

1 [ARTICLE] 8

2
3 DISSOLUTION AND WINDING UP

4
5 SECTION 801. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved,

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

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

8 (2) an administrative dissolution under Section 805.

9 Comment

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

11
12 Consistent with Section 306, which provides as a default rule that a statutory trust has
13 perpetual existence, this Section provides that a statutory trust is dissolved upon the occurrence of
14 an event or circumstance stated in the governing instrument.

15
16 Under Section 103(c)(1), the provisions of this section are not subject to override by the
17 governing instrument. However, as confirmed by Section 306, the governing instrument need not
18 provide for an event or circumstance that causes dissolution. ~~See Section 306.~~
19

20 SECTION 802. WINDING UP.

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

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

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

26 (2) deliver to the [Secretary of State] for filing a statement of dissolution stating the
27 name of the trust and that the trust is dissolved;

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

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

1 time;

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

4 (3) transfer the trust's property;

5 (4) settle disputes;

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

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

11 **Comment**

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

14
15 If the governing instrument of a statutory trust provides for the dissolution of the trust, then
16 upon the event or circumstance that triggers dissolution, the statutory trust may continue only for
17 the purpose of winding up.

18
19 In winding up the statutory trust within a reasonable time, the trustees are neither required
20 to undertake a fire sale of the assets of the statutory trust on unfavorable terms nor permitted to
21 continue the trust endlessly under the guise of winding down. The question of what period of time
22 is “reasonable” under paragraph (c)(1) turns on the totality of the circumstances.

23
24 Paragraph (d) provides for the possibility that after dissolution additional unfinished
25 business of the statutory trust is discovered.

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

29
30 **[For Discussion: (1) Whether to revise Sections 803 and 804 to track RMBCA**
31 **Sections 14.06 and 14.07. (2) Whether to add provisions based on RMBCA Sections 14.08**
32 **and 14.09 after Section 804. (3) Whether to take up Commissioner Baena's suggestion that**
33 **we require notice to creditors of dissolution. No other unincorporated entity or corporate law**
34 **so provides. –Rob]**

1 |
2 | **SECTION 803. KNOWN CLAIMS AGAINST DISSOLVED STATUTORY TRUST.**

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

6 | (b) A dissolved statutory trust may in a record notify ~~its~~ a known claimants of the
7 | dissolution. The notice must: **[For Discussion: Whether “may in a record notify” is sufficient**
8 | **to convey the point that there must be actual notice. Contrast RMBCA 14.05. –Rob]**

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

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

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

22 |
23 | (d) This section does not apply to a claim based:

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

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

Comment

Principal Source – Revised Uniform Limited Liability Company Act §703 (2006).

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

SECTION 804. OTHER CLAIMS AGAINST DISSOLVED STATUTORY TRUST.

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

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

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

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

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

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

(1) a claimant that did not receive notice in a record under Section 803;

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

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

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

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

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

8 **Comment**

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

10 Under Section 103(c)(1), the provisions of this section are not subject to override by the
11 governing instrument.
12
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14 **SECTION 805. ADMINISTRATIVE DISSOLUTION.**

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

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

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

20 (3) file an annual report; or

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

23 (b) If the [Secretary of State] determines that a ground exists for administratively
24 dissolving a statutory trust, the [Secretary of State] must file a notice of dissolution and send a
25 copy to the trust's agent for service of process, or if the trust does not have an agent for service of

process in this state, to the trust's designated office. The notice must state:

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

(2) the basis for the revocation.

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

(d) A statutory trust that has been administratively dissolved continues in existence but, subject to Section 806, may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 802 and 808 and to notify claimants under Sections 803 and 804.

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

Comment

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

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

SECTION 806. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

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

1 and state: [For Discussion: Should there be a time limit on when a dissolved trust may apply
2 for reinstatement? -Rob]

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

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

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

6 (b) If the [Secretary of State] determines that an application under subsection (a) contains
7 the required information and that the information is correct, the [Secretary of State] shall prepare a
8 declaration of reinstatement that states this determination, sign and file the original of the
9 declaration of reinstatement, and send a copy to the trust's agent for service of process.

10 (c) When a reinstatement becomes effective, it relates back to and takes effect as of the
11 effective date of the administrative dissolution ~~and the statutory trust may resume its activities as if~~
12 ~~the dissolution had not occurred.~~ [For Discussion: The term "resume" is in tension with the
13 relation back concept. Does this paragraph, with the language deleted, more precisely state
14 the idea? -Rob]

15 **Comment**

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

17
18 Under Section 103(c)(1), the provisions of this section are not subject to override by the
19 governing instrument.
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21 **SECTION 807. APPEAL FROM REJECTION OF REINSTATEMENT.**

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

25 (b) A statutory trust may appeal from the rejection by petitioning the [appropriate court] to

1 set aside the dissolution. The petition must be delivered to the [Secretary of State] and contain a
2 copy of the [Secretary of State's] declaration of dissolution, the trust's application for
3 reinstatement, and the [Secretary of State's] notice of rejection.

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

6 **Comment**

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

8
9 Under Section 103(c)(1), the provisions of this section are not subject to override by the
10 governing instrument.
11

12 **SECTION 808. DISTRIBUTION OF ASSETS IN WINDING UP STATUTORY**
13 **TRUST'S ACTIVITIES.**

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

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

18 **[For Discussion: What is the purpose of this section, and how does it fit with Section 802?]**

19 **Comment**

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

21
22 Under Section 103(c)(1), Section 808(a) is not subject to override by the governing
23 instrument.
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