINITIONS.**

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

30 (2) “Common law trust” means a fiduciary relationship with respect to property arising
31 from a manifestation of intention to create that relationship which subjects the person that holds
32 title to the property to duties to deal with it for the benefit of a person that is not the sole trustee
33 whether or not the purpose of the trust is donative or commercial. The term includes the type of
34 trust known at common law as a “business trust” or “Massachusetts trust”.

35 (3) “Certificate of trust” means the record that under Section 201 is delivered to the

1 [Secretary of State] for filing to create a statutory trust.

2 (4) “Designated office” means:

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

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

6 (5) “Foreign statutory trust” means a business trust, statutory trust, statutory business
7 trust, statutory trust entity, or other trust entity that is formed under the laws of a jurisdiction
8 other than this state and is required by those laws to file a record with a registry office in that
9 jurisdiction.

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

11 (7) “Person” means an individual, corporation, statutory trust, common law trust, estate,
12 partnership, limited partnership, limited liability company, association, joint venture, public
13 corporation, government or governmental subdivision, agency, or instrumentality, or any other
14 legal or commercial entity.

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

17 (9) “Recorded transmission” means any form of communication that creates a record,
18 electronic or otherwise.

19 (10) “Related person”, with respect to a trustee, officer, employee, manager, or beneficial
20 owner, means:

21 (A) the spouse, or a parent or sibling thereof, of the person;

22 (B) a child, grandchild, sibling, parent, or a spouse thereof, of the person;

1 (C) an individual having the same home as the person;

2 (D) a trust or estate of which an individual specified in subparagraph (A), (B), or

3 (C) is a substantial beneficiary; or

4 (E) a trust, estate, incompetent, conservatee, or minor of which the person is a

5 fiduciary.

6 (11) “Sign” means, with the present intent to authenticate a record:

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

8 (B) to attach or logically associate an electronic symbol, sound, or

9 process to or with a record.

10 (12) “State” means a State of the United States, the District of Columbia, Puerto Rico, the

11 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

12 the United States.

13 (13) “Statutory trust” means an unincorporated entity created under this [act] that files a

14 certificate of trust pursuant to Section 201 and is governed by a trust instrument under which

15 property is or will be held by a trustee for the benefit of one or more beneficial owners.

16 (14) “Trust instrument” means any instrument other than the certificate of trust, whether

17 referred to as a trust agreement, trust instrument, declaration of trust, or otherwise, that provides

18 for the governance of the affairs of the statutory trust and the conduct of its business.

19 (15) “Trustee” means a person designated as a trustee of a statutory trust in accordance

20 with the governing instrument or other law.

21 **Comment**

22
23 **Principal Sources** – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust
24 Act §34-501; Uniform Limited Partnership Act §102.

Paragraph (2) defines “common law trust” consistently with Restatement (Third) of Trusts §2 (2003), except that as defined herein the term also includes common law business trusts, a subject otherwise excluded from the Restatement. See Restatement (Third) of Trusts §1 cmt. b.

Paragraphs (3), (6), and (15) define “certificate of trust,” “governing instrument,” and “trust instrument” respectively. The certificate of trust is the record that must be filed with a public official under Section 201 to create a statutory trust. The trust instrument is the transaction document that provides for the governance of the affairs of the statutory trust and that need not be made part of the public record. Together, the certificate of trust and the trust instrument compose the governing instrument. Conflicts between the certificate of trust and the governing instrument are resolved pursuant to Section 201(d).

SECTION 103. KNOWLEDGE. A person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

[Reporter’s Note to drafting committee: Should this section also include something along the lines of the following (see UTC §104)? An organization that conducts activities through employees has notice or knowledge of a fact involving a statutory trust only from the time the information was received by an employee having responsibility to act for the statutory trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the statutory trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the statutory trust would be materially affected by the information. **End of note.]**

Comment

Principal Source – Uniform Trust Code §104.

This section specifies when a person is deemed to know a fact. **[From the comment to UTC §104:** Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Under subsection (a), a fact is known to a person if the person had

1 actual knowledge of the fact, received notification of it, or had reason to know of the fact's
2 existence based on all of the circumstances and other facts known to the person at the time.
3 Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a
4 branch office. Nor does the organization necessarily acquire knowledge at the moment the
5 notice arrives in the organization's mailroom. Rather, the organization has notice or knowledge
6 of a fact only when the information is received by an employee having responsibility to act for
7 the statutory trust, or would have been brought to the employee's attention had the organization
8 exercised reasonable diligence.]
9

10 **SECTION 104. DEFAULT AND MANDATORY RULES.**

11 (a) Except as otherwise provided in the governing instrument, this [act] governs the
12 duties and powers of a trustee, relations among trustees, and the rights and interests of a
13 beneficial owner.

14 (b) Subject to subsection (c), the terms of a governing instrument prevail over any
15 provision of this [act] except:

- 16 (1) the meaning of "knowledge" under Section 103;
- 17 [(2) the tax classification of the statutory trust under Section 108]
- 18 (3) Article 2;
- 19 (4) the law governing the internal affairs of a statutory trust under Section 302;
- 20 (5) the standards of conduct for trustees under Section 402, but the governing
21 instrument may define "good faith", "best interests of the statutory trust", or "care that a person
22 in a like position would reasonable believe appropriate under similar circumstances" if the
23 definition is not manifestly unreasonable;
- 24 (6) the right of a trustee to information under Section 403, but the governing
25 instrument may define "necessary" if the definition is not manifestly unreasonable;
- 26 (7) the prohibition under Section 406 of indemnification, advancement, or

1 exculpation for conduct involving bad faith or reckless indifference;

2 (8) the invalidity under Section 408(b) of a direction to a trustee or other person if
3 the direction is manifestly contrary to the terms of the governing instrument or would constitute
4 a serious breach of a fiduciary duty;

5 (9) the right of a beneficial owner to information under Section 508, but the
6 governing instrument may define “necessary” if the definition is not manifestly unreasonable;

7 (10) the public filing requirements in connection with a consolidation or merger
8 under Sections 604 and 608;

9 (11) Article 7; and

10 (12) Article 8.

11 (c) If a statutory trust has a prevailingly donative purpose, the following rules prevail
12 over the terms of the governing instrument and the provisions of this [act]:

13 (1) the duty of a trustee to act in good faith and in accordance with the terms and
14 purposes of the trust and the interests of the beneficiaries;

15 (2) the requirement that a trust and its terms be for the benefit of one or more
16 ascertainable beneficiaries, and that the trust have a purpose that is lawful, not contrary to public
17 policy, and possible to achieve; and

18 (3) the laws of this state applicable to common law trusts concerning:

19 (A) the power of the court to modify or terminate a trust;

20 (B) the effect of a spendthrift provision and the rights of the settlor’s and
21 the beneficiary’s creditors and assignees to reach the assets of a trust;

22 (C) the power of the court to adjust a trustee’s compensation specified in

1 the terms of the trust which is unreasonably low or high;

2 (D) the power of the court to remove a trustee for a serious breach of trust;

3 (E) the duty of the trustee to give information and make reports

4 concerning the administration of the trust to the beneficiary;

5 (F) the effect of an exculpatory term that purports to limit or eliminate the

6 duties or liabilities of a trustee to a beneficiary;

7 (G) the rights of a party, other than a trustee or beneficiary, that transacts

8 with the trustee in the trustee's capacity as such;

9 (H) the rules against perpetuities, accumulations of income, and

10 suspension of the power of alienation; and

11 (I) the power of the court to take such action and exercise such jurisdiction

12 as may be necessary in the interests of justice.

13 **Comment**

14 **Principal Sources** – Uniform Trust Code §105; Uniform Limited Partnership Act §110.

15

16 Paragraph (a) emphasizes that the Uniform Statutory Trust Act is primarily a default

17 statute. Most of its provisions may be overridden by the terms of the governing instrument.

18

19 Paragraph (b) lists the provisions of this act that are not subject to override in the

20 governing instrument of a statutory trust. Most concern the rights of nonparties or public filing

21 and notice requirements. By contrast, nearly all the provisions of this Act concerning the duties

22 and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary

23 may be overridden by the terms of the governing instrument. Consistent with longstanding

24 principles of trust law, the main exception is the mandatory prohibition of indemnification,

25 advancement, or exculpation for conduct involving bad faith or reckless indifference (paragraph

26 (b)(7). See Restatement (Second) of Trusts §222 (1959); George G. Bogert & George T.

27 Bogert, The Law of Trusts and Trustees §542 (rev. 2d ed. 1993). See also John H. Langbein,

28 Mandatory Rules in the Law of Trusts, 98 Nw. U.L. Rev. 1105, 1121-25 (2004).

29

30 Paragraphs (b)(5), (b)(6), and (b)(9) allow the governing instrument to alter the nature of

31 the trustee's fiduciary obligation, the right of a trustee to information, and the right of a

1 beneficial owner to information, but only if the alteration is not manifestly unreasonable.

2
3 **[Note to drafting committee:** Per the discussion at the last session, this draft uses the
4 “manifestly unreasonable” formulation of ULPA §110(b)(5)(A). The alternative model was
5 Delaware Limited Liability Company Act §18-1101(e): “A limited liability company agreement
6 may provide for the limitation or elimination of any and all liabilities for breach of contract and
7 breach of duties (including fiduciary duties) of a member, manager or other person to a limited
8 liability company or to another member or manager or to another person that is a party to or is
9 otherwise bound by a limited liability company agreement; provided, that a limited liability
10 company agreement may not limit or eliminate liability for any act or omission that constitutes a
11 bad faith violation of the implied contractual covenant of good faith and fair dealing.” See Paul
12 M. Altman & Srinivas M. Raju, Delaware Alternative Entities and the Implied Covenant of
13 Good Faith and Fair Dealing Under Delaware Law, 60 Bus. Law. 1469 (2005). **End of note.]**
14

15 Paragraph (b)(8) makes mandatory the invalidity under Section 408(b) of a direction to a
16 trustee or other person that is manifestly contrary to the terms of the governing instrument or
17 would constitute a serious breach of fiduciary duty. However, the effect of paragraph (b)(8) is
18 limited by paragraph (b)(5), which allows the meaning of fiduciary duty to be altered by the
19 governing instrument if the alteration is not manifestly unreasonable.
20

21 The drafting committee took notice of the fact that the Investment Company Act of 1940
22 (the “1940 Act”) would trump this Act with respect a statutory trust that registers as an
23 investment company under the 1940 Act. For such a trust the 1940 Act imposes additional
24 mandatory rules. See, e.g., the comments to Sections 209 (name of statutory trust), 404
25 (interested transactions), 406 (indemnification, advancement, and exculpation), 409 (delegation
26 by trustee), and 410 (action by trustees).
27

28 Because paragraph (b) refers specifically to other sections of the Act, enacting
29 jurisdictions that modify those other sections may also need to modify paragraph (b).
30

31 Paragraph (c) addresses the concern that a statutory trust might be used in an estate
32 planning or other donative context to evade public policy limitations on donative transfers and
33 common law trusts. See John H. Langbein, Mandatory Rules in the Law of Trusts, 98 Nw. U.L.
34 Rev. 1105 (2004). With respect to a statutory trust that has a “prevailingly donative purpose,”
35 paragraph (c) schedules the mandatory rules of ordinary trust law that prevail over the terms of
36 this Act and the statutory trust’s governing instrument. In designing this schedule of mandatory
37 rules, the drafting committee took Uniform Trust Code §105 as its starting point, except that
38 instead of adopting the language of the Uniform Trust Code, under subsection (c)(3) the “the
39 laws of this state applicable to common law trusts concerning” each of the scheduled rules
40 applies. Incorporating by reference the state’s existing law on each of the scheduled matters
41 achieves the underlying aim of this Section without the need to confront the increasing
42 differentiation among the states on these matters, particularly with respect to the rights of the
43 settlor’s creditors in a self-settled trust and the continued application of the Rule Against
44 Perpetuities to interests held in trust. For a discussion, see Robert H. Sitkoff & Max M.

1 Schanzenbach, Jurisdictional Competition for Trust Funds: An Empirical Analysis of
2 Perpetuities and Taxes, 115 Yale L.J. 356, 430-33 tbl. 5 (2005).
3

4 **SECTION 105. SCOPE OF GOVERNING INSTRUMENT.**

5 (a) Subject to Section 104, a governing instrument may contain any provision relating to
6 the management of the business and affairs of the statutory trust, and the rights, duties and
7 obligations of the trustees, beneficial owners, and other persons, and any other provision that is
8 not inconsistent with this [act].

9 (b) Subject to Section 104, a governing instrument may:

10 (1) provide the means by which beneficial ownership is determined and
11 evidenced;

12 (2) eliminate a beneficial owner's right to bring a derivative action under Section
13 507 or subject such right to additional standards and restrictions including the requirement that
14 beneficial owners owning a specified beneficial interest in the statutory trust join in bringing the
15 derivative action;

16 (3) limit a beneficial owner's right to transfer its interest in the statutory trust;

17 (4) provide for classes, groups, or series of trustees or beneficial owners, or
18 classes, groups, or series of beneficial interests, having such relative rights, powers, and duties as
19 the governing instrument may provide, and may make provision for the creation in the manner
20 provided in the governing instrument of additional classes, groups, or series of trustees,
21 beneficial owners, or beneficial interests, having such relative rights, powers, and duties as may
22 be established, including rights, powers, and duties senior or subordinate to existing classes,
23 groups or series of trustees, beneficial owners or beneficial interests;

1 (5) establish or provide for the establishment of designated series of trustees,
2 beneficial owners, or beneficial interests having separate rights, powers or duties with respect to
3 specified property or obligations or profits and losses associated with specified property or
4 obligations, and permit the series to have a separate business purpose or investment objective;

5 (6) grant to, or withhold from, all or certain trustees or beneficial owners, or a
6 specified class, group, or series of trustees or beneficial owners, the right to vote, separately or
7 with any or all other classes, groups, or series of the trustees or beneficial owners, on any matter;

8 (7) if and to the extent that voting rights are granted under the governing
9 instrument, set forth provisions relating to notice of the time, place, or purpose of any meeting at
10 which any matter is to be voted on, waiver of any such notice, action by consent without a
11 meeting, establishment of record dates, quorum requirements, voting in person, by proxy, by
12 recorded transmission, by telephone, by video conference, or in any other manner, or any other
13 matter with respect to the exercise of the right to vote;

14 (8) provide for the taking of any action without the vote or approval of any
15 particular trustee or beneficial owner, or class, group, or series of trustees or beneficial owners,
16 including:

- 17 (A) the amendment of the governing instrument;
- 18 (B) the accomplishment of a merger, consolidation, or reorganization;
- 19 (C) the appointment of one or more trustees;
- 20 (D) the sale, lease, exchange, transfer, pledge or other disposition of all or
21 any part of the assets of the statutory trust or the assets of any series;
- 22 (E) the dissolution of the statutory trust; or

1 (F) the creation of a class, group, or series of beneficial interests that was
2 not previously outstanding;

3 (9) provide for the present or future creation of more than one statutory trust,
4 including the creation of a future statutory trust to which all or any part of the assets, liabilities,
5 profits, or losses of any existing statutory trust will be transferred or exchanged, and for the
6 conversion of beneficial interests in an existing statutory trust, or series thereof into beneficial
7 interests in the separate statutory trust or series thereof;

8 (10) provide for the appointment, election, or engagement, either as agents or
9 independent contractors **[Reporter’s Note to drafting committee: “either as agents or**
10 **independent contracts” requires further discussion.]** of the statutory trust or as delegates of
11 the trustees, or as agents, officers, employees, managers, committees, or other individuals who
12 may manage the business and affairs of the statutory trust, who may have such titles and such
13 relative rights, powers, and duties as the governing instrument provides;

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

16 (12) provide for the manner in which the governing instrument may be amended,
17 including by requiring the approval of a person that is not a party to the governing instrument or
18 the satisfaction of specified conditions, and to the extent the governing instrument provides for
19 the manner in which it may be amended it may be amended only in that manner or as otherwise
20 permitted by law, except that the approval of any person may be waived by the person and these
21 conditions may be waived by all persons for whose benefit the conditions were intended;

22 (13) provide that a person becomes a beneficial owner and is bound by the

governing instrument if the person, or a representative authorized by the person orally, in writing, or by conduct such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest **[Note to drafting committee: If this subsection (13) necessary and if so is there a smoother way to say this?];**

(14) consist of one or more agreements, instruments or other writings and may refer to or incorporate bylaws containing provisions relating to the business of the statutory trust, the conduct of its affairs, and its rights or powers or the rights or powers of its trustees, beneficial owners, agents, or employees;

(15) provide that the statutory trust or the trustees, acting for and on behalf of the statutory trust, are deemed to hold beneficial ownership of any income earned on securities of the statutory trust issued by any business entities formed, organized, or existing under the laws of any jurisdiction, including the laws of any foreign country; and

(16) provide for the establishment of record dates with respect to allocations and distributions by a statutory trust.

[Reporter’s Note to drafting committee: I am unsure where to put this paragraph (c).] (c) Subject to Section 104, solely with respect to a statutory trust that is registered as an investment company under the Investment Company Act of 1940, as amended (15 U.S.C. Section 80a-1 et seq.), or any successor statute thereto (the “1940 Act”):

(1) “Independent trustee” means any trustee who is not an “interested person” of the statutory trust; provided that the receipt of compensation for service as an independent trustee of the statutory trust and also for service as an independent trustee of one or more other

1 investment companies managed by a single investment adviser (or an “affiliated person” of such
2 investment adviser) shall not affect the status of a trustee as an independent trustee under this
3 chapter. Independent trustee as defined hereunder shall be deemed to be independent and
4 disinterested for all purposes.

5 (2) “Affiliated person” and “interested person” have the meanings set forth in the
6 1940 Act or any rule adopted thereunder.

7 **Comment**

8 **Principal Sources** – Scattered sections of the Delaware and Connecticut Statutory Trust
9 Acts.

10
11 Paragraph (a) emphasizes the freedom of contract afforded to transactional planners by
12 the Uniform Statutory Trust Act, which is primarily a default statute.

13
14 Paragraph (b) enumerates a nonexhaustive list of the sort of provisions that may validly
15 be included in a statutory trust’s governing instrument. Although this enumeration adds little of
16 substance to the rest of the Act, the drafting committee concluded that the demand of third
17 parties and transactional planners to see language that expressly authorizes specific terms
18 justified inclusion of a detailed list. Similar reasoning underlies the existence of a detailed
19 schedule of powers in Uniform Trust Code §816 notwithstanding the broad general statement of
20 power in Uniform Trust Code §815.

21
22 **SECTION 106. APPLICABILITY OF TRUST LAW.** The laws of this state
23 pertaining to trusts supplement this [act], except to the extent modified or displaced by this [act],
24 the governing instrument, or another statute of this state.

25 **Comment**

26
27 **Principal Sources** – Uniform Trust Code §106; Delaware Statutory Trust Act §3809;
28 Connecticut Statutory Trust Act §34-519.

29
30 Consistent with the leading statutory trust acts in Delaware and Connecticut, the Uniform
31 Statutory Trust Act provides that state trust law, not corporate law, supplements this Act and the
32 terms of the governing instrument. In resolving this question in favor of trust law, the drafting
33 committee was strongly influenced by the revealed preference for trust law among existing users

1 of statutory trusts as evidenced by the popularity of the Delaware and Connecticut Acts as
2 compared the business trust acts (such as those in Arizona, Indiana, Kansas, Mississippi,
3 Montana, Oregon, Tennessee, Washington, and West Virginia) that look to corporate law.

4
5
6 **SECTION 107. RULES OF CONSTRUCTION.**

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

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

11 **Comment**

12
13 **Principal Sources** – Delaware Statutory Trust Act §3825; Connecticut Statutory Trust
14 Act §34-546.

15
16 Paragraph (a) emphasizes the freedom of contract afforded to transactional planners by
17 the Uniform Statutory Trust Act, which is primarily a default statute.

18
19 Paragraph (b) admonishes the courts not to apply to this Act the canon of construction
20 that statutes in derogation of the common law are to be strictly construed. Although Revised
21 Uniform Partnership Act §104 (1997) does not include a similar admonition on the ground that
22 the “principle is now so well established that it is not necessary to so state in the Act,” id. cmt.,
23 the drafting committee for the Uniform Statutory Trust Act included this admonition because
24 several of this Act’s provisions are designed specifically to reject the application of one or more
25 common law principles to a statutory trust.

26
27
28 **[SECTION 108. TAX CLASSIFICATION.** For purposes of any tax imposed by this
29 state or any instrumentality, agency or political subdivision of this state, a statutory trust is
30 classified as a corporation, an association, a partnership, a trust or otherwise, as shall be
31 determined under the United States Internal Revenue Code of 1986 [26 U.S.C. Section 1 et
32 seq.], as amended, or under any successor provision.]

33 **Comment**
34

1 **Principal Sources** – Delaware Statutory Trust Act §3809; Connecticut Statutory Trust
2 Act §34-519.

3
4 This provision supplies a transitional rule to deal with questions of state and local
5 taxation of statutory trusts created under this Act. **[Reporter’s Note to the drafting committee:**
6 **As instructed at the last session, I have moved this Section to Article 1. We should discuss**
7 **omitting it altogether.]**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

3

5

7
8
9
0
1
2

5

6
7

8

9

0
12
34
5

6
7
8

9

beneficial owners; and

(2) the certificate of trust, statement of cancellation, or change or articles of conversion or merger prevail as to a person other than a trustee or a beneficial owner that reasonably relies on the filed record to their detriment.

Comment

Principal Sources – Uniform Limited Partnership Act §201; Delaware Statutory Trust Act §3810; Connecticut Statutory Trust Act §34-503.

A statutory trust, like all other limited liability forms of business organization, but unlike a common law trust, is a creature of statute that requires a filing with the state to come into existence. A statutory trust comes into existence only if (1) a certificate of trust is prepared and delivered to the specified public official for filing, and (2) the public official files the certificate. (For more on the meaning of “filing,” see Section 205 and the comment thereto.) The certificate of trust provides notice to interested third parties of the existence of the statutory trust and the identification of the statutory trust’s initial agent for service of process. Pursuant to Section 304(d)(2), the certificate of trust also puts third parties on notice if the statutory trust further segregates its assets and liabilities by creating one or more series.

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

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE.

(a) In order to amend its certificate of trust, a statutory trust must deliver to the [Secretary of State] for filing an amendment or, pursuant to [Article] 6, articles of merger stating:

(1) the name of the statutory trust;

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

(3) the changes that the amendment makes to the certificate as most recently

1 amended or restated.

2 (b) A trustee that knows that any information in a filed certificate of trust was false when
3 the certificate was filed or has become false due to changed circumstances must promptly:

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

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

7 (c) A certificate of trust may be amended at any time for any purpose as determined by
8 the trustees.

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

11 (e) Subject to Section 205(c), an amendment or restated certificate is effective when filed
12 by the [Secretary of State].

13 **Comment**

14
15 **Principal Sources** – Uniform Limited Partnership Act §202; Delaware Statutory Trust
16 Act §3810; Connecticut Statutory Trust Act §34-503.

17
18 Paragraph (a) provides a mechanism for updating a statutory trust's filed certificate of
19 trust. Paragraph (b) imposes an obligation directly on the trustee rather than on the statutory
20 trust. A trustee's failure to meet that responsibility can expose the trustee to liability to third
21 parties under Section 206 and might constitute a breach of trust.
22

23 **SECTION 203. STATEMENT OF CANCELLATION.**

24 (a) A terminated statutory trust that has completed winding up shall deliver to the
25 [Secretary of State] for filing a statement of cancellation that states:

26 (1) the name of the statutory trust;

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

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

2 (b) Subject to Section 205(c), a statement of cancellation is effective when filed by the
3 [Secretary of State].

4 **Comment**

5
6 **Principal Sources** – Uniform Limited Partnership Act §203; Delaware Statutory Trust
7 Act §3810; Connecticut Statutory Trust Act §34-503.

8
9 Unlike Uniform Limited Partnership Act §203, this section requires the filing of a
10 statement of cancellation when a statutory trust is terminated.

11
12
13 **SECTION 204. SIGNING OF RECORDS.**

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

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

18 **Comment**

19
20 **Principal Sources** – Uniform Limited Partnership Act §204; Delaware Statutory Trust
21 Act §3811; Connecticut Statutory Trust Act §34-504.

22
23 **SECTION 205. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY**
24 **OF STATE]; EFFECTIVE TIME AND DATE.**

25 (a) A record authorized or required to be delivered to the [Secretary of State] for filing
26 under this [act] must be captioned to describe the record's purpose, be in a medium permitted by
27 the [Secretary of State], and be delivered to the [Secretary of State]. Unless the [Secretary of
28 State] determines that a record does not comply with the filing requirements of this [act], and if
29 all filing fees have been paid, the [Secretary of State] shall file the record and make available a

1 copy of the filed record to the person on whose behalf the record was filed.

2 (b) Upon request and payment of a fee, the [Secretary of State] shall send to the requester
3 a certified copy of the requested record.

4 (c) Except as otherwise provided in Sections 206 and 214, a record delivered to the
5 [Secretary of State] for filing under this [act] may specify an effective time and a delayed
6 effective date. Except as otherwise provided in this [act], a record filed by the [Secretary of
7 State] is effective:

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

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

13 (3) if the record specifies a delayed effective date but not an effective time, at
14 12:01 a.m. on the earlier of:

15 (A) the specified date; or

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

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

19 (A) the specified date; or

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

21 **Comment**

22
23 **Principal Sources** – Uniform Limited Partnership Act §206; Delaware Statutory Trust
24 Act §3812; Connecticut Statutory Trust Act §34-505.

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

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

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

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

27 **SECTION 206. CORRECTING FILED RECORD.**

28 (a) A statutory trust or foreign statutory trust may deliver to the [Secretary of State] for
29 filing a statement of correction to correct a record previously delivered by the statutory trust or
30 foreign statutory trust to the [Secretary of State] and filed by the [Secretary of State], if at the
31 time of filing the record contained false or erroneous information or was defectively or
32 erroneously signed.

33 (b) A statement of correction may not state a delayed effective date and must:

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

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

(3) correct the incorrect information or defective signature.

(c) When filed by the [Secretary of State], a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons relying on the uncorrected record and adversely affected by the correction.

Comment

Principal Source – Uniform Limited Partnership Act §207.

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

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

SECTION 207. CERTIFICATE OF EXISTENCE OR REGISTRATION.

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

(1) the statutory trust’s name;

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

(3) that all fees and penalties due to the [Secretary of State] under this [act] or

1 other law have been paid;

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

3 (b) The [Secretary of State], upon request and payment of the requisite fee, shall furnish a
4 certificate of registration for a foreign statutory trust if the records filed in the [office of the
5 Secretary of State] show that the [Secretary of State] has filed a certificate of authority, has not
6 revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of
7 registration must state:

8 (1) the foreign statutory trust's name and any alternate name adopted under
9 Section 706 for use in this state;

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

12 (3) that the [Secretary of State] has not revoked its certificate of authority and has
13 not filed a notice of cancellation.

14 (c) Subject to any qualification stated in the certificate, a certificate of existence or
15 registration issued by the [Secretary of State] may be relied upon as conclusive evidence that the
16 statutory trust or foreign statutory trust is in existence or is authorized to transact business in this
17 state.

18 **Comment**

19
20 **Principal Source** – Uniform Limited Partnership Act §209.

21
22 A certificate of existence or registration can reveal only information present in the public
23 record. Under this Act significant information bearing on the status of a statutory trust may be
24 outside the public record.

25
26 Section 205(b) provides a mechanism for obtaining a certified copy of a certificate of
27 trust even if the trust has been terminated.

1
2 A certificate of registration furnished under this section is different than a certificate of
3 authority under Section 705.
4

5
6 **SECTION 208. CANCELLATION OF CERTIFICATE OF EXISTENCE.**
7

8 (a) A certificate of existence of a statutory trust may be cancelled by the [Secretary of
9 State] in the manner provided in subsections (b) and (c) if the statutory trust does not:

10 (1) pay, within 60 days after the due date, any fee, tax or penalty due to the
11 [Secretary of State] under this [act] or other law;

12 (2) appoint and maintain an agent for service of process as required by Section
13 212;

14 (3) deliver for filing a statement of a change under Section 214 within 30 days
15 after a change has occurred in the name or address of the agent; or

16 (4) file an annual report under Section 211.

17 (b) In order to cancel a certificate of existence, the [Secretary of State] must prepare,
18 sign, and file a notice of cancellation and send a copy to the statutory trust's agent for service of
19 process, or if the statutory trust does not appoint and maintain a proper agent in this state, to the
20 statutory trust's designated office. The notice must state:

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

23 (2) the statutory trust's failures to comply with subsection (a) which are the
24 reason for the revocation.

25 (c) The authority of the statutory trust to transact business ceases on the effective date of
26 the notice of cancellation unless the statutory trust cures each failure to comply with subsection

1 (a) stated in the notice.

2 (d) If the statutory trust cures the failures stated in the notice of cancellation under
3 subsection (c), the [Secretary of State] shall indicate reinstatement of the statutory trust on the
4 filed notice. For all purposes the reinstatement of the statutory trust relates back to the date of
5 the notice of cancellation.

6 **Comment**

7
8 **Principal Source** – Uniform Limited Partnership Act §906.
9

10 **SECTION 209. NAME OF STATUTORY TRUST.**

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

13 (1) the name of any person, other than an individual, incorporated, organized, or
14 authorized to transact business in this state; and

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

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

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

24 (1) the present user, registrant, or owner of the conflicting name consents in a

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

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

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

(A) has merged into the applicant;

(B) has been converted into the applicant; or

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

(d) Subject to Section 706, this section applies to any foreign statutory trust transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

Comment

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

Section 35(d) of the Investment Company Act of 1940, which is applicable to a statutory trust that is a registered investment company, prohibits “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d). **[For further discussion: The differences between the Connecticut and Delaware provisions on permissible names. This section follows the Delaware model.]**

SECTION 210. RESERVATION OF NAME.

1 (a) The exclusive right to the use of a name that complies with Section 209 may be
2 reserved by:

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

5 (2) a statutory trust or a foreign statutory trust authorized to transact business in
6 this state intending to adopt the name;

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

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

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

12 (6) a foreign statutory trust formed under a name that does not comply with
13 Section 209, but the name reserved under this paragraph may differ from the foreign statutory
14 trust's name only to the extent necessary to comply with Section 209.

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

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

1 current reservation.

2 (d) A person that has reserved a name under this section may deliver to the [Secretary of
3 State] for filing a notice of transfer that states the reserved name, the name and street and mailing
4 address of some other person to which the reservation is to be transferred, and the paragraph of
5 subsection (a) which applies to the other person. Subject to Section 205(c), the transfer is
6 effective when the [Secretary of State] files the notice of transfer.

7 **Comment**

8 **Principal source** – Uniform Limited Partnership Act §109.
9

10 **SECTION 211. ANNUAL REPORT FOR [SECRETARY OF STATE].**

11 (a) A statutory trust or a foreign statutory trust authorized to transact business in this
12 state must deliver to the [Secretary of State] for filing an annual report that states:

13 (1) the name of the statutory trust or foreign statutory trust;

14 (2) the street and mailing address of its designated office and the name and street
15 and mailing address of its agent for service of process in this state;

16 (3) in the case of a foreign statutory trust, the street and mailing address of its
17 principal office; and

18 (4) in the case of a foreign statutory trust, the state or other jurisdiction under
19 whose law the foreign statutory trust is formed and any alternate name adopted under Section
20 706(a).

21 (b) Information in an annual report must be current as of the date the annual report is
22 delivered to the [Secretary of State] for filing.

23 (c) The first annual report must be delivered to the [Secretary of State] between [January

1 1 and April 1] of the year following the calendar year in which a statutory trust was formed or a
2 foreign statutory trust was authorized to transact business. An annual report must be delivered to
3 the [Secretary of State] between [January 1 and April 1] of each subsequent calendar year.

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

9 (e) If a filed annual report contains an address of a designated office or the name or
10 address of an agent for service of process which differs from the information shown in the
11 records of the [Secretary of State] immediately before the filing, the differing information in the
12 annual report is considered a statement of change under Section 213.

13 **Comment**

14
15 **Source** – Uniform Limited Partnership Act §210.

16
17 **[Reporter’s Note to drafting committee: This section which had been omitted in the**
18 **prior draft, was restored per the discussion at the last session.]**
19

20 **SECTION 212. OFFICE AND AGENT FOR SERVICE OF PROCESS.**

21 (a) A statutory trust and a foreign statutory trust authorized to transact business in this
22 state must designate and continuously maintain in this state an agent for service of process.

23 (b) An agent for service of process of a statutory trust or foreign statutory trust must be
24 an individual who is a resident of this state or other person authorized to do business in this state
25 and that maintains an office in this state.

1 **Comment**

2
3 **Principal Sources** – Uniform Limited Partnership Act §114; Delaware Statutory Trust
4 Act §3804; Connecticut Statutory Trust Act §34-507.
5

6 Under Section 201(a)(3), the initial designation of an agent for service of process is made
7 in the original certificate of trust. The initial designation may be changed pursuant to a
8 statement of change under Section 213 or by an amendment to the certificate of trust under
9 Section 202.
10

11 **SECTION 213. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**
12 **SERVICE OF PROCESS.**

13 (a) In order to change its agent for service of process, or the address of its agent for
14 service of process, a statutory trust or a foreign statutory trust may deliver to the [Secretary of
15 State] for filing a statement of change containing:

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

17 (2) the street and mailing address of its current designated office;

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

20 (4) the name and street and mailing address of its current agent for service of
21 process; and

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

24 (b) Subject to Section 205(c), a statement of change is effective when filed by the
25 [Secretary of State].

26 **Comment**

27
28 **Principal Source** – Uniform Limited Partnership Act §115.

1
2 Paragraph (a) uses “may” rather than “shall” because a statutory trust may also change
3 the information by an amendment to its certificate of trust under Section 202.
4

5 **SECTION 214. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

6 (a) In order to resign as an agent for service of process of a statutory trust or 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 statutory trust or foreign statutory trust.

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

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

15 **Comment**

16
17 **Principal Source** – Uniform Limited Partnership Act §116.
18

19 This section provides the exclusive means for an agent to resign without cooperation
20 from the statutory trust or foreign statutory trust and the only way the agent, rather than the
21 statutory trust or foreign statutory trust, can effect a change in the public record. In contrast to
22 most records authorized or required to be delivered to the filing officer for filing under this Act,
23 a statement of resignation may not provide for a delayed effective date. Paragraph (c) mandates
24 the effective date. An effective date included in a statement of resignation is disregarded. To
25 satisfy Section 212(a), the statutory trust or foreign statutory trust must designate a new agent for
26 service of process before the effective date. If the statutory trust or foreign statutory trust fails to
27 do so, under Section 215 service on the statutory trust or foreign statutory trust may be made on
28 the [Secretary of State].
29

30 **SECTION 215. SERVICE OF PROCESS.**

31 (a) An agent for service of process appointed by a statutory trust or foreign statutory trust

1 is an agent of the statutory trust or foreign statutory trust for service of any process, notice, or
2 demand required or permitted by law to be served upon the statutory trust or foreign statutory
3 trust.

4 (b) If a statutory trust or foreign statutory trust does not appoint or maintain an agent for
5 service of process in this state or the agent for service of process cannot with reasonable
6 diligence be found at the agent's address, then the [Secretary of State] is an agent of the statutory
7 trust or foreign statutory trust which the process, notice, or demand may be served.

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

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

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

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

18 (3) five days after the process, notice, or demand is deposited in the mail, if
19 mailed postpaid and correctly addressed.

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

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

1 manner provided by law.

2 **Comment**

3

4 **Principal Source** – Uniform Limited Partnership Act §117.

1 **ARTICLE 3**
2
3 **STATUTORY TRUSTS**
4

5 **SECTION 301. STATUTORY TRUSTS AUTHORIZED.** A statutory trust is an
6 authorized entity, separate from its trustees and beneficial owners, for the conduct of lawful
7 activity.

8 **Comment**
9

10 **Principal Sources** – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust
11 Act §§34-502, 34-502a.
12

13 This Section confirms that any prior judicial decision that holds that a common law
14 business trust violates the state’s corporate law, trust law, or public policy is not applicable to a
15 statutory trust created under this Act. Examples of such decisions, which reflect the now
16 outmoded concern that a business trust could be used to evade regulatory limitations on the
17 corporate form, are collected in Robert H. Sitkoff, *The Rise of the Statutory Business Trust* [in
18 progress].
19

20 Consistent with modern corporate law, a statutory trust may be formed for any lawful
21 purpose. The drafting committee contemplated that the limitation for “lawful” activity would
22 allow for the possibility that the State has limited the type of entity that may engage in a
23 particular line of business. For example, some states limit the type of organizations that may be
24 used in regulated industries such as banking and insurance.
25

26 **SECTION 302. LAW OF INTERNAL AFFAIRS.** The laws of this state govern the
27 organization and internal affairs of a statutory trust created under this act, including the liability
28 of a beneficial owner or a trustee of the statutory trust.

29 **Comment**
30

31 **Principal Sources** – Connecticut Statutory Trust Act §34-502; Uniform Limited
32 Partnership Act §106.
33

34 Under this section the internal affairs of a statutory trust created under this act are
35 governed by the laws of this state. The rule of this section is comparable to the internal affairs
36 doctrine of corporate law. See Note, *The Internal Affairs Doctrine: Theoretical Justifications*

1 and Tentative Explanations for its Continued Primacy, 115 Harv. L. Rev. 1480 (2002). This
2 Section also supports Sections 412 and 505 by confirming that the liability, if any, of a trustee or
3 a beneficial owner is governed by the laws of this state.

4
5 Under Section 702(a), the organization and internal affairs of a foreign statutory trust are
6 governed by the law of the state or other jurisdiction under which the foreign statutory trust is
7 organized.

8 9 10 **SECTION 303. DURATION OF STATUTORY TRUST.**

11 (a) A statutory trust has perpetual existence.

12 (b) A statutory trust, or any series thereof, may not be terminated or revoked by a
13 beneficial owner or other person except in accordance with this [act] or the terms of the statutory
14 trust's governing instrument.

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

17 **Comment**

18
19 **Principal Sources** – Delaware Statutory Trust Act §3808; Connecticut Statutory Trust
20 Act §34-518.

21
22 Paragraph (a) of this section establishes as a default rule that a statutory trust has perpetual
23 existence. The duration of a common law trust, by contrast, is curtailed by the Rule Against
24 Perpetuities. See Restatement (Second) of Property: Donative Transfers § 2.1 (1981); 1A Austin
25 Wakeman Scott & William Franklin Fratcher, The Law of Trusts § 62.10, at 336 (4th ed. 1987).
26 Accordingly, unless the governing instrument provides otherwise or Section 104(c) applies because
27 the statutory trust has a prevailingly donative purpose and the state has retained the Rule Against
28 Perpetuities, under this section a statutory trust is exempt from the Rule. Without taking a position
29 on the policy soundness of the tax-driven movement to abolish the Rule Against Perpetuities with
30 respect to donative trusts, see Max M. Schanzenbach & Robert H. Sitkoff, Perpetuities or Taxes?
31 Explaining the Rise of the Perpetual Trust, 27 Cardozo L. Rev. __ (2006), the drafting committee
32 concluded that the policies that underpin the Rule Against Perpetuities do not apply to a statutory
33 trust that has a business purpose.

34
35 Paragraph (b) confirms that, unless Section 104(c) applies because the statutory trust has a
36 prevailingly donative purpose, a statutory trust may only be terminated in accordance with the terms
37 of this Act or the governing instrument. Thus, with respect to statutory trusts that do not have a

1 prevailingly donative purpose, paragraph (b) overrides the common law of trust modification and
2 termination that would otherwise be applicable to a statutory trust under Section 106.

3
4 Paragraph (c) confirms that the rule of partnership law under which a partnership is
5 dissolved upon the death or incapacity of one of the partners has no application to a statutory
6 trust or any series thereof.
7

8 **SECTION 304. POWER TO SUE AND BE SUED.**

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

10 (b) Except as otherwise provided in subsection (d), a statutory trust may be sued for debts
11 and other obligations or liabilities contracted or incurred by the trustees or by the duly authorized
12 agents of such trustees in the performance of their respective duties under the governing
13 instrument of the statutory trust, and for any damages to persons or property resulting from the
14 negligence of such trustees or agents acting in the performance of their respective duties.

15 (c) Except as otherwise provided in subsection (d), the property of a statutory trust shall
16 be subject to attachment and execution as if it were a domestic corporation.

17 (d) If the governing instrument of a statutory trust, including a statutory trust that is a
18 registered investment company under the Investment Company Act of 1940, as amended, 15
19 U.S.C. Sections 80a-1 et seq., creates one or more series as provided in Section 105(b)(4) to (6),
20 then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing
21 with respect to a particular series shall be enforceable against the assets of such series only, and
22 not against the assets of the statutory trust generally or any other series thereof, and none of the
23 debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with
24 respect to the statutory trust generally or any other series thereof shall be enforceable against the
25 assets of such series if:

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

(2) notice of the limitation on liabilities of a series as referenced in this section is set forth in the certificate of trust of the statutory trust.

Comment

Principal Sources – Delaware Statutory Trust Act §3804; Connecticut Statutory Trust Act §34-518.

Paragraphs (a), (b), and (c) implement the concept that the statutory trust is a separate juridical entity with the power to contract, sue, and be sued in its own name.

Paragraph (d) confirms that for a statutory trust that has created separate series under Section 105(b)(4) to (6), the debts, liabilities, and other obligations of a particular series are enforceable against the assets of that series only, but only if (1) separate records are maintained for each series and (2) notice of the limitation on liabilities of a series is set forth in the certificate of trust. Under Section 201 the certificate of trust is made part of the public record.

Structuring a statutory trust with multiple series is common in mutual funds and other investment companies organized under the Investment Company Act of 1940. “Investment companies often structure themselves in the form [of] a master trust with several series of sub-trusts. The sub-trusts may have different investment objectives or marketing and distribution plans that are designed to appeal to different institutional and retail markets. Because the multiple series structure involves only a single investment company, it may be more economical to operate than creating a separate trust for each series. Such separate series may not share all costs of operating the statutory trust equally or may use varying amounts of leverage to finance their investments.” Wendell Fenton & Eric A. Mazie, Delaware Statutory Trusts, in The Delaware Law of Corporations & Business Organizations §19.4 (3d ed. 2005 Supp.)

SECTION 305. POWER TO HOLD PROPERTY. A statutory trust has the power to hold or take title to property its own name whether in an active, passive, or custodial capacity.

1 **Comment**

2 **Principal Source** – Connecticut Statutory Trust Act §34-502a.

3
4 This Section implements the concept that a statutory trust is an entity separate from its
5 trustee and beneficial owners by confirming that a statutory trust may transact over property in
6 its own name. The property of a common law trust, by contrast, must be held in the name of the
7 trustee as such. See also Section 407.

1 **ARTICLE 4**

2 **TRUSTEES AND TRUST MANAGEMENT**

3 **SECTION 401. MANAGEMENT OF STATUTORY TRUSTS.**

4
5
6 (a) The business and affairs of a statutory trust is managed by or under the authority of its
7 trustees.

8 (b) A trustee, without authorization by the court, may exercise:

9 (1) powers conferred by the governing instrument; and

10 (2) except as limited by the governing instrument:

11 (A) all powers over the trust property that an unmarried competent owner
12 has over individually owned property;

13 (B) any other powers necessary or convenient to carry out the business
14 and affairs of the statutory trust; and

15 (C) any other powers conferred by this [act].

16 (c) A statutory trust is liable for loss or injury caused to a person, or for a penalty
17 incurred, as a result of a wrongful act or omission, or other actionable conduct, of a trustee acting
18 in the ordinary course of business of the statutory trust or with authority of the statutory trust.

19 **Comment**

20 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust
21 Act §34-517; Uniform Trust Code §815; Uniform Limited Liability Company §302; Uniform
22 Limited Partnership Act §105.

23
24 Paragraph (a) confirms that the trustees manage the statutory trust.

25
26 By creating a default rule that grants the trustees the broadest possible powers, paragraph
27 (b) is intended to override the application to a statutory trust under Section 106 of the discredited
28 common law rule that a trustee has only those powers granted by the trust instrument. See

1 Restatement (Third) of Trusts §85 cmt. a (T.D. No. 4, 2005); Uniform Trust Code §815. This
2 broad authority is denoted by granting the trustees the powers of an unmarried competent owner
3 of individually owned property, unlimited by restrictions that might be placed on such property
4 by marriage, disability, or cotenancy. However, the existence of a power, regardless of the
5 source of the power, does not speak to the question whether in a particular case it is consistent
6 with the trustee’s fiduciary obligation under Section 402 to exercise that power. “To safeguard
7 beneficiaries against abuse of this discretion, trust fiduciary law has developed as the functional
8 replacement for the former scheme of trustee disability. . . . Trustees’ powers legislation
9 authorizes transacting, fiduciary law regulates the purposes and standards of transacting.” John
10 H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 Yale L.J. 625, 642, 660 (1995).

11
12 Under paragraph (c), the actions of the trustee are imputed to the statutory trust if the
13 trustee is acting with actual or apparent authority or in the ordinary course of business.

14 15 16 **SECTION 402. STANDARDS OF CONDUCT FOR TRUSTEES.**

17 (a) When discharging the duties of trusteeship, a trustee of a statutory trust must act in
18 good faith and in a manner that the trustee reasonably believes to be in the best interests of the
19 statutory trust.

20 (b) A trustee of a statutory trust must discharge its duties with the care that a person in a
21 like position would reasonably believe appropriate under similar circumstances.

22 **Comment**

23 **Principal Source** – Model Business Corporation Act §8.30.

24 To police the trustee’s exercise of the trustee’s broad powers under Section 401, this
25 section subjects the trustee to default fiduciary duties of loyalty (paragraph (a)) and care
26 (paragraph (b)) akin to those of a corporate director. Under Section 104(b), the trustee’s
27 standards of conduct under this section are mandatory rules that are not subject to override by the
28 governing instrument. However, the governing instrument may define “good faith,” “best
29 interests of the statutory trust,” or “care that a person in a like position would reasonable believe
30 appropriate under similar circumstances,” provided that the definition is not manifestly
31 unreasonable.

32
33 The drafting committee opted to model the trustee’s duties on the corporate fiduciary
34 obligation rather than the more restrictive trust law fiduciary obligation on the ground that the
35 statutory trust is used chiefly as a mode of business organization. Unlike the trust law fiduciary
36 obligation, which evolved in the context of donative transfers, the corporate law fiduciary

1 obligation evolved to serve the needs of commercial actors. For a comparison, see Robert H.
2 Sitkoff, Trust Law, Corporate Law, and Capital Market Efficiency, 28 J. Corp. L. 565, 572-82
3 (2003). See also sources cited in the comment to Section 404.
4

5
6 **SECTION 403. TRUSTEE’S RIGHT TO INFORMATION.** A trustee has the right
7 to examine information relating to the affairs of the statutory trust necessary for the trustee’s
8 discharge of the trustee’s duties as trustee.

9 **Comment**

10 Under Section 104(b), the trustee’s right to information relating to the affairs of the
11 statutory trust under this section is a mandatory rule that is not subject to override by the
12 governing instrument. However, the trustee’s right to information under this section is limited to
13 information necessary for the trustee to discharge its duties as trustee, and under Section 104(b)
14 the governing instrument may define necessary in any manner that is not manifestly
15 unreasonable.
16

17 By linking the trustee’s information rights to the scope of the trustee’s duties as trustee,
18 this section makes trust trustee’s right to information function specific. This section therefore
19 allows for the creation of a limited-role trustee who will not have access to confidential
20 information unrelated to the trustee’s limited role. At the same time, this section ensures that
21 such a trustee will have access to information necessary to discharge the trustee’s duties in
22 connection with the trustee’s limited role.
23

24 Section 508 provides a comparable rule for a beneficial owner’s right to information.
25
26

27 **SECTION 404. INTERESTED TRANSACTIONS.** A trustee, officer, employee,
28 manager, or a related person of a trustee, officer, employee, or manager, may lend money to,
29 borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more
30 obligations of, provide collateral for, and transact other business with a statutory trust and,
31 subject to the trustee’s fiduciary obligation under Section 402, has the same rights and
32 obligations with respect to any such matter as a person who is not a trustee, officer, employee,
33 manager, or related person of a trustee, officer, employee, or manager.

1 **Comment**

2 **Principal Sources** – Delaware Statutory Trust Act §3806.

3
4 Consistent with the use of the term “best interests” instead of “sole interest” in Section
5 402(a), this section abrogates the no-further-inquiry rule of the common law of trusts, which
6 forbids self-dealing transactions. See Restatement (Second) of Trusts §170 (1959). The drafting
7 committee opted instead for the corporate law rule whereby a self-dealing or other interested
8 transaction is permitted if its terms are fair and reasonable. See Stephen M. Bainbridge,
9 Corporation Law and Economics §7.2 (2002); John H. Langbein, Questioning the Trust Law
10 Duty of Loyalty: Sole Interest or Best Interest?, 114 Yale L.J. 929 (2005); Melanie Leslie,
11 Trusting Trustees: Fiduciary Duties and the Limits of Default Rules, 94 Georgetown L.J. 67
12 (2005).

13
14 The application of this section to a statutory trust that is registered as an investment
15 company is preempted by the Investment Company Act of 1940, which generally prohibits a
16 trustee, officer, employee, manager, and their related persons from lending money to, borrowing
17 money from, and engaging in other transactions with the mutual fund without exemptive relief
18 from the Securities and Exchange Commission. See 15 U.S.C. §§80a-17(a), (d), 80a-18(a).

19
20 **SECTION 405. NONLIABILITY FOR GOOD FAITH RELIANCE ON**
21 **GOVERNING INSTRUMENT.**

22 (a) A trustee who acts in good faith reliance on the terms of the governing instrument is
23 not liable to the statutory trust or to a beneficial owner for breach of any duty, including
24 fiduciary duties, to the extent the breach resulted from the reliance.

25 (b) An officer, employee, manager, committee, or other person designated pursuant to
26 Section 105(b)(9) that acts in good faith reliance on the terms of the governing instrument is not
27 liable to the statutory trust or to a beneficial owner for breach of any duty, including fiduciary
28 duties, to the extent the breach resulted from the reliance.

29 **Comment**

30 **Principal Source** – Uniform Trust Code §1006; Delaware Statutory Trust Act §3806;
31 Connecticut Statutory Trust Act §34-517.
32

1 A trustee, officer, employee, manager, committee, or other such person or persons should
2 be able to administer a statutory trust with dispatch and without concern that a reasonable
3 reliance on the terms of the governing instrument is misplaced. This section protects a person
4 that so relies on a trust instrument but only to the extent the breach of trust resulted from such
5 reliance and only if the person's reliance was in good faith.
6
7

8 **SECTION 406. INDEMNIFICATION, ADVANCEMENT, AND EXCLUPATION.**

9 (a) A statutory trust has the power to indemnify and hold harmless any trustee or
10 beneficial owner or other person from and against any and all claims and demands on the person
11 by reason of the person's affiliation with or to the statutory trust, if the claim or demand does not
12 arise from such person's bad faith or reckless indifference.

13 (b) Expenses, including attorneys' fees, incurred by a trustee, beneficial owner, or any
14 other person in connection with a claim or demand on the person by reason of the person's
15 affiliation with or to the statutory trust may [NOTE: Should this be shall?] be paid by the
16 statutory trust in advance of the final disposition of the claim or demand upon an undertaking by
17 or on behalf of the person to repay the statutory trust if the person is ultimately determined not to
18 be entitled to be indemnified under subsection (a).

19 (c) A term in the governing instrument relieving or exculpating a trustee from liability is
20 unenforceable to the extent that it relieves the trustee from liability for conduct involving bad
21 faith or reckless indifference.

22 **Comment**

23
24 **Principal Sources** – Delaware Statutory Trust Act §3817; Connecticut Statutory Trust
25 Act §34-524; Delaware General Corporation Law §145; Uniform Trust Code §105.
26

27 In Nakahara v. The NS 1991 American Trust, 739 A.2d 770 (Del. Ch. 1998), the court
28 denied the trustees' claim for indemnification on the ground of unclean hands but held that a
29 Delaware statutory trust did have the power to advance litigation expenses.
30

1 Under Section 104(b), this section's prohibition of indemnification, advancement, or
2 exculpation for conduct involving bad faith or reckless indifference is not subject to override by
3 the governing instrument. Prohibiting indemnification, advancement, or exculpation for such
4 conduct is consistent with traditional principles of trust law. See Restatement (Second) of Trusts
5 §222 (1959); George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* §542
6 (rev. 2d ed. 1993). See also John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 Nw.
7 U.L. Rev. 1105, 1121-25 (2004).

8
9 Any indemnification provision in the governing instrument of a statutory trust operating
10 as a mutual fund is subject to Section 17(h) of the Investment Company Act of 1940, which
11 generally prohibits a fund from including in its organizational documents any provision that
12 protects a trustee or officer of a fund against liability to the fund or its shareholders by reason of
13 willful misfeasance, bad faith, gross negligence, or reckless disregard of the person's duties as
14 trustee or officer. See §15 U.S.C. § 80a-17(h); see also 15 U.S.C. §80a-17(h)-(i); 17 CFR
15 271.11330.

16
17 The SEC has taken the position that, before advancing legal fees to a trustee of a mutual
18 fund, the fund's board must either: (1) obtain assurances, such as by obtaining insurance or
19 receiving collateral provided by the trustee, that the advance will be repaid if the trustee is found
20 to have engaged in disabling conduct, or (2) have a reasonable belief that the trustee has not
21 engaged in disabling conduct and ultimately will be entitled to indemnification. See SEC
22 Interpretation: *Matters Concerning Independent Directors of Investment Companies*, Investment
23 Company Act Rel. No. 24083 (Oct. 14, 1999). The SEC has also taken the position that there is
24 a rebuttable presumption that an independent trustee (as defined in Section 105(c)) has not
25 engaged in disabling conduct. *Id.*

26
27 **SECTION 407. TITLE TO TRUST PROPERTY.** Legal title to the property of the
28 statutory trust or any part thereof may be held in the name of any trustee of the statutory trust, in
29 its capacity as such, with the same effect as if the property were held in the name of the statutory
30 trust.

31 **Comment**

32
33 **Principal Sources** – Delaware Statutory Trust Act §§3803, 3805; Connecticut Statutory
34 Trust Act §34-523; Uniform Limited Partnership Act §303.

35
36 Because a common law trust is not an entity separate from its trustee, the trust property
37 must be held by the trustee in its capacity as such. To police the boundary of the trustee's
38 personal assets and the assets of the trust, the common law imposes on the trustee duties to
39 earmark trust property and not to commingle it with the trustee's own. See Uniform Trust Code

§810; Restatement (Second) of Trusts §179 (1959).

A statutory trust, by contrast, is a juridical entity with the power to transact over property in its own name. See Section 305. Hence, the question arises whether a trustee of a statutory trust may hold trust property in the name of the trustee in the trustee's capacity as such, or if instead trust property must be held only in the name of the statutory trust. This Section provides the more permissive answer, giving the trustee the option of holding property in the name of the trustee in the trustee's capacity as such.

SECTION 408. DIRECTION OF TRUSTEES.

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

(b) If the terms of a trust confer upon a person a power to direct certain actions of a trustee or other person, the trustee or other person must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the governing instrument or the trustee or other person knows the attempted exercise would constitute a serious breach of a fiduciary duty.

(c) Neither the power to give direction to a trustee or other persons nor the exercise thereof by any person, including a beneficial owner, causes the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating thereto, to the statutory trust or to a beneficial owner thereof.

Comment

Principal Sources – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust Act §34-517; Uniform Trust Code §808.

Paragraph (a) ratifies the use of directed trustees, meaning a trustee that must act in accord with the directions of another person. Under paragraph (b), however, the trustee need not follow a direction that is manifestly contrary to the terms of the governing instrument or that the trustee knows would constitute a serious breach of fiduciary duty. Under paragraph (c), unless the governing instrument provides otherwise, by reason of having the power to direct the trustee

1 such other person is not a trustee and owes no duties, fiduciary or otherwise, to the statutory trust
2 or the beneficial owners.

3
4 In conjunction with Section 409, this section facilitates the current practice in existing
5 statutory trusts of creating a trusteeship with respect to some, but not all, aspects of the trust—
6 for example, in a mutual fund with an investment advisor or in a securitization transaction with a
7 person whose consent is required before the statutory trust can petition for bankruptcy.
8

9 **SECTION 409. DELEGATION BY TRUSTEE.** A trustee of a statutory trust has the
10 power to delegate to one or more other persons the trustee's rights and powers to manage and
11 control the business and affairs of the statutory trust, including the power to delegate to agents,
12 officers, managers, committees, or employees of the trustee or the statutory trust, and to delegate
13 by management agreement or other agreement with, or otherwise to, other persons, including to
14 another trustee. Delegation by a trustee of a statutory trust does not relieve the trustee's duties
15 with respect to the matter delegated or cause the person to which any rights and powers have
16 been delegated to be a trustee of the statutory trust by reason of the delegation.

17 **Comment**

18 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust
19 Act §34-517.
20

21 This section reverses the traditional common law rule against delegation by a trustee.
22 The Delaware and Connecticut Statutory Trust Acts have similar provisions, and most states
23 have abrogated the nondelegation rule with respect to common law trusts with legislation based
24 on the Uniform Prudent Investor Act, Uniform Trust Code, or the Restatement (Third) of Trusts.
25 See Uniform Trust Code §807 (2000); Uniform Prudent Investor Act §9; Restatement (Third) of
26 Trusts: Prudent Investor Rule §171 (1992); John H. Langbein, Reversing the Nondelegation Rule
27 of Trust-Investment Law, 59 Mo. L. Rev. 105 (1994).
28

29 Following the lead of the Delaware and Connecticut Statutory Trust Act, however, this
30 Section's abrogation of the nondelegation doctrine deviates from the Uniform Trust Code,
31 Uniform Prudent Investor Act, and the Restatement (Third) of Trusts in two important respects.
32 First, this section does not explicitly require the trustee to exercise reasonable care, skill, and
33 caution, in selecting, instructing, and monitoring the agent. Instead, the drafting committee
34 contemplated that delegation under this section would be subject to the trustee's duties under

1 Section 402. Second, this section treats delegation to a co-trustee in the same manner as
2 delegation to another agent. By contrast, the common law of trusts disfavors delegation by one
3 co-trustee to another. See Restatement (Second) of Trusts §184 (1959); see also Uniform Trust
4 Code §703(e) (2000).

5
6 Mutual funds often receive a common set of services from an organization that
7 specializes in operating mutual funds, which is typically the investment adviser. The adviser, not
8 the trustees of the mutual fund, ordinarily arranges for the mutual fund to contract with the
9 necessary service providers, which include an administrator, custodian, distributor and transfer
10 agent. The trustees monitor the service providers and the Investment Company Act of 1940
11 requires the trustees to approve the contracts with the adviser and distributor. See 15 U.S.C. §
12 80a-15(a).

13
14 **SECTION 410. ACTION BY TRUSTEES.** On any matter that is to be acted on by
15 trustees:

16 (1) the trustees may act by majority of their number;

17 (2) the trustees may take the action without a meeting, without a prior notice, and without
18 a vote, if a consent, or consents, in writing, setting forth the action so taken, are signed by the
19 trustees having not less than the minimum number of votes that would be necessary to authorize
20 or take the action at a meeting at which all trustees entitled to vote thereon were present and
21 voted, but prompt notice of the action must be given to those trustees that did not consent; and

22 (3) a trustee may vote in person or by proxy, and the proxy may be granted in writing or
23 by means of recorded transmission.

24 **Comment**

25
26 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust
27 Act § 34-517; Delaware General Corporation law §228; Uniform Trust Code §703.

28
29 In accord with Uniform Trust Code §703(a) (2000) and Restatement (Third) of Trusts
30 §39 (2003), paragraph (a)(1) rejects the common law rule requiring unanimity among the
31 trustees of a private trust, replacing it with a default rule requiring a majority.

32
33 The remainder of this section allows for maximum flexibility in the mechanics of

1 allowing the trustees to act or vote on actions.

2
3 The Investment Company Act of 1940 requires a mutual fund's investment advisory
4 contract, underwriting contract, fidelity bond, and other such matters to be approved by the
5 trustees of the mutual fund. See 15 U.S.C. § 80a-15(a); 17 C.F.R. § 270.17g-1. In most cases,
6 the 1940 Act requires the approval of both a majority of the trustees and a majority of the
7 independent trustees.
8

9 **SECTION 411. RIGHTS OF TRUSTEE IN TRUST PROPERTY.** A creditor of a
10 trustee does not have the right to obtain possession of, or otherwise exercise legal or equitable
11 remedies with respect to, the property of the statutory trust with respect to any claim against, or
12 obligation of, the trustee in its individual capacity not related to the statutory trust.

13 **Comment**

14 **Principal Sources** – Delaware Statutory Trust Act §3805.

15 This section implements the concept that the statutory trust is an entity separate from its
16 trustee by confirming that the personal creditors of a trustee have no recourse against the assets
17 of the statutory trust. As a result, creditors of the statutory trust need not worry about the
18 solvency of the trustee personally. See Henry Hansmann & Reinier Kraakman, The Essential
19 Role of Organizational Law, 110 Yale L.J. 387 (2000); Henry Hansmann & Ugo Mattei, The
20 Functions of Trust Law: A Comparative Legal and Economic Analysis, 73 N.Y.U. L. Rev. 434
21 (1998).
22

23 **SECTION 412. NONLIABILITY OF TRUSTEE FOR DEBTS OF STATUTORY**
24 **TRUST.** An obligation of a statutory trust, whether arising in contract, tort, or otherwise, is not
25 the obligation of a trustee. A trustee, by reason of being a trustee, is not liable to any person
26 other than the statutory trust or a beneficial owner for any act, omission or obligation of the
27 statutory trust or any trustee thereof.

28 **Comment**

29 **Principal Source** – Uniform Limited Liability Company §303.

1 **ARTICLE 5**

2 **BENEFICIARIES AND BENEFICIAL RIGHTS**

3 **SECTION 501. CONTRIBUTIONS BY BENEFICIAL OWNERS.**

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

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

20 (c) The governing instrument may provide that the interest of any beneficial owner that
21 fails to make any contribution that such beneficial owner is obligated to make, or that fails to
22 perform in accordance with, or to comply with the terms and conditions of, the governing
23 instrument, is subject to specified penalties or consequences of, such failure, including:

24 (1) reduction or elimination of the defaulting beneficial owner's proportionate

1 interest in the statutory trust;

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

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

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

6 (5) the lending by other beneficial owners of the amount necessary to meet the
7 defaulting beneficial owner's commitment; or

8 (6) fixing the value of the defaulting beneficial owner's beneficial interest by
9 appraisal or by formula and redemption or sale of the defaulting beneficial owner's beneficial
10 interest at such value.

11 **Comment**

12
13 **Principal Sources** – Delaware Statutory Trust Act §3802; Connecticut Statutory Trust
14 Act §34-515.

15
16 Although statutory trusts are used primarily as a mode of business organization in
17 commercial transactions, paragraph (a) acknowledges that a beneficial owner may obtain a
18 beneficial interest without an exchange of consideration. Thus, it is possible to use a statutory
19 trust to effect a donative transfer. For this reason, Section 104(c) subjects a statutory trust with a
20 prevailingly donative purpose to the mandatory rules normally applicable to common law trusts.

21
22 Paragraph (c) repudiates the hostility to penalties of traditional law.
23

24
25 **SECTION 502. REDEMPTION OF BENEFICIAL INTERESTS.** A statutory trust
26 may acquire, by purchase, redemption or otherwise, any beneficial interest in the statutory trust.
27 Any such interest so acquired by a statutory trust is canceled.

28 **Comment**

29
30 **Principal Source** – Delaware Statutory Trust Act §3818.
31

1 A mutual fund organized as an open-end fund is obligated to honor redemption requests
2 by fund shareholders. Such a fund is required to redeem a shareholder's share within seven days
3 upon the redemption request in cash (or in some cases, in kind) at a price that equals the net asset
4 value per share next calculated after receipt of the request. See 15 U.S.C. § 80a-22(e); 17 C.F.R.
5 §270.22c-1. A mutual fund may obtain relief from its redemption obligation only in narrowly
6 defined circumstances (e.g., during periods when the New York Stock Exchange is closed). See
7 15 U.S.C. § 80a-22(e)(1). In response to the market timing scandal, the SEC adopted a rule that
8 requires trustees of a mutual fund either to require a fund to impose a fee on shares redeemed
9 within seven days of purchase or to make a determination that such a fee is not necessary to deter
10 market timers. See 17 C.F.R. § 270.22c-2.
11

12 **SECTION 503. RIGHTS OF BENEFICIAL OWNERS IN TRUST PROPERTY.**

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

15 (b) A beneficial owner's beneficial interest in the statutory trust is personal property
16 notwithstanding the nature of the property of the statutory trust. A beneficial owner has no
17 interest in specific property of the statutory trust.

18 (c) A beneficial owner's beneficial interest in the statutory trust is freely transferable.

19 (d) At the time a beneficial owner becomes entitled to receive a distribution, the
20 beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the
21 statutory trust with respect to the distribution.

22 (e) A beneficial owner does not have a preemptive right to subscribe to any additional
23 issue of beneficial interests or any other interest.

24 (f) If a statutory trust is a registered investment company under the Investment Company
25 Act of 1940, as amended (15 U.S.C. Section 80a-1 et seq.), any class, group or series of
26 beneficial interests established by the governing instrument with respect to the statutory trust is a
27 class, group or series preferred as to distribution of assets or payment of dividends over all other

1 classes, groups, or series in respect to assets specifically allocated to the class, group or series as
2 contemplated by Section 18, or any amendment or successor provision, of the Investment
3 Company Act of 1940 (15 U.S.C. Section 80a-18), as amended, and any regulations issued
4 thereunder, except that this section is not intended to affect in any respect the provisions of
5 Section 304(d).

6 **Comment**

7
8 **Principal Source** – Delaware Statutory Trust Act §3805; Connecticut Statutory Trust
9 Act §34-516.

10
11 This section implements the concept that a statutory trust is an entity separate from its
12 trustee and beneficial owners by confirming that a creditors of a beneficial owner cannot seize
13 trust property. See Wendell Fenton & Eric A. Mazie, Delaware Statutory Trusts, in The
14 Delaware Law of Corporations & Business Organizations §19.4 (3d ed. 2005 Supp.). A useful
15 analogy is to the creditors of a corporate shareholder, who normally can seize only the
16 shareholder's stock, not the company's underlying assets.

17
18 **SECTION 504. TRANSACTION WITH A BENEFICIAL OWNER.** A beneficial
19 owner or a related person of a beneficial owner may lend money to, borrow money from, act as a
20 surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide
21 collateral for, or transact other business with a statutory trust and, subject to other applicable
22 law, has the same rights and obligations with respect to any such matter as a person that is not a
23 beneficial owner.

24 **Comment**

25
26 **Principal Source** – Delaware Statutory Trust Act §3806.

27
28 Although this section expressly authorizes transactions between a beneficial owner and
29 the statutory trust, the drafting committee contemplated that in appropriate circumstances a
30 beneficial owner that held a significant or controlling interest in the trust might be subject to a
31 fiduciary obligation to the statutory trust akin to the fiduciary duties of a controlling shareholder
32 in corporate law. See Stephen M. Bainbridge, Corporation Law and Economics §7.4 (2002).
33

SECTION 505. LIMITED LIABILITY OF BENEFICIAL OWNERS. A beneficial owner of a statutory trust is entitled to the same limitation of liability extended to a shareholder of a domestic corporation.

Comment

Principal Sources – Delaware Statutory Trust Act §3803; Connecticut Statutory Trust Act §34-523.

By providing as a default rule that the beneficial owners of a statutory trust enjoy the same limited liability as shareholders of a domestic corporation, 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 the parallel provision in the Delaware Statutory Trust Act, see Wendell Fenton & Eric A. Mazie, *Delaware Statutory Trusts*, in *The Delaware Law of Corporations & Business Organizations* §19.3 (3d ed. 2005 Supp.).

SECTION 506. ACTION BY BENEFICIAL OWNERS. On any matter that is to be acted on by the beneficial owners:

(1) the beneficial owners may act by majority of their number;

(2) the beneficial owners may take the action without a meeting, without a prior notice, and without a vote, if a consent, or consents, in writing, setting forth the action so taken, are signed by beneficial owners having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all beneficial entitled to vote thereon were present and voted, but prompt notice of the action must be given to those beneficial owners that did not consent; and

(3) a beneficial owner may vote in person or by proxy, and the proxy may be granted in

1 writing or by means of recorded transmission.

2 **Comment**

3
4 **Principal Source** – Delaware Statutory Trust Act §3806; Delaware General Corporation
5 Law §228.
6

7 **SECTION 507. DERIVATIVE ACTIONS.**

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

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

13 (2) a demand would be futile.

14 (b) A derivative action may be maintained only by a person that is a beneficial owner at
15 the time the action is commenced and:

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

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

21 (c) In a derivative action, the complaint must state with particularity:

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

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

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

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

5 (2) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall
6 immediately remit them to the statutory trust.

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

10 (f) A derivative action may not be discontinued or settled without the court's approval.

11 **Comment**

12
13 **Principal Sources** - Uniform Limited Partnership Act §§1002-1005; Delaware Statutory
14 Trust Act §3816; Connecticut Statutory Trust Act §34-522.

15
16 Under Section 105(b)(2), the governing instrument may eliminate or otherwise modify
17 the right of a beneficial owner to bring a derivative action under this section.
18

19 **SECTION 508. BENEFICIAL OWNER'S RIGHT TO INFORMATION. A**

20 beneficial owner has the right to examine information relating to the affairs of the statutory trust
21 necessary for the beneficial owner to enforce its rights as a beneficial owner.

22 **Comment**

23 Under Section 104(b), a beneficial owner's right to information relating to the affairs of
24 the statutory trust under this section is a mandatory rule that is not subject to override by the
25 governing instrument. However, a beneficial owner's right to information under this section is
26 limited to information necessary for the beneficial owner to enforce its rights as such, and under
27 Section 104(b) the governing instrument may define necessary in any manner that is not
28 manifestly unreasonable.
29

1 Section 403 provides a comparable rule for a trustee's right to information.

ARTICLE 6

MERGER, CONSOLIDATION, AND DISSOLUTION

[Reporter’s Note to the drafting committee: Regarding dissolution, Sections 611 and 612 have not been changed. However, we should discuss whether to add limitations provisions. Language to that end based on the Uniform Limited Partnership appears at the end of this Article. Regarding merger and consolidation, Sections 601 through 610, which are based on the Uniform Limited Partnership Act, are all new. Following the Delaware Statutory Trust Act, the default rule is that all trustees and beneficiaries must approve a merger or consolidation. Hence, there is no provision for appraisal or other dissenter’s rights. **End of Reporter’s Note to drafting committee.]**

SECTION 601. DEFINITIONS. In this [article]:

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

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

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

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

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

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

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

(8) “Organizational documents” means the basic records that create the organization and

1 determine its internal governance and the relations among the persons that own it, have an
2 interest in it, or are members of it.

3 (9) “Surviving organization” means an organization into which one or more other
4 organizations are merged. A surviving organization may preexist the merger or be created by the
5 merger.

6 **Comment**

7 **Principal Source** – Uniform Limited Partnership Act §1101.

8
9 This section contains definitions specific to this Article.
10

11
12 **SECTION 602. CONVERSION.**

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

16 (1) the other organization’s governing statute authorizes the conversion;

17 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the
18 governing statute; and

19 (3) the other organization complies with its governing statute in effecting the
20 conversion.

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

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

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

24 (3) the terms and conditions of the conversion, including the manner and basis for
25 converting interests in the converting organization into any combination of money, interests in

1 the converted organization, and other consideration; and

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

3 **Comment**

4 **Principal Sources** – Uniform Limited Partnership Act §1102;

5
6 In a statutory conversion an existing entity changes its form, the jurisdiction of its
7 governing statute, or both. For example, a statutory trust organized under the laws of one
8 jurisdiction might convert to a corporation, limited liability company, or limited partnership
9 under the laws of the same or another jurisdiction (referred to in some statutes as
10 “domestication”).

11
12 In contrast to a merger, which involves at least two entities, a conversion involves only
13 one. The converting and converted organization are the same entity. See Section 605(a). For
14 this Act to apply to a conversion, either the converting or converted organization must be a
15 statutory trust subject to this Act.

16
17 A plan of conversion may provide that some persons with interests in the converting
18 organization will receive interests in the converted organization while other persons with
19 interests in the converting organization will receive some other form of consideration. Thus, a
20 “squeeze out” conversion is possible.

21
22
23 **SECTION 603. ACTION ON PLAN OF CONVERSION BY CONVERTING**

24 **STATUTORY TRUST.**

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

27 (b) A converting limited partnership may amend the plan or abandon the planned
28 conversion:

29 (1) as provided in the plan; and

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

32 **Comment**

1 **Principal Source** – Uniform Limited Partnership Act §1103.

2
3 The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries
4 is a default rule because it is not scheduled in Section 104(b). See also Section 105(b)(8)(B).
5 Hence, the governing instrument may state a different quantum of consent or provide a
6 completely different approval mechanism. Varying this subsection’s rule means that a beneficial
7 owner might be subject to a conversion (including a “squeeze out” conversion) without consent
8 and with no appraisal remedy. If the converting organization is a statutory trust subject to this
9 Act, the trustee of the converting organization is subject to the duties and obligations stated in
10 this Act. Those duties would apply to the process and terms under which the conversion occurs.
11 However, if the governing instrument allows for a conversion with less than unanimous consent,
12 the mere fact that a beneficial owner objects to a conversion does not mean that a trustee that is
13 favoring, arranging, consenting to, or effecting the conversion has breached a duty under this
14 Act.

15
16
17 **SECTION 604. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

18 (a) After a plan of conversion is approved:

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

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

23 (B) the name and form of the organization and the jurisdiction of its
24 governing statute;

25 (C) the date the conversion is effective under the governing statute of the
26 converted organization;

27 (D) a statement that the conversion was approved as required by this
28 [Act];

29 (E) a statement that the conversion was approved as required by the
30 governing statute of the converted organization; and

1 (F) if the converted organization is a foreign organization not authorized
2 to transact business in this state, the street and mailing address of an office which the [Secretary
3 of State] may use for the purposes of Section 605(c); and

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

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

9 (B) the name and form of the organization and the jurisdiction of its
10 governing statute; and

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

13 (b) A conversion becomes effective:

14 (1) if the converted organization is a statutory trust, when the certificate of trust
15 takes effect; and

16 (2) if the converted organization is not a statutory trust, as provided by the
17 governing statute of the converted organization.

18 **Comment**

19 **Principal Source** – Uniform Limited Partnership Act §1104.
20

21 Under paragraph (b) the effective date of a conversion is determined under the governing
22 statute of the converted organization.
23
24

1 **SECTION 605. EFFECT OF CONVERSION.**

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

4 (b) When a conversion takes effect:

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

7 (2) all debts, liabilities, and other obligations of the converting organization
8 continue as obligations of the converted organization;

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

11 (4) except as prohibited by other law, all of the rights, privileges, immunities,
12 powers, and purposes of the converting organization remain vested in the converted
13 organization;

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

16 (6) except as otherwise agreed, the conversion does not dissolve a converting
17 statutory trust or any series thereof for the purposes of Sections 611 and 612.

18 (c) A converted organization that is a foreign organization consents to the jurisdiction of
19 the courts of this state to enforce any obligation owed by the converting limited partnership, if
20 before the conversion the converting statutory trust was subject to suit in this state on the
21 obligation. A converted organization that is a foreign organization and not authorized to transact
22 business in this state appoints the [Secretary of State] as its agent for service of process for

1 purposes of enforcing an obligation under this subsection. Service on the [Secretary of State]
2 under this subsection is made in the same manner and with the same consequences as in Section
3 215(c) and (d).

4 **Comment**

5 Principal Source – Uniform Limited Partnership Act §1105.
6

7 Paragraph (a) confirms that conversion changes an entity’s legal type, but does not create
8 a new entity. Paragraph (b) confirms that conversion does not transfer any of the entity’s rights
9 or obligation. Unlike a merger, a conversion involves a single entity.
10

11 **SECTION 606. MERGER.**

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

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

15 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of
16 those governing statutes; and

17 (3) each of the other organizations complies with its governing statute in effecting
18 the merger.

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

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

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

23 (3) the terms and conditions of the merger, including the manner and basis for
24 converting the interests in each constituent organization into any combination of money,
25 interests in the surviving organization, and other consideration;

1 (4) if the surviving organization is to be created by the merger, the surviving
2 organization's organizational documents; and
3 (5) if the surviving organization is not to be created by the merger, any
4 amendments to be made by the merger to the surviving organization's organizational documents.

5 **Comment**

6 **Principal Source** – Uniform Limited Partnership Act §1106.
7

8 For this Act to apply to a merger, at least one of the constituent organizations must be a
9 statutory trust subject to this Act. A trustee of any such statutory trust is subject to the duties and
10 obligations stated in this Act, including Section 402 (standards of conduct for trustees).
11

12 A plan of merger may provide that some persons with interests in a constituent
13 organization will receive interests in the surviving organization, while other persons with
14 interests in the same constituent organization will receive some other form of consideration.
15 Thus, a “squeeze out” merger is possible. As noted above, the duties and obligations stated in
16 this Act apply to a trustee of a constituent organization that is a statutory trust subject to this Act.
17 Those duties would apply to the process and terms under which a squeeze out merger occurs.
18
19

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

21 **STATUTORY TRUST.**

22 (a) A plan of merger must be consented to by all trustees and beneficial owners of a
23 constituent limited partnership.

24 (b) After a merger is approved, and at any time before a filing is made under Section
25 608, a constituent statutory trust may amend the plan or abandon the planned merger:

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

29 **Comment**

30 **Principal Sources** – Uniform Limited Partnership Act §1107.

1
2 The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries
3 is a default rule because it is not scheduled in Section 104(b). See also Section 105(b)(8)(B).
4 Hence, the governing instrument may state a different quantum of consent or provide a
5 completely different approval mechanism. Varying this subsection's rule means that a beneficial
6 owner might be subject to a merger (including a "squeeze out" merger) without consent and with
7 no appraisal remedy. The trustee of a constituent statutory trust is subject to the duties and
8 obligations stated in this Act, and those duties would apply to the process and terms under which
9 the merger occurs. However, if the governing instrument allows for a merger with less than
10 unanimous consent, the mere fact a beneficial owner objects to a merger does not mean that a
11 trustee that is favoring, arranging, consenting to, or effecting the merger has breached a duty
12 under this Act.
13

14 **SECTION 608. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

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

17 (1) each preexisting constituent statutory trust, by each trustee listed in the
18 certificate of trust; and

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

21 (b) The articles of merger must include:

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

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

27 (3) the date the merger is effective under the governing statute of the surviving
28 organization;

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

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

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

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

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

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

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent statutory trust shall deliver the articles of merger for filing in the [office of the Secretary of State].

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

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

(i) compliance with subsection (c); or

(ii) subject to Section 205(c), as specified in the articles of merger; or

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

Comment

1 **Principal Source** – Uniform Limited Partnership Act §1108.
2
3

4 **SECTION 609. EFFECT OF MERGER.**

5 (a) When a merger becomes effective:

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

7 (2) each constituent organization that merges into the surviving organization
8 ceases to exist as a separate entity;

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

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

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

15 (6) except as prohibited by other law, all of the rights, privileges, immunities,
16 powers, and purposes of each constituent organization that ceases to exist vest in the surviving
17 organization;

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

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

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

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

1 (9) if the surviving organization preexists the merger, any amendments provided
2 for in the articles of merger for the organizational document that created the organization
3 become effective.

4 (b) A surviving organization that is a foreign organization consents to the jurisdiction of
5 the courts of this state to enforce any obligation owed by a constituent organization, if before the
6 merger the constituent organization was subject to suit in this state on the obligation. A
7 surviving organization that is a foreign organization and not authorized to transact business in
8 this state appoints the [Secretary of State] as its agent for service of process for the purposes of
9 enforcing an obligation under this subsection. Service on the [Secretary of State] under this
10 subsection is made in the same manner and with the same consequences as in Section 215(c) and
11 (d).

12 **Comment**

13 **Principal Source** – Uniform Limited Partnership Act §1109.
14
15

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

18 **Comment**

19 **Principal Source** – Uniform Limited Partnership Act §1113.
20

21 **SECTION 611. DISSOLUTION OF A STATUTORY TRUST.**

22 (a) Upon dissolution of a statutory trust and until the filing of a statement of cancellation
23 as provided in Section 203, the trustees or other persons who under the governing instrument are
24 responsible for winding up the statutory trust's affairs may, in the name of and for and on behalf
25 of the statutory trust:

- (1) prosecute and defend suits, whether civil, criminal or administrative;
- (2) settle and close the statutory trust business;
- (3) dispose of and convey the statutory trust property;
- (4) discharge or make reasonable provision for the statutory trust liabilities; and
- (5) distribute to the beneficial owners any remaining assets of the statutory trust.

(b) A statutory trust that has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the statutory trust and all claims and obligations that are known to the statutory trust but for which the identity of the claimant is unknown, in accordance with the following rules:

(1) If there are sufficient assets, the claims and obligations must be paid in full, and any provision for payment must be made in full.

(2) If there are insufficient assets, the claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor.

(3) Any remaining assets must be distributed to the beneficial owners.

(c) Any person, including any trustee, that under the governing instrument is responsible for winding up a statutory trust's affairs who has complied with this section is not liable to the claimants of the dissolved statutory trust by reason of the person's actions in winding up the statutory trust.

Comment

Principal Source – Delaware Statutory Trust Act §3808.

1 **SECTION 612. DISSOLUTION OF A SERIES.**

2 (a) A series established in accordance with Section 105(b)(4) to (6) may be dissolved
3 and its affairs wound up without causing the dissolution of the statutory trust or any other series
4 thereof in accordance with the following rules:

5 (1) The dissolution, winding up, liquidation, or termination of the statutory trust
6 or any series thereof does not affect the limitation of liability with respect to a series established
7 in accordance with Section 304(d).

8 (2) A series established in accordance with Section Section 105(b)(4) to (6) is
9 dissolved and its affairs must be wound up at the time or upon the happening of events specified
10 in the governing instrument of the statutory trust.

11 (3) Upon dissolution of a series of a statutory trust, the persons that under the
12 governing instrument of the statutory trust are responsible for winding up the series's affairs, in
13 the name of the statutory trust and for and on behalf of the statutory trust and the series, may take
14 all actions with respect to the series as are permitted under Section 604(a) and shall provide for
15 the claims and obligations of the series and distribute the assets of the series as provided Section
16 604(b).

17 (b) Any person, including any trustee, that under the governing instrument is responsible
18 for winding up such series's affairs which has complied with this section is not liable to the
19 claimants of the dissolved series by reason of such person's actions in winding up the series.

20 **Comment**

21 **Principal Source** – Delaware Statutory Trust Act §3808.
22

23 This section parallels and is analogous in scope and effect to Section 604, except that it
24 applies to a series rather than the entire statutory trust.

1
2 * * *
3

4 **[Reporter's Note to drafting Committee:** Here is language based on ULPB sections
5 807 and 808 that would create a limitations period for a dissolved statutory trust (we could easily
6 configure this language also to cover a dissolved series of a statutory trust). First, for *known*
7 *claims*:

8 (a) A dissolved statutory trust may dispose of the known claims against it by
9 following the procedure described in subsection (b).

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

- 12 (1) specify the information required to be included in a claim;
13 (2) provide a mailing address to which the claim is to be sent;
14 (3) state the deadline for receipt of the claim, which may not be less than
15 120 days after the date the notice is received by the claimant; and
16 (4) state that the claim will be barred if not received by the deadline.

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

- 19 (1) the claim is not received by the specified deadline; or
20 (2) in the case of a claim that is timely received but rejected by the
21 dissolved statutory trust, the claimant does not commence an action to enforce the claim against
22 the statutory trust within 90 days after the receipt of the notice of the rejection.

23 (d) This section does not apply to a claim based on an event occurring after the
24 effective date of dissolution or a liability that is contingent on that date.
25

26 Second, for *other claims*:

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

30 (b) The notice must:

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

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

36 (3) state that a claim against the statutory trust is barred unless an
37 action to enforce the claim is commenced within five years after publication of the notice.

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

42 (1) a claimant that did not receive notice in a record under Section
43 ____;

44 (2) a claimant whose claim was timely sent to the dissolved

1 statutory trust but not acted on; and
2 (3) a claimant whose claim is contingent or based on an event
3 occurring after the effective date of dissolution.
4 (d) A claim not barred under this section may be enforced:
5 (1) against the dissolved statutory trust, to the extent of its
6 undistributed assets; or
7 (2) if the assets have been distributed in liquidation, against a
8 beneficial owner or transferee to the extent of that person's proportionate share of the claim or
9 the statutory trust's assets distributed to the beneficial owner or transferee in liquidation,
10 whichever is less, but a person's total liability for all claims under this paragraph does not
11 exceed the total amount of assets distributed to the person as part of the winding up of the
12 dissolved statutory trust.

13
14 **End of Reporter's Note to drafting committee.]**

1 **ARTICLE 7**

2 **FOREIGN STATUTORY TRUSTS**

3 **SECTION 701. GOVERNING LAW.**

4
5
6 (a) The laws of the state or other jurisdiction under which a foreign statutory trust is
7 organized govern its organization and internal affairs, including the liability of its beneficial
8 owners and trustees.

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

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

15 **Comment**

16
17 **Principal Sources** – Uniform Limited Partnership Act §901; Delaware Statutory Trust
18 Act §3851; Connecticut Statutory Trust Act §34-530.

19
20 Paragraph (a) parallels and is analogous in scope and effect to Section 302 (internal
21 affairs rule for domestic statutory trusts). Paragraph (b) allows for a foreign statutory trust to
22 operate domestically even if the law governing it is different from the laws governing domestic
23 statutory trusts, but under paragraph (c) a foreign statutory trust cannot engage in any business or
24 exercise any power that a domestic statutory trust could not.
25

26 **SECTION 702. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

27 (a) A foreign statutory trust may apply for a certificate of authority to transact business in
28 this state by delivering an application to the [Secretary of State] for filing. The application must
29 state:

1 (1) the name of the foreign statutory trust and, if the name does not comply with
2 Section 209, an alternate name adopted pursuant to Section 706(a).

3 (2) the name of the state or other jurisdiction under whose law the foreign
4 statutory trust is organized;

5 (3) the street and mailing address of the foreign statutory trust's principal office
6 and, if the laws of the jurisdiction under which the foreign statutory trust is organized require the
7 foreign statutory trust to maintain an office in that jurisdiction, the street and mailing address of
8 the required office; and

9 (4) the name and street and mailing address of the foreign statutory trust's initial
10 agent for service of process in this state;

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

15 **Comment**

16
17 **Principal Source** – Uniform Limited Partnership Act §902.

18
19 A certificate of authority applied for under this section is different than a certificate of
20 existence or registration furnished under Section 207.

21
22
23 **SECTION 703. AMENDMENT OR RESTATEMENT OF CERTIFICATE.**

24 (a) In order to amend its certificate of authority, a foreign statutory trust must deliver to
25 the [Secretary of State] for filing an amendment or, pursuant to [Article 6], articles of merger
26 stating:

1 (1) the name of the foreign statutory trust;
2 (2) the date of filing of its initial certificate; and
3 (3) the changes that the amendment makes to the certificate as most recently
4 amended or restated.

5 (b) A trustee that knows that any information in a filed certificate of authority was false
6 when the certificate was filed or has become false due to changed circumstances shall promptly:

7 (1) cause the certificate to be amended; or
8 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
9 correction pursuant to Section 206.

10 (c) A certificate of authority may be amended at any time for any purpose as determined
11 by the trustees.

12 (d) Subject to Section 205(c), an amendment or restated certificate is effective when filed
13 by the [Secretary of State].

14 **Comment**

15
16 **Principal Source** – Uniform Limited Partnership Act §202.

17
18 Paragraph (a) provides a mechanism for updating a statutory trust's certificate of
19 authority. Paragraph (b) imposes an obligation directly on the trustee rather than on the statutory
20 trust. A trustee's failure to meet that responsibility can expose the trustee to liability to third
21 parties under Section 206 and might constitute a breach of trust.
22

23 **SECTION 704. ACTIVITIES NOT CONSTITUTING TRANSACTING** 24 **BUSINESS.**

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

- 1 (1) maintaining, defending, and settling an action or proceeding;
- 2 (2) holding meetings of its trustees or carrying on any other activity concerning
- 3 its internal affairs;
- 4 (3) maintaining accounts in financial institutions;
- 5 (4) maintaining offices or agencies for the transfer, exchange, and registration of
- 6 the foreign statutory trust's own securities or maintaining trustees or depositories with respect to
- 7 those securities;
- 8 (5) selling through independent contractors;
- 9 (6) soliciting or obtaining orders, whether by mail or electronic means or through
- 10 employees or agents or otherwise, if the orders require acceptance outside this state before they
- 11 become contractual obligations;
- 12 (7) creating or acquiring indebtedness, mortgages, or security interests in real or
- 13 personal property;
- 14 (8) securing or collecting debts or enforcing mortgages or other security interests
- 15 in property securing the debts, and holding, protecting, and maintaining property so acquired;
- 16 (9) conducting an isolated transaction that is completed within 30 days and is not
- 17 one in the course of similar transactions of a like manner; and
- 18 (10) transacting business in interstate commerce.
- 19 (b) For purposes of this [article], the ownership in this state of income-producing real
- 20 property or tangible personal property, other than property excluded under subsection (a),
- 21 constitutes transacting business in this state.
- 22 (c) This section does not apply in determining the contacts or activities that may subject a

1 foreign statutory trust to service of process, taxation, or regulation under any other law of this
2 state.

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

5 **Comment**

6
7 **Principal Sources** – Uniform Limited Partnership Act §903; Delaware Statutory Trust
8 Act §3852.
9

10 **SECTION 705. FILING OF CERTIFICATE OF AUTHORITY.** Unless the
11 [Secretary of State] determines that an application for a certificate of authority does not comply
12 with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees,
13 shall file the application, prepare, sign and file a certificate of authority to transact business in
14 this state, and make available a copy of the filed certificate to the foreign statutory trust or its
15 representative.

16 **Comment**

17
18 **Principal Source** – Based on Uniform Limited Partnership Act §904.

19
20 A certificate of authority filed under this section is different than a certificate of
21 registration under Section 207.
22

23 **SECTION 706. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.**

24 (a) A foreign statutory trust whose name does not comply with Section 107 may not
25 obtain a certificate of authority until it adopts, for the purpose of transacting business in this
26 state, an alternate name that complies with Section 107. A foreign statutory trust that adopts an
27 alternate name under this subsection and then obtains a certificate of authority with the name

1 need not comply with [fictitious name statute]. After obtaining a certificate of authority with an
2 alternate name, a foreign statutory trust shall transact business in this state under the name unless
3 the foreign statutory trust is authorized under [fictitious name statute] to transact business in this
4 state under another name.

5 (b) If a foreign statutory trust authorized to transact business in this state changes its
6 name to one that does not comply with Section 107, it may not thereafter transact business in this
7 state until it complies with subsection (a) and obtains an amended certificate of authority.

8 **Comment**

9
10 **Principal Source** – Uniform Limited Partnership Act §905.
11

12 **SECTION 707. REVOCATION OF CERTIFICATE OF AUTHORITY.**

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

16 (1) pay, within 60 days after the due date, any fee, tax or penalty due to the
17 [Secretary of State] under this [act] or other law;

18 (2) appoint and maintain an agent for service of process as required by Section
19 212;

20 (3) deliver for filing a statement of a change under Section 214 within 30 days
21 after a change has occurred in the name or address of the agent; or

22 (4) file an annual report under Section 211.

23 (b) In order to revoke a certificate of authority, the [Secretary of State] must prepare,
24 sign, and file a notice of revocation and send a copy to the foreign statutory trust's agent for

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

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

5 (2) the foreign statutory trust's failures to comply with subsection (a) which are
6 the reason for the revocation.

7 (c) The authority of the foreign statutory trust to transact business in this state ceases on
8 the effective date of the notice of revocation unless before that date the foreign statutory trust
9 cures each failure to comply with subsection (a) stated in the notice.

10 (d) If the foreign statutory trust cures the failures stated in the notice of revocation under
11 subsection (c), the [Secretary of State] shall indicate reinstatement of the foreign statutory trust
12 on the filed notice. For all purposes the reinstatement of the statutory trust relates back to the
13 date of the notice of cancellation.

14 **Comment**

15
16 **Principal Source** – Uniform Limited Partnership Act §906.
17

18 **SECTION 708. CANCELLATION OF CERTIFICATE OF AUTHORITY;** 19 **EFFECT OF FAILURE TO HAVE CERTIFICATE.**

20 (a) In order to cancel its certificate of authority to transact business in this state, a foreign
21 statutory trust must deliver to the [Secretary of State] for filing a notice of cancellation that
22 states:

23 (1) the name of the foreign statutory trust;

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

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

2 (b) The certificate of authority is canceled when the notice of cancellation becomes
3 effective under Section 205.

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

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

9 (e) If a foreign statutory trust transacts business in this state without a certificate of
10 authority or cancels its certificate of authority, it appoints the [Secretary of State] as its agent for
11 service of process for rights of action arising out of the transaction of business in this state.

12 **Comment**

13
14 **Principal Source** – Uniform Limited Partnership Act §907.
15

16 **SECTION 709. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
17 may maintain an action to restrain a foreign statutory trust from transacting business in this state
18 in violation of this [article].

19 **Comment**

20
21 **Principal Source** – Uniform Limited Partnership Act §908.

1 **ARTICLE 8**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

4
5 applying and construing this Uniform Act, consideration must be given to the need to promote
6
7 uniformity of the law with respect to its subject matter among states that enact it.

8 **Comment**

9
10 **Principal Source** – Uniform Limited Partnership Act §1201.
11

12 **SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

13 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
14 Electronic Signatures in Global and National Commerce Act[, 15 U.S.C. Section 7001 et seq.],
15 but this [act] does not modify, limit, or supersede Section 101(c) of that Act or authorize
16 electronic delivery of any of the notices described in Section 103(b) of that Act.

17 **Comment**

18
19 **Principal Source** – Uniform Limited Partnership Act §1203.
20
21

22 **SECTION 803. SAVING CLAUSE.** This [act] does not affect an action commenced,
23 proceeding brought, or right accrued before this [act] takes effect.

24 **Comment**

25
26 **Principal Source** – Uniform Limited Partnership Act §1207.
27
28

SECTION 804. APPLICATION TO EXISTING RELATIONSHIPS.

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

(b) A common law trust created before or after the effective date of this [act] may elect to be governed by the provisions of this [act] upon the filing of a certificate of trust under Section 201.

[(c) A domestic statutory trust created before the effective date of this [act] may elect to be governed by the provisions of this [act] upon the filing an amendment to its certificate of trust under Section 202.]

[(d) This [act] governs the organization and internal affairs of all domestic statutory trusts created before the effective date of this [act] starting two years after the effective date of this [act].]

Comment

Principal Source – Uniform Limited Partnership Act §1206.

This section pertains exclusively to domestic statutory trusts—i.e., to statutory trusts formed under this Act or a predecessor statute enacted by the same jurisdiction. For foreign statutory trusts, see the comment to Section 807.

This Act governs all domestic statutory trusts formed on or after the Act’s effective date. For pre-existing domestic statutory trusts, this section establishes an optional “elect in” period and a mandatory, all-inclusive date of two years following the effective date. Beginning on the all-inclusive date, each pre-existing domestic statutory trust that has not previously elected in becomes subject to this Act—including the schedule of mandatory rules in Section 104(b)—by operation of law.

The drafting committee contemplated that some states might modify this provision to

address other transition problems arising from differences between this Act and prior law.

SECTION 805. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

Comment

Principal Source – Uniform Limited Partnership Act §1202.

SECTION 806. REPEALS. Effective [all-inclusive date], the following acts and parts of acts are repealed:

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

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

Comment

Principal Sources – Uniform Limited Partnership Act §1205.

[Reporter’s Note to drafting committee: We should discuss whether this section should suggest repeal of specialized REIT entity laws, and if so, transition rules for Section 804.]

SECTION 807. EFFECTIVE DATE. This [act] takes effect [effective date].

Comment

Principal Source – Uniform Limited Partnership Act §1204.

Section 804 specifies how this Act affects domestic statutory trusts, with special provisions pertaining to domestic statutory trusts formed before the Act's effective date. Section

1 804 contains no comparable provisions for foreign statutory trusts. Therefore, once this Act is
2 effective, it applies immediately to all foreign statutory trusts, whether formed before or after the
3 Act's effective date.