

D R A F T

FOR APPROVAL

# UNIFORM STATUTORY TRUST ENTITY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR  
SANTA FE, NEW MEXICO  
JULY 9 - JULY 16, 2009

# UNIFORM STATUTORY TRUST ENTITY ACT

*WITH PREFATORY NOTE AND COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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June 3, 2009

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# UNIFORM STATUTORY TRUST ENTITY ACT

## Prefatory Note

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

To address the legal uncertainty surrounding the common law business trust, at least thirty states have enacted legislation that validates 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 a “statutory business trust,” “statutory trust entity,” or “statutory trust” than as a common law business trust with statutory validation.

A statutory trust differs from a common-law trust in several important respects. A common-law trust, whether its purpose is donative or commercial, arises from private action without the involvement of a public official. See Uniform Trust Code §401 (2000); Restatement (Third) of Trusts §10 (2003). Because a common-law trust is not a juridical entity, it must sue, be sued, and transact in the name of the trustee in the trustee’s capacity as such. By contrast, a statutory trust is formed by delivering a certificate of trust to a public official, typically the Secretary of State, for filing in the public record. See Section 201. Moreover, a statutory trust is a juridical entity, separate from its trustees and beneficial owners, that has capacity to sue, be sued, and transact in its own name. See Sections 302, 307-308.

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

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

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

understand the law governing statutory trusts. The case law on statutory trusts is sparse.

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

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

In choosing to take the Delaware Statutory Trust Act as its starting point, the drafting committee was strongly influenced by data collected by the reporter and later confirmed by [IACA—full cite to come] on the aggregate number of statutory trusts and the number of new statutory trust formations over the last few years. These data indicate that the Delaware Act dominates the field. For a general discussion of the Delaware Statutory Trust Act, see Wendell Fenton and Eric A. Mazie, Delaware Statutory Trusts, in 2 R. Franklin Balotti and Jesse A. Finkelstein, *The Delaware Law of Corporations and Business Organizations* ch. 19 (3d ed. 2005 Supp.) [updated cite to come].

Following the Delaware model, Section 105 provides that ordinary trust law supplements this Act. However, several substantive provisions of this Act are drawn from corporate or unincorporated entity law rather than trust law. Looking variously to corporate and unincorporated entity law in addition to trust law is consistent with the hybrid nature of the Delaware Statutory Trust, which likewise includes provisions that draw variously on all three traditions.

In drafting the public filing and other procedural provisions not unique to the statutory trust form, the drafting committee took the Uniform Limited Partnership Act (2001) and the Revised Uniform Limited Liability Company Act (2006) as its starting points. For guidance on the common law of trusts, the drafting committee took the Uniform Trust Code (2000) as its starting point, referencing also the Restatement (Third) of Trusts (2003 and 2007) and Restatement (Second) of Trusts (1959).

**Innovative Provisions.** Although much of the Uniform Statutory Trust Entity Act reflects a reorganization and refinement of provisions found in the Delaware Statutory Trust Act, the Uniform Act contains several innovations including: (1) specification of rules that are not subject to override in the statutory trust's governing instrument (§103(f)); (2) clearer guidance on the applicability of ordinary trust law to a statutory trust (§104); (3) prohibition against a statutory trust having a predominantly donative purpose (§303); (4) an entire article on series trusts (Article 4); (5) a charging order provision (§606); (6) systematic treatment of conversion and merger (Article 7), and of dissolution (Article 8); and (7) clearer guidance on the relationship between the common-law trust and statutory trust entities (§1005).

**Series Trusts.** [Discussion to come.]

**Default and Mandatory Rules.** Most of the Uniform Statutory Trust Entity Act consists of default rules that apply only if the governing instrument does not address a particular issue. Under Section 103, the governing instrument may override a substantial majority of the Act's provisions. The exceptions are scheduled in Section 103(f).

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

There is, however, no separate body of general business law that applies to a common-law trust that has a business purpose. The common law of trusts applies to all trusts arising under the common law, even those that have a business purpose, to the extent that the common law is not displaced by the trust instrument or specialized legislation. For this reason, although the Uniform Trust Code "is directed primarily at trusts that arise in an estate planning or other donative context," the UTC also applies to trusts that have a business or commercial purpose to the extent that neither the trust instrument nor other legislation displace the UTC's provisions. UTC §102, cmt (2000).

The Uniform Statutory Trust Entity Act is not a codification of general business law principles applicable to common law business trusts. Nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. On the contrary, Section 1005(a) expressly confirms the continued applicability of the state's laws pertaining to trusts to a common law business trust.

The Uniform Statutory Trust Entity Act more closely resembles a generic corporate code or unincorporated entity law than it does the UTC. Like a corporation, limited liability company, and limited partnership, but unlike a common-law trust, a statutory trust is a juridical entity that may conduct transactions in its own name separate from that of the trustee and the beneficial owners. See Sections 302, 307-08. Like those entities, but unlike a common-law trust, a statutory trust is formed by delivering a certificate of trust to a public official for filing. Compare Section 201 with UTC §401 (2000) and Restatement (Third) of Trusts §10 (2003). Further, Section 104 provides that ordinary trust law supplements this Act, but only to the extent not modified or displaced by this Act or the governing instrument — and this Act modifies or displaces a host of ordinary trust law principles including those concerning fiduciary standards of conduct (Section 505) and termination of trusts (Section 306). Section 1005(b) allows an existing common-law trust that does not have a predominantly donative purpose to convert into a statutory trust by delivering a certificate of trust for filing under Section 201.

Although the drafting committee contemplated that a statutory trust under this Act will be used primarily as a mode of business organization, Section 603(a) confirms that a person may become a beneficial owner of a statutory trust without an exchange of consideration. It is therefore possible that a statutory trust could be used as a substitute for the common-law trust in noncommercial contexts. To ensure that a statutory trust is not used to evade mandatory rules applicable to common-law trusts that enforce public policy limitations on donative transfers, Section 303 provides that a statutory trust may not have a predominantly donative purpose. For discussion of the nonapplicability to a statutory trust of the mandatory rules applicable to common-law trusts (including UTC §105), see the comment to Section 103 under the heading “Relationship to Mandatory Rules Under the Uniform Trust Code” and the comments to Sections 104 and 303.

**Citation Convention.** [To come: A statement here about citation conventions, for example, that state statutory cites are current as of Lexis or Westlaw on X date.]

1 **UNIFORM STATUTORY TRUST ENTITY ACT**

2  
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

8 **Comment**

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

16  
17 The drafting committee included the word “entity” in the Act’s title for two reasons. First,  
18 the creature of this act is indeed a trust entity. It has the power to sue, be sued, and transact in its  
19 own name. See Sections 307-308. A common-law trust, by contrast, is not a juridical entity, but  
20 rather a fiduciary relationship whereby the trustee acts in a fiduciary capacity with respect to the  
21 trust property. Second, the word “entity” in the title differentiates this act from the Uniform Trust  
22 Code, which is a codification of the common law of trusts. However, to conform with prevailing  
23 usage under the Delaware Statutory Trust Act, the entity that arises under this Act is called a  
24 “statutory trust,” not a “statutory trust entity.” See Section 102(16). Further, because the drafting  
25 committee wanted a statutory trust under this act to receive treatment under applicable regulatory  
26 law similar to that of a Delaware statutory trust, the entity features of a statutory trust under this  
27 act closely resemble those of a Delaware statutory trust.

28  
29 The drafting committee had three reasons for eschewing the phrase “business trust.” First,  
30 under this act a statutory trust need not have a business or commercial purpose. On the contrary,  
31 Section 303 confirms that a statutory trust may have any lawful purpose other than a  
32 predominantly donative purpose.

33  
34 Second, the drafting committee endeavored to avoid any implication on whether a statutory  
35 trust would qualify as a “business trust” under the bankruptcy code. Under the bankruptcy code,  
36 the definition of a “debtor” eligible for bankruptcy includes a “person,” 11 U.S.C. §101(13), the  
37 definition of “person” includes a “corporation,” id. §101(41), and the definition of “corporation”  
38 includes a “business trust.” Id. §101(9). Bankruptcy eligibility is a significant issue for trusts used  
39 as special purpose entities in structured finance transactions, a principal use of the modern

1 statutory trust in practice. Such trusts are often designed to be “bankruptcy remote.” Thus, as in  
2 the leading case of *In re Secured Equipment Trust of Eastern Airlines, Inc.*, 38 F.3d 86 (2d Cir.  
3 1994), in certain configurations trusts used in securitization transactions have indeed been held not  
4 to be “business trusts” under the bankruptcy code.  
5

6 Third, the drafting committee was influenced by the revealed preference for “statutory  
7 trust” over “business trust” in practice as evidenced by the dominant position of the Delaware  
8 Statutory Trust Act relative to the statutory or business trust acts of the other states. In 2002  
9 Delaware recast the “Delaware Business Trust Act” as the “Delaware Statutory Trust Act,”  
10 replacing nearly every reference to “business trust” with “statutory trust.” See 73 Del. Laws 329  
11 (2002).  
12

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

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

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

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

24 (4) “Designated office” means:

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

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

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

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

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

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

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

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

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

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

15 (A) the spouse of the person;

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

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

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

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

23 (F) a person that directly or indirectly controls, is controlled by, or is under

1 common control with, the person.

2 (13) “Series trust” means a statutory trust that has one or more series created under Section  
3 401.

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

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

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

8 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
9 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
10 United States.

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

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

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

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

### 18 **Comment**

19  
20 **Principal Sources** – Delaware Statutory Trust Act §3801; Connecticut Statutory Trust Act  
21 §34-501; Uniform Limited Partnership Act §102 (2001); SEC Rule 144(a)(1), 17 C.F.R.  
22 §230.144(a)(1).

23  
24 Paragraphs (2), (6), and (18) define “certificate of trust,” “governing instrument,” and  
25 “trust instrument” respectively. The certificate of trust is the record that under Section 201 must  
26 be delivered to a public official for filing to form a statutory trust. The trust instrument is the  
27 transaction document that typically provides for the governance of the statutory trust. Unlike the  
28 certificate of trust, the trust instrument need not be made part of the public record, and typically it  
29 is not. Together, the certificate of trust and the trust instrument compose the governing

1 instrument. The terms “governing instrument” and “trust instrument” are in the singular to  
2 conform with prevailing usage even though there may be more than one document that qualifies as  
3 a trust instrument. Section 103(c) makes authorization of multiple instruments explicit. Conflicts  
4 between the certificate of trust and the governing instrument are resolved pursuant to Section  
5 201(e).

6  
7 Paragraph (3) defines “common-law trust” in accordance with Restatement (Third) of  
8 Trusts §2 (2003), except that as defined herein the term expressly includes a common law business  
9 trust. See also Uniform Trust Code §102, cmt. (2000).

10  
11 Paragraph (12) defines the term “related person,” which is used in Sections 507 and 607  
12 concerning the legality of certain interested transactions. In using but not defining the term  
13 “substantial” in Paragraph (12)(D), the drafting committee contemplated that a totality of the  
14 circumstances test would apply. Section 512 defines the term “independent trustee” with respect  
15 to a statutory trust that is an investment company under the Investment Company Act of 1940.

16  
17 Paragraph (13) defines the term “series trust” [to come].

18  
19 Paragraph (19) defines “trustee” as a person designated as such in accordance with the  
20 governing instrument or applicable law. For discussion of trustee appointment, see the Comment  
21 to Section 501.

22  
23 **SECTION 103. GOVERNING INSTRUMENT: SCOPE, LIMITATIONS, AND**  
24 **AMENDMENT.**

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

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

27 (2) the rights, interests, duties, obligations, and powers of, and the relations among,  
28 the trustees, the beneficial owners, the statutory trust, and other persons.

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

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

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

1 (e) Subject to subsection (f), without limiting the terms that may be included in a governing  
2 instrument, the governing instrument may:

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

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

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

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

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

10 (B) waiver of notice;

11 (C) action by consent without a meeting;

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

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

16 (5) provide for the creation of one or more classes of trustees, beneficial owners, or  
17 beneficial interests having separate rights, powers, or duties;

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

21 (A) amendment of the governing instrument;

22 (B) merger, conversion, or reorganization;

23 (C) appointment of trustees;

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

3 (E) dissolution of the statutory trust;

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

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

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

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

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

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

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

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

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

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

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

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

11 (f) The governing instrument may not:

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

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

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

15 (4) vary the provisions pertaining series trusts in Sections 401, 402(b), 403, and  
16 404(c);

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

21 (6) restrict the nonliability under Section 506 of a trustee or other person that relies  
22 in good faith on the terms of the governing instrument, the records of the statutory trust, or the  
23 opinions, reports, or statements of an expert, but the governing instrument may prescribe the

1 standards for assessing whether the reliance was in good faith, if the standards are not manifestly  
2 unreasonable;

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

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

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

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

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

19 (12) restrict the right of a beneficial owner to bring an action under Section 609, but  
20 the governing instrument may subject the right to additional standards and restrictions, including  
21 the a requirement that beneficial owners owning a specified amount or type of beneficial interest  
22 including, in a series trust, an interest in the series, join in bringing the action, if the additional  
23 standards and restrictions are not manifestly unreasonable;

1 (13) vary the provisions pertaining to conversion and merger in Sections 701, 704,  
2 705, 708, and 709;

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

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

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

7 **Comment**

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

12  
13 **Default rules.** Paragraphs (a) and (b) emphasize that the Act primarily states default rules.  
14 Most of the Act’s provisions may be overridden by the terms of the governing instrument  
15 (paragraph (a)), but if the governing instrument does not provide for a matter, then the Act applies  
16 (paragraph (b)).

17  
18 **Governing instrument(s).** [discussion of paragraph (c) to come.]

19  
20 **Amending the governing instrument.** Paragraph (d) provides for a mechanism to amend  
21 the governing instrument in circumstances where the governing instrument does not already do so.  
22 In such a case, paragraph (d) provides that the governing instrument may be amended by  
23 unanimous agreement of the beneficial owners. Consistent with prevailing commercial practice,  
24 the drafting committee assumed that in most instances the governing instrument will provide for  
25 amendments, a possibility expressly contemplated by paragraphs (e)(6)(A) and (e)(10). In such a  
26 case the amendment mechanisms stated in the governing instrument prevail over paragraph (d).

27  
28 **Illustrative statement of permissive terms.** The purpose of paragraph (e) is to collect in a  
29 single provision the various permissive rules regarding the scope of the governing instrument that  
30 are scattered throughout the Delaware and Connecticut Statutory Trust Acts. The main exception  
31 concerns the allowable remedies for a beneficial owner’s breach in Section 603(c).

32  
33 The list of permissive rules stated in paragraph (e) is meant to be illustrative and not to  
34 limit the generality of paragraph (a). The drafting committee concluded that the demand of third  
35 parties and transactional planners to see language that expressly authorizes specific terms justified  
36 inclusion of a detailed list in addition to the broad statement of freedom of contract in paragraph  
37 (a) and Section 105. Statutory confirmation reduces transaction costs by resolving doubts in  
38 practice over the permissibility of such provisions. Similar reasoning underlies the provision of a  
39 detailed schedule of powers in Uniform Trust Code §816 (2000) in addition to the broad general

1 statement in UTC §815.  
2

3 **Mandatory Rules.** Paragraph (f) schedules the provisions of this act that are not subject to  
4 override in the governing instrument. The provisions included in this schedule are the only rules  
5 that have mandatory application to a statutory trust.  
6

7 Most of the provisions scheduled in paragraph (f) concern the rights of nonparties or public  
8 filing and notice requirements. By contrast, with two exceptions all the provisions of this Act  
9 concerning the powers and duties of a trustee, relations among trustees, and the rights and interests  
10 of a beneficial owner may be overridden or at least altered by the terms of the governing  
11 instrument.  
12

13 The first exception is the mandatory prohibition of indemnification, advancement, or  
14 exoneration for conduct involving bad faith, willful misconduct, or reckless indifference in  
15 paragraph (f)(8). This exception is familiar trust law. See Uniform Trust Code §1008 (2000);  
16 Restatement (Third) of Trusts §96 (T.D. No. 5, 2009); 4 Austin Wakeman Scott, William Franklin  
17 Fratcher, and Mark L. Ascher, *Scott and Ascher on Trusts* §24.27.3 (5th ed. 2007). For a general  
18 discussion, see John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 Nw. U.L. Rev. 1105,  
19 1121-25 (2004); Melanie B. Leslie, *Trusting Trustees: Fiduciary Duties and the Limits of Default*  
20 *Rules*, 94 *Georgetown L.J.* 67 (2005).  
21

22 The Delaware Statutory Trust Act likewise limits the permissible scope of exoneration.  
23 Delaware Statutory Trust Act §3806(e) provides that the “governing instrument may provide for  
24 the limitation or elimination of any and all liabilities for breach of contract and breach of duty  
25 (including fiduciary duties) of a trustee ... ; provided, that the governing instrument may not  
26 eliminate the implied contractual covenant of good faith and fair dealing.”  
27

28 Limitations on permissible exoneration are also familiar corporate and alternative entity  
29 law. See, e.g., Delaware General Corporation Law §102(b)(7); Delaware Limited Liability  
30 Company Act §18-1101; [to come: citation to MBCA 2.02(b)(4) and/or other uniform acts].  
31

32 The second exception is paragraph (f)(9), which makes mandatory the invalidity under  
33 Section 510(c) of a direction to a trustee or other person that is manifestly contrary to the terms of  
34 the governing instrument or would constitute a serious breach of fiduciary duty. The reference to  
35 serious breach of fiduciary duty is meant to exclude an inconsequential, immaterial, or technical  
36 breach that does not harm the trust or a beneficial owner. For some purposes, trust law  
37 distinguishes between serious and not serious breaches of trust. See, e.g., UTC §706(b)(1); 2 *Scott*  
38 *and Ascher on Trusts*, supra, §11.10, at p. 661. However, the effect of paragraph (f)(8) is limited  
39 by paragraph (f)(5), which allows the trustee’s fiduciary duty to be altered by the governing  
40 instrument if the alteration is not manifestly unreasonable.  
41

42 Paragraphs (f)(5), (f)(6), (f)(7), (f)(11), and (f)(12) allow the governing instrument to alter  
43 the nature of the trustee’s fiduciary obligation; the nonliability of a trustee or another for good  
44 faith reliance on the governing instrument, records of the statutory trust, or opinions of experts; the  
45 right of a trustee to information; the right of a beneficial owner to information; and the right of a  
46 beneficial owner to bring an action, but only if the alteration is not “manifestly unreasonable.” In

1 opting for the “manifestly unreasonable” standard instead of Delaware’s “good faith and fair  
2 dealing” formulation, see Delaware Statutory Trust Act §3806(c) and (e), the drafting committee  
3 took notice of the use of the term “manifestly unreasonable” in Revised Uniform Limited Liability  
4 Company Act §110(d) (2006); Uniform Limited Partnership Act §110(b) (2001), Revised Uniform  
5 Partnership Act §103(b) (1997), Uniform Limited Liability Company Act §103(b) (1996), and  
6 intended a similar meaning here. See Mark J. Loewenstein, *Fiduciary Duties and Unincorporated*  
7 *Business Entities: In Defense of the “Manifestly Unreasonable” Standard*, 41 *Tulsa L. Rev.* 411  
8 (2006).

9  
10 **Relationship to Mandatory Rules and the Uniform Trust Code.** Section 104 provides  
11 that the law of this state pertaining to common-law trusts supplements this act. However, it also  
12 provides that the governing instrument of a statutory trust may override or modify the application  
13 to the statutory trust of any rule pertaining to common-law trusts. Accordingly, in a jurisdiction  
14 that has also enacted the Uniform Trust Code, the UTC will apply to a statutory trust only to the  
15 extent that the UTC’s provisions are not displaced by this act or the governing instrument. No  
16 provision of the UTC, including the rules stated in UTC §105 that are mandatory with respect to a  
17 common-law trust, is mandatory with respect to a statutory trust. Likewise, any common-law rule  
18 that is mandatory with respect to a common-law trust may nonetheless be overridden with respect  
19 to a statutory trust by the governing instrument of the statutory trust. The governing instrument of  
20 a statutory trust may override or alter any rule of trust law other than those scheduled in paragraph  
21 (f) of this section.

22  
23 To prevent evasion of the public policy limitations on donative transfers that underpin the  
24 mandatory rules applicable to a common-law trust, see John H. Langbein, *Mandatory Rules in the*  
25 *Law of Trusts*, 98 *Nw. U.L. Rev.* 1105 (2004), Section 302 of this Act provides that a statutory  
26 trust may not have “a predominantly donative purpose.” For further discussion of the relationship  
27 between this Act, the common law, and the Uniform Trust Code, see the Prefatory Note to this Act  
28 under the heading “Relationship to Common-Law trusts and the Uniform Trust Code” and the  
29 comments to Sections 104 and 303.

30  
31 **Registered Investment Companies.** The Investment Company Act of 1940 (the “1940  
32 Act”) supersedes this Act with respect to a statutory trust that registers as an investment company.  
33 For such a statutory trust the 1940 Act imposes additional mandatory rules. See, e.g., the  
34 Comments to Sections 207 (name of statutory trust), 503 (action by trustees), 507 (interested  
35 transactions), 509 (indemnification, advancement, and exoneration), and 511 (delegation by  
36 trustee).

37  
38 **SECTION 104. APPLICABILITY OF TRUST LAW.** The law of this state pertaining  
39 to common-law trusts supplements this [act]. However, the governing instrument may supersede  
40 or modify application to the statutory trust of any law of this state pertaining to common-law  
41 trusts.

1 **Comment**

2 **Principal Sources** – Uniform Trust Code §106 (2000); Delaware Statutory Trust Act  
3 §3809; Connecticut Statutory Trust Act §34-519.  
4

5 **Trust Law Supplements this Act.** This Section provides that state trust law supplements  
6 this act and the terms of the governing instrument. In looking to trust law to supplement this act  
7 and the governing instrument, the drafting committee was strongly influenced by the popularity of  
8 the Delaware Statutory Trust Act, which likewise looks to trust law, in comparison to the business  
9 trust acts (such as those in Arizona, Indiana, Kansas, Mississippi, Montana, Oregon, Tennessee,  
10 Washington, and West Virginia) that look to corporate law.  
11

12 **No Mandatory Rules Other Than Those Scheduled in Section 103(f).** This Section also  
13 confirms that, except for the mandatory rules scheduled in Section 103(f), the governing  
14 instrument may override any rule or law pertaining to common-law trusts that would otherwise be  
15 applicable to a statutory trust under this Section.  
16

17 **Relationship to the Uniform Trust Code.** In a jurisdiction that has also enacted the  
18 Uniform Trust Code, the effect of this Section is to make the UTC applicable to a statutory trust,  
19 but only to the extent that the UTC’s provisions — including the mandatory rules scheduled in  
20 UTC §105 — are not displaced by this act or the statutory trust’s governing instrument. For  
21 further discussion, see the comment to Section 103 under the heading “Relationship to Mandatory  
22 Rules and the Uniform Trust Code.”  
23

24 **Remedies.** Under this Section, the law of remedies for breach of trust applies to a statutory  
25 trust unless the governing instrument provides otherwise. See 4 Austin Wakeman Scott, William  
26 F. Fratcher, and Mark L. Ascher, *Scott and Ascher on Trusts* §24.9 (5th ed. 2006); UTC §§1001-  
27 1003 (2000). However, when a breach of trust injures the trust rather than a beneficial owner  
28 directly, such remedies are properly sought in a derivative suit under Section 609 rather than in a  
29 direct suit by the beneficiary because a statutory trust is itself an entity. See ALI Principles of  
30 Corporate Governance §7.01 (1994).  
31

32 **SECTION 105. RULE OF CONSTRUCTION.**

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

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

37 **Comment**

38 **Principal Sources** – Delaware Statutory Trust Act §3825; Connecticut Statutory Trust Act  
39

1 §34-546; Uniform Statute and Rule Construction Act §18 (1995).

2  
3 Paragraph (a) emphasizes the freedom of contract afforded to transactional planners by the  
4 Uniform Statutory Trust Entity Act, which is primarily a default statute. The only mandatory rules  
5 applicable to a statutory trust are those scheduled in Section 103(f). The drafting committee  
6 contemplated that section 105(a) would apply to the construction of Section 103(f).

7  
8 Paragraph (b) admonishes the courts not to apply to this act the canon of construction that  
9 statutes in derogation of the common law are to be strictly construed. The drafting committee  
10 included this admonition because several of this act's provisions are designed specifically to  
11 preclude the application to a statutory trust of one or more common-law trust principles. See, e.g.,  
12 Sections 203, 302, 304, 306, 502, 503, 504, 505, 506, 507, 511, [list to be confirmed/expanded].  
13 Those provisions, which deliberately derogate the common law, should be interpreted in accord  
14 with that purpose.  
15

1 [ARTICLE] 2

2 FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS; PROCESS

3  
4 SECTION 201. CERTIFICATE OF TRUST.

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

7 (b) A certificate of trust must state:

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

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

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

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

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

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

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

19 **Comment**

20  
21 **Principal Sources** – Uniform Limited Partnership Act §201 (2001); Delaware Statutory  
22 Trust Act §3810; Connecticut Statutory Trust Act §34-503.

23  
24 Unlike a common-law trust, a statutory trust is a creature of statute. A statutory trust  
25 comes into existence only if (1) a certificate of trust is prepared and delivered to the specified  
26 public official for filing, and (2) the public official files the certificate. See Section 204. Filing  
27 rules are typical of limited liability entities. Such rules serve a notice function, alerting interested  
28 parties to the creation and existence of a new juridical entity with limited liability. The certificate  
29 of trust also identifies the statutory trust’s initial agent for service of process and, in connection

1 with Section 401, the certificate of trust puts third parties on notice if the statutory trust might  
2 further segregates its property and liabilities by creating one or more series.

3  
4 Although formed by making a public filing, a statutory trust is also a creature of contract.  
5 As such, it will be possible, though improper, for the trust instrument to be inconsistent with the  
6 certificate of trust or other public filings relating to the statutory trust. Paragraph (d) provides that  
7 in such circumstances the public filing controls.

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

11  
12 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF**  
13 **TRUST.**

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

16 (1) the name of the trust;

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

18 (3) the changes to the certificate.

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

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

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

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

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

27 **Comment**

28  
29 **Principal Sources** – Uniform Limited Partnership Act §202 (2001); Delaware Statutory  
30 Trust Act §3810; Connecticut Statutory Trust Act §34-503.

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

3  
4 Under Section 103(f)(1), this Section is not subject to override by the governing  
5 instrument.  
6

7 **SECTION 203. SIGNING OF RECORDS.**

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

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

11 **Comment**

12  
13 **Principal Sources** – Uniform Limited Partnership Act §204 (2001); Delaware Statutory  
14 Trust Act §3811; Connecticut Statutory Trust Act §34-504.

15  
16 Paragraph (b) confirms that the signing of a public record by a trustee is a delegable act,  
17 ensuring that the discredited common law nondelegation rule will not apply. See Uniform Trust  
18 Code §807 (2000); Restatement (Third) of Trusts §80 (2007).

19  
20 Under Section 103(f)(1), this Section is not subject to override by the governing  
21 instrument.  
22

23 **SECTION 204. 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 subject of the record and be in a medium  
27 permitted by the [Secretary of State]. If all filing fees have been paid, unless the [Secretary of  
28 State] determines that the record does not comply with the filing requirements of this [act], the  
29 [Secretary of State] shall file the record and make available a copy of the filed record to the person  
30 on whose behalf the record was filed.

31 (b) On request and payment of the required fee, the [Secretary of State] shall send to any

1 person a certified copy of a record filed in the office of the [Secretary of State] pursuant to this  
2 [act].

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

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

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

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

14 (A) the specified date; or

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

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

18 (A) the specified date; or

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

20 **Comment**

21  
22 **Principal Sources** – Uniform Limited Partnership Act §206 (2001); Delaware Statutory  
23 Trust Act §3812; Connecticut Statutory Trust Act §34-505.

24  
25 For a record prepared by a private person to become part of the public record under this  
26 act, (1) someone must put a properly prepared version of the record into the possession of the  
27 public official specified in the act as the appropriate filing officer, and (2) the filing officer must

1 determine that the record complies with the filing requirements of this act and then officially make  
2 the record part of the public record. This Act refers to the first step as “delivery to the [Secretary  
3 of State] for filing” and refers to the second step as “filing.” Hence, “filing” is an official action.  
4

5 Under paragraph (a), the caption need only indicate the title of the record — for example,  
6 “Certificate of Trust” or “Statement of Change for Statutory Trust.” Filing officers typically note  
7 on a filed record the fact, date, and time of filing. Copies provided by the filing officer under  
8 paragraph (a) should contain that notation. This Act does not provide a remedy if the filing officer  
9 wrongfully fails or refuses to file a record.  
10

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

17 Consistent with the existing statutory trust acts, but inconsistent with most corporate codes,  
18 this Act makes no provision for collecting a franchise tax. See generally Marcel Kahan and Ehud  
19 Kamar, Price Discrimination in the Market for Corporate Law, 86 Cornell L. Rev. 1205, 1218-33  
20 (2001).  
21

22 Under Section 103(f)(1), this Section is not subject to override by the governing  
23 instrument.  
24

## 25 **SECTION 205. CORRECTING FILED RECORD.**

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

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

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

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

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

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

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

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

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

7 **Comment**

8 **Principal Source** – Uniform Limited Partnership Act §207 (2001).

9  
10  
11 A statement of correction is appropriate only to correct inaccuracies that existed or  
12 signatures that were defective “at the time of filing.” A statement of correction may not be used to  
13 amend or revise a record that was accurate when filed but has become inaccurate as a result of  
14 subsequent events.

15  
16 Under paragraph (c), a statement of correction relates back by way of retroactive  
17 application except against persons that have relied on the uncorrected record and would be  
18 adversely affected if the correction related back.

19  
20 Under Section 103(f)(1), this Section is not subject to override by the governing  
21 instrument.

22  
23 **SECTION 206. CERTIFICATE OF GOOD STANDING.**

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

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

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

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

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

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

6 (b) A certificate of good standing must state:

7 (1) the name of the trust;

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

9 and

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

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

14 **Comment**

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

16 A certificate of good standing can reveal only information present in the public record.  
17 Under this Act significant information bearing on the status of a statutory trust may be outside the  
18 public record.

19 Section 905 provides for the issuance of a certified copy of the certificate of registration for  
20 a qualified foreign statutory trust.

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

23 **SECTION 207. NAME OF STATUTORY TRUST.**

24 (a) Except as otherwise provided in subsection (c), the name of a statutory trust must be  
25 distinguishable in the records of the [Secretary of State] from:  
26  
27

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

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

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

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

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

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

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

21 (A) has merged with the applicant;

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

23 (C) has transferred substantially all of its property, including the conflicting

1 name, to the applicant.

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

5 **Comment**

6  
7 **Principal Sources** – Uniform Limited Partnership Act §108 (2001); Delaware Statutory  
8 Trust Act §3814.

9  
10 The drafting committee considered but decided against requiring that the name of a  
11 statutory trust contain a traditional limited liability appellation. Such a requirement would be  
12 inconsistent with current practice under the Delaware Statutory Trust Act. However, the drafting  
13 committee contemplated that an enacting jurisdiction with a strong policy regarding names of  
14 limited liability entities might modify this Section accordingly. Moreover, other regulatory law  
15 will sometimes limit the range of permissible names notwithstanding this Section. For example,  
16 the names of mutual funds typically do not contain a limited liability appellation, but Section 35(d)  
17 of the Investment Company Act of 1940, which is applicable to a statutory trust that is a registered  
18 investment company, prohibits “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d).  
19 See also Rule 35d-1, 17 C.F.R. §270.35d-1 (listing types of names that have been deemed  
20 “materially deceptive or misleading”).

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

24

25 **SECTION 208. RESERVATION OF NAME.**

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Comment**



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

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

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

7 **Comment**

8  
9 **Principal Source** – Uniform Limited Partnership Act §115 (2001).

10  
11 This section uses the term “may” rather than “must” in the first sentence because a  
12 statutory trust may also change the information by an amendment to its certificate of trust under  
13 Section 202. Further, if the information currently in the public record is accurate, a statutory trust  
14 or qualified foreign statutory trust may change the information in an annual report under Section  
15 213.

16  
17 Under Section 103(f)(1), this Section is not subject to override by the governing  
18 instrument.

19  
20 **SECTION 211. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

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

24 (1) the name of the trust;

25 (2) the name of the agent; and

26 (3) a statement that the agent resigns as agent for service of process.

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

1 from the address of the designated office.

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

4 **Comment**

5 **Principal Source** – Uniform Limited Partnership Act §116 (2001).  
6

7  
8 This section provides the exclusive means for an agent to resign without cooperation from  
9 the statutory trust or qualified foreign statutory trust and the only way the agent, rather than the  
10 statutory trust or foreign statutory trust, can effect a change in the public record.

11  
12 Unlike most records authorized or required to be delivered to the filing officer for filing  
13 under this act, a statement of resignation may not provide for a delayed effective date. Paragraph  
14 (c) mandates the effective date of the agent’s resignation. An effective date included in a statement  
15 of resignation is disregarded.

16  
17 To satisfy Section 209(a), the statutory trust or qualified foreign statutory trust must  
18 designate a new agent for service of process before the effective date of the current agent’s  
19 resignation. If the statutory trust or foreign statutory trust fails to do so, under Section 212(b)  
20 service on the statutory trust or foreign statutory trust may be made on the Secretary of State.

21  
22 Under Section 103(f)(1), this Section is not subject to override by the governing  
23 instrument.  
24

25 **SECTION 212. SERVICE OF PROCESS.**

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

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

33 (1) the date the agent for the statutory trust or qualified foreign statutory trust

1 receives the process, notice, or demand;

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

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

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

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

11 **Comment**

12  
13 **Principal Source** – Uniform Limited Partnership Act §117 (2001); Model Registered  
14 Entity Act §13 ([year]).

15  
16 Under Section 103(f)(1), this Section is not subject to override by the governing  
17 instrument.

18  
19 **SECTION 213. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF**  
20 **STATE].**

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

23 (1) in the case of a statutory trust:

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

25 (B) the name and street and mailing address of its agent for service of

26 process; or

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

1 (A) any alternate name adopted under Section 906;  
2 (B) the name of the state or other jurisdiction of formation of the trust;  
3 (C) the street and mailing address of its principal office and, if the laws of  
4 the jurisdiction of formation of the trust require it to maintain an office in that jurisdiction, the  
5 street and mailing address of that office; and  
6 (D) the name and street and mailing address of its agent for service of  
7 process in this state.

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

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

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

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

23 **Comment**

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

2  
3           A statutory trust that fails to comply with this section is subject to administrative  
4 dissolution. See Section 806.

5  
6           [Comment on bracketed options to come.]

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

10

1 [ARTICLE] 3

2 GOVERNING LAW; AUTHORIZATION; DURATION; POWERS

3  
4 SECTION 301. GOVERNING LAW. The law of this state governs:

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

6 (2) the liability of a beneficial owner as beneficial owner and a trustee as trustee for a debt,  
7 obligation, or other liability of a statutory trust or a series thereof; and

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

10 Comment

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

14  
15 Under paragraph (1) the internal affairs of a statutory trust are governed by the law of this  
16 state even if the trust operates in other states. Although the term “internal affairs” may be  
17 indeterminate at its edges, the concept certainly includes interpretation and enforcement of the  
18 governing instrument and relations among the trustees, beneficial owners, and the statutory trust.  
19 See Restatement (Second) of Conflict of Laws §302, cmt. a (1971) (defining “internal affairs” with  
20 reference to corporate law as “the relations inter se of the corporation, its shareholders, directors,  
21 officers or agents”).

22  
23 Paragraph (2) supports Sections 304 and 305 by confirming that the liability of a beneficial  
24 owner or a trustee for the debts, obligations, or other liabilities of the statutory trust is governed by  
25 the law of this state. This paragraph is stated separately from Paragraph (1) because the liability of  
26 a beneficial owner or trustee to third parties is arguably not an internal affair. See Restatement  
27 (Second) of Conflict of Laws §307 (1971) (treating shareholders’ liability separately from the  
28 internal affairs doctrine).

29  
30 Paragraph (3) [discussion to come].

31  
32 Section 901 states rules for qualified foreign statutory trusts that parallel and are analogous  
33 in scope to those of this section.

34  
35 Under Section 103(f)(3), this Section is not subject to override by the governing  
36 instrument.



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

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

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

31  
32  
33 Most of the foregoing rules are referenced in UTC §105, the UTC's schedule of mandatory rules.  
34 For discussion of why the rules that are mandatory with respect to a common-law trust are not  
35 mandatory with respect to a statutory trust, see the comments to Sections 103 and 105.

36  
37 Section 401(c) states a similar rule for the series of a statutory trust.

38  
39 Under Section 103(f)(2), this Section is not subject to override by the governing  
40 instrument.

41  
42 **SECTION 304. STATUTORY TRUST SOLELY LIABLE FOR DEBTS,**  
43 **OBLIGATIONS, OR OTHER LIABILITIES OF STATUTORY TRUST.** A debt, obligation,

1 or other liability of a statutory trust or series thereof is solely a debt, obligation, or other liability of  
2 the trust or series thereof. A beneficial owner, trustee, agent of the trust, or agent of the trustee is  
3 not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt,  
4 obligation, or other liability of the trust or series thereof solely by reason of being or acting as a  
5 trustee, beneficial owner, agent of the trust, or agent of the trustee.

6 **Comment**

7 **Principal Sources** – Delaware Statutory Trust Act §3803; Connecticut Statutory trust Act  
8 §34-523; Revised Uniform Partnership Act §306 (1994); Uniform Limited Liability Company Act  
9 §303; Uniform Limited Partnership Act §§303, 404 (2001); Uniform Trust Code §507 (2000).

10  
11 This section implements the concept that the statutory trust is an entity separate from its  
12 trustees and beneficial owners in three ways. First, this section confirms that a trustee, as a  
13 manager of the statutory trust, is not liable for the debts, obligations, and liabilities of the statutory  
14 trust or a series thereof. As such, this section overrides the outmoded common law rule that held  
15 the trustee liable for the debts of the trust and then gave the trustee a right to indemnity out of the  
16 trust fund. Compare Restatement (Second) of Trusts §§244, 261 (1959) (stating the old rule), with  
17 Uniform Trust Code §1010 (2000) (eliminating the personal liability of the trustee for debts,  
18 obligations, and liabilities arising in the trustee’s fiduciary capacity). However, nothing in this  
19 Section limits the personal liability of the trustee to the statutory trust for breach of duty under  
20 Section 505.

21  
22 [Further discussion, cross-reference to series, to come.]

23  
24 Second, this section confirms that the statutory trust is solely liable for the debts,  
25 obligations, and liabilities of the trust.

26  
27 Third, this section confirms the limited liability of a beneficial owner and trustee by  
28 providing that neither a beneficial owner nor trustee of a statutory trust is liable for the debts,  
29 obligations, or liabilities of the statutory trust. An agent of the beneficial owner or trustee is  
30 likewise not liable for the debts, obligations, or liabilities of the statutory trust. This section  
31 therefore confirms that the “control test” of *Williams v. Inhabitants of Milton*, 102 N.E. 355  
32 (Mass. 1913), and Restatement (Second) of Agency §14B (1958), is not applicable to a statutory  
33 trust. Under the control test, if a beneficiary of a common law business trust had a say in the  
34 administration of the trust or the right to remove and replace the trustees, the beneficiary might be  
35 held liable for the debts of the trust. By contrast, under this section a beneficial owner may  
36 participate in the management of the statutory trust without exposure to liability for the debts of  
37 the statutory trust. For discussion of a beneficial owner’s limited liability under the Delaware  
38 Statutory Trust Act, see Wendell Fenton and Eric A. Mazie, *Delaware Statutory Trusts*, in 2 R.  
39 Franklin Balotti and Jesse A. Finkelstein, *The Delaware Law of Corporations and Business*  
40 *Organizations* §19.3 (3d ed. 2005 Supp.). [Citation to be updated.]



1 accordance with this [act] or the terms of the governing instrument.

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

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

## 6 **Comment**

7  
8 **Principal Sources** – Delaware Statutory Trust Act §3808; Connecticut Statutory Trust Act  
9 §34-518.

10  
11 Paragraph (a) provides a default rule of perpetual existence for a statutory trust. See also  
12 Section 801 and Section 806. The duration of a common-law trust, by contrast, is curtailed by the  
13 Rule Against Perpetuities. See Restatement (Third) of Trusts §29, cmt. h(1) (2003); Restatement  
14 (Second) of Property: Donative Transfers §2.1 (1981). Accordingly, unless the governing instrument  
15 provides otherwise, under this section a statutory trust is exempt from the Rule Against Perpetuities.  
16 Without taking a position on the policy soundness of the tax-driven movement to abolish the Rule  
17 Against Perpetuities with respect to donative trusts, see [citation to come], the drafting committee  
18 concluded that the dead-hand worries that underpin the Rule do not apply to a statutory trust.  
19 Under Section 302, a statutory trust may not have a predominantly donative purpose.

20  
21 Paragraph (b) confirms that a statutory trust may only be terminated in accordance with the  
22 terms of this act or the governing instrument. Thus, paragraph (b) overrides the rules of common-law  
23 trust termination that would otherwise be applicable to a statutory trust pursuant to Section 105. Those  
24 rules are concerned with mediating the tension between the donor’s intent and subsequent contrary  
25 preferences of the beneficiaries, see Robert H. Sitkoff, *An Agency Costs Theory of Trust Law*, 89  
26 *Cornell L. Rev.* 621, 658-63 (2004), an issue that is not applicable to a statutory trust because a  
27 statutory trust may not have a predominantly donative purpose. Instead, the drafting committee  
28 contemplated that the governing instrument would provide for termination of the statutory trust or  
29 modification of the governing instrument if such provisions are desirable.

30  
31 Paragraph (c) confirms that the rule of partnership law under which a partnership is  
32 dissolved upon the death or incapacity of one of the partners does not apply to a statutory trust.

33  
34 Paragraph (d) overrides the application to a statutory trust under Section 105 of the  
35 common law rule of merger whereby legal and equitable title to the trust property merge and the  
36 trust terminates if the same person is the sole trustee and sole beneficiary. See Restatement (Third)  
37 of Trusts §69 (2003); Restatement (Second) of Trusts §341 (1959); Comment, *The Doctrine of*  
38 *Merger as Applied to Commercial Trusts*, 29 *Yale L.J.* 97 (1919).

39



1 in its own name.

2  
3 Paragraph (b) addresses the attachment and execution of a statutory trust's property subject  
4 to the possibility that the statutory trust has formed one or more series under Article 4.

5

1 [ARTICLE 4]

2 SERIES TRUSTS

3  
4 SECTION 401. STATUTORY TRUST HAVING SERIES.

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

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

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

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

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

16 **Comment**

17  
18 **Principal Sources** – Delaware Statutory Trust Act §3806; Delaware Limited Liability  
19 Company Act §18-215.

20  
21 Paragraph (a) of this section provides that a statutory trust may be organized with one or  
22 more series, subject to two conditions: (1) records must be maintained that reasonably identify the  
23 property of the series, and (2) notice of the limitation on liabilities of a series must be set forth in  
24 the certificate of trust.

25  
26 The earmarking requirement of paragraph (a)(1) safeguards the separate interests of the  
27 beneficial owners of each series by clarifying the boundaries between the property and liabilities  
28 of each series. For similar reasons, the earmarking requirement also protects third parties that deal  
29 with a series trust. Third parties are further protected by paragraph (a)(2), which conditions  
30 limited liability across series on notice in the certificate of trust that the trust might have one or  
31 more series.

1  
2 [Comparison of asset partitioning series to governance classes under Section 104(e)(5) to  
3 come.]  
4

5 Paragraph (b) [discussion of non-entity status to come, including the point that this  
6 provision makes explicit what is implicit in the Delaware act, and that entity status for tax  
7 purposes is a separate question not addressed here (analogy is to common law trust, which is not  
8 an entity under state trust law but is for federal tax purposes)].  
9

10 Paragraph (c) [discussion and cross-reference to Section 303 to come.]  
11

12 The organization of a master statutory trust with several series is particularly common  
13 among statutory trusts that are registered as investment companies under the Investment Company  
14 Act of 1940, as amended, 15 U.S.C. Sections 80a-1 et seq. (the “1940 Act”). In such a case, any  
15 series of beneficial interests established by the governing instrument of the trust is a series  
16 preferred in distribution of property or payment of dividends over all other series with respect to  
17 property specifically allocated to the series under Section 18 of the Investment Company Act of  
18 1940.  
19

20 [To come, discussion of Delaware Statutory Trust Act §3805(h): “Except to the extent  
21 otherwise provided in the governing instrument of the statutory trust, where the statutory trust is a  
22 registered investment company under the Investment Company Act of 1940, as amended (15  
23 U.S.C. § 80a-1 et seq.), any class, group or series of beneficial interests established by the  
24 governing instrument with respect to such statutory trust shall be a class, group or series preferred  
25 as to distribution of assets or payment of dividends over all other classes, groups or series in  
26 respect to assets specifically allocated to the class, group or series as contemplated by § 18 (or any  
27 amendment or successor provision) of the Investment Company Act of 1940 [15 U.S.C. § 80a-18],  
28 as amended, and any regulations issued thereunder, provided that this section is not intended to  
29 affect in any respect the provisions of § 3804(a) of this title.”]  
30

31 Under Section 103(f)(4), this Section is not subject to override by the governing  
32 instrument.  
33

## 34 **SECTION 402. LIABILITY OF SERIES TRUST.**

35 (a) In a series trust:

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

39 (2) none of the debts, obligations, or other liabilities incurred or otherwise existing

1 with respect to the trust generally or the property of any other series thereof is enforceable against  
2 the property of the series;.

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

7 **Comment**

8  
9 **Principal Sources** – Delaware Statutory Trust Act §3804; Delaware Limited Liability  
10 Company Act §18-215.

11  
12 Paragraph (a) provides that if a statutory trust creates one or more series under Section 401,  
13 the debts, liabilities, and other obligations of a particular series are enforceable against the  
14 property of that series only. In such circumstances, the debts, liabilities, and other obligations of  
15 the trust generally and any other series thereof are not enforceable against the property of the  
16 series. [Discussion of the common creditor problem and the idea of the trust as a separate bucket  
17 from each series to come.]

18  
19 Paragraph (b) addresses [discussion to come; the basic idea is that we don't want to allow  
20 transfer of property from series A to series B, thereby frustrating the creditors of series A, if the  
21 transfer will leave series A insolvent or otherwise would have qualified as a fraudulent transfer if  
22 A and B were separate entities].

23  
24 Under Section 103(f)(4), paragraph (b) of this Section is not subject to override by the  
25 governing instrument.  
26

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

32 **Comment**

33  
34 [Explanatory comment]

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

5 **SECTION 404. DISSOLUTION OF SERIES.**

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

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

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

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

18 **Comment**

19 **Principal Source** – Delaware Statutory Trust Act §3808; Revised Uniform Limited  
20 Liability Company Act §§701-02 (2006).

21  
22 [Comment to explain that series dissolves as if it were a trust, and default/mandatory  
23 treatment, to come.]  
24

25 Under Section 103(f)(4), paragraph (c) of this Section is not subject to override by the  
26 governing instrument.  
27  
28

1 [ARTICLE 5]

2 TRUSTEES AND TRUST MANAGEMENT

3  
4 SECTION 501. MANAGEMENT OF STATUTORY TRUST. The business and affairs  
5 of a statutory trust must be managed by or under the authority of its trustees.

6 Comment

7 Principal Sources – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust Act  
8 §34-517; Uniform Limited Partnership Act §105 (2001); Delaware General Corporation Law  
9 §141; Revised Model Business Corporation Act §8.01 (2005).

10  
11 Section 102(19) defines the term “trustee” as a person designated as such in accordance  
12 with the governing instrument or applicable law. Section 104(e)(6)(C) confirms that the governing  
13 instrument may provide for trustee appointment. However, because no provision in this Act  
14 provides default rules for trustee appointment, if the governing instrument does not provide for  
15 trustee appointment, then under Section 105 the state’s law pertaining to trustee appointment in  
16 common-law trusts controls.

17  
18 For treatment of the default rules of trustee appointment, removal, and succession in  
19 common-law trusts, see Uniform Trust Code §§701-02, 704-06 (2000); Restatement (Third) of  
20 Trusts §§31-37 (2003). [Scott and Ascher on Trusts citation to come.]  
21

22 SECTION 502. TRUSTEE POWERS. A trustee may exercise:

23 (1) powers conferred by the governing instrument;

24 (2) except as limited by the governing instrument, any other powers necessary or  
25 convenient to carry out the business and affairs of the statutory trust; and

26 (3) any other powers conferred by this [act].

27 Comment

28 Principal Source –Uniform Trust Code §815 (2000).  
29

30 This section is intended to grant trustees the broadest possible powers. Hence, this section  
31 overrides the application to a statutory trust under Section 105 of the outmoded common-law rule  
32 that a trustee has only those powers granted by the trust instrument. See Uniform Trust Code §815  
33 (2000); Restatement (Third) of Trusts §85, cmt. a (2007).  
34





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

4  
5 [To come: Discussion of differences with the UTC.]

6  
7 For discussion of the meaning of good faith, see the comment to Section 505.  
8

## 9 **SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES.**

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

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

### 15 **Comment**

16 **Principal Source** – Revised Model Business Corporation Act §8.30 (2005).

17 To police the exercise of the trustee’s broad powers under Section 502, this section subjects  
18 the trustee to fiduciary duties of loyalty and care akin to those of a corporate director.

19  
20 The drafting committee opted to model the trustee’s duties on the corporate fiduciary  
21 obligation as stated in Revised Model Business Corporation Act §8.30 (2005) rather than the more  
22 restrictive trust law fiduciary obligation because the statutory trust is used chiefly as a mode of  
23 business organization. Unlike the trust law fiduciary obligation, which evolved in the context of  
24 donative transfers, the corporate law fiduciary obligation evolved to serve the needs of commercial  
25 actors. For a statement of the duties of loyalty and prudence in trust law, see Restatement (Third)  
26 of Trusts §§77-78 (2007). For a comparison, see Robert H. Sitkoff, Trust Law, Corporate Law,  
27 and Capital Market Efficiency, 28 J. Corp. L. 565, 572-82 (2003). See also the sources cited in the  
28 Comment to Section 507.

29  
30 [Discussion of *Cargill, Inc. v. JWH Special Circumstance LLC*, 959 A.2d 1096 (Del.Ch.  
31 2008), and differences between the Delaware Act and this Section, to come.]

32  
33 The drafting committee declined the suggestion to define the term good faith on the ground  
34 that such a definition necessarily would be over- and under-inclusive. Instead, the committee  
35 contemplated that the term would be interpreted in light of its evolving meaning in the business  
36 and trust law cases.  
37

1 [Commentary explaining rationale for the “subject to Section 403” language.]

2  
3 Under Section 103(f)(5), the trustee’s standards of conduct under this section are  
4 mandatory rules that are not subject to override by the governing instrument. However, the  
5 governing instrument may prescribe the standards by which good faith, best interests of the  
6 statutory trust, and care that a person in a similar position would reasonably believe appropriate  
7 under similar circumstances are determined provided that the standards are not manifestly  
8 unreasonable.

9  
10 Delaware Statutory Trust Act §3806(c) provides that a trustee’s fiduciary duties “may be  
11 expanded or restricted or eliminated by provisions in the governing instrument; provided, that the  
12 governing instrument may not eliminate the implied contractual covenant of good faith and fair  
13 dealing,” and §3806(e), which provides that a “governing instrument may provide for the  
14 limitation or elimination of any and all liabilities for ... breach of duties (including fiduciary  
15 duties) . . .; provided, that a governing instrument may not limit or eliminate liability for any act or  
16 omission that constitutes a bad faith violation of the implied contractual covenant of good faith and  
17 fair dealing.”

18  
19 **SECTION 506. GOOD-FAITH RELIANCE.** A trustee, officer, employee, manager, or  
20 committee of a statutory trust, or other person designated pursuant to Section 104(c)(8), is not  
21 liable to the trust or to a beneficial owner for breach of any duty, including a fiduciary duty, to the  
22 extent the breach results from good-faith reliance on:

23 (1) a term of the governing instrument;

24 (2) a record of the statutory trust; or

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

29 **Comment**

30 **Principal Source** – Uniform Trust Code §1006 (2000); Delaware Statutory Trust Act  
31 §3806; Connecticut Statutory Trust Act §34-517.

32  
33 A trustee, officer, employee, manager, committee, or other such person or persons should  
34 be able to administer a statutory trust with dispatch and without concern that a reasonable reliance

1 on (1) the terms of the governing instrument, (2) the records of the statutory trust, or (3) the  
2 opinions of experts is misplaced. This section protects a person that so relies, but only to the  
3 extent the breach of trust resulted from such reliance and only if the person’s reliance was in good  
4 faith. “Taking the advice of legal counsel,” for example, “evidences prudence on the part of the  
5 trustee. Reliance on the advice of counsel, however, is not a complete defense to an alleged  
6 breach of trust, because that would reward a trustee who shopped for legal advice that would  
7 support the trustee’s desired course of conduct or who otherwise acted unreasonably in procuring  
8 or following legal advice. In seeking and considering advice of counsel, the trustee has a duty to  
9 act with prudence. Thus, if a trustee has selected trust counsel prudently and in good faith, and has  
10 relied on plausible advice on a matter within counsel’s expertise, the trustee’s conduct is  
11 significantly probative of prudence.” Restatement (Third) of Trusts §77, cmt. b(2) (2007).  
12

13 **SECTION 507. INTERESTED TRANSACTIONS.**

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

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

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

22 **Comment**

23 **Principal Sources** – Delaware Statutory Trust Act §3806; Delaware General Corporation  
24 Law §144.  
25

26 Consistent with the use of the term “best interests” instead of “sole interest” in Section  
27 505(a), this section abrogates the no-further-inquiry rule of the common law of trusts, which  
28 renders a self-dealing or conflicted transaction by the trustee voidable by the beneficiaries even if  
29 the transaction is fair and in the best interests of the trust and the beneficiaries. See Restatement  
30 (Third) of Trusts §78 (2007); Restatement (Second) of Trusts §170 (1959); John H. Langbein,  
31 Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest?, 114 Yale L.J. 929  
32 (2005); Melanie B. Leslie, Trusting Trustees: Fiduciary Duties and the Limits of Default Rules, 94  
33 Georgetown L.J. 67 (2005).  
34

35 Instead, this section follows the corporate model whereby an interested transaction is

1 voidable by the statutory trust unless the related party shows that the transaction is fair to the trust.  
2 For discussion of the fairness test as applied in corporate law, see Steven M. Bainbridge,  
3 Corporation Law and Economics §7.2, at pp. 315-16 (2002), citing Marciano v. Nakash, 535 A.2d  
4 400 (Del. 1987). [To come: Further discussion, along with reference to ALI Principles of  
5 Corporate Governance.]  
6

7 [To come: Explanation for omitting this Section from 103(f), hence ratification and related  
8 ideas may be addressed in the governing instrument. The point of this section is to override the  
9 no-further-inquiry rule, not to validate all self-dealing transactions.]  
10

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

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

21 **Comment**

22 Under Section 103(f)(8), the trustee’s right to information under this section is not subject  
23 to override by the governing instrument. However, the trustee’s right to information is limited to  
24 information “reasonably related to the trustee’s discharge of the trustee’s duties as trustee,” and  
25 under Section 103(f)(8) the governing instrument may prescribe the standards by which reasonably  
26 related is determined provided that those standards are not manifestly unreasonable.  
27

28 By linking the trustee’s information rights to the scope of the trustee’s duties as trustee, this  
29 section makes the trustee’s right to information function specific. This section therefore allows for  
30 the creation of a limited-role or directed trustee that will not have access to confidential  
31 information unrelated to the trustee’s limited role. At the same time, this section ensures that such  
32 a trustee will have access to information reasonably related to discharging the trustee’s duties in  
33 connection with the trustee’s limited role.  
34

35 Section 608 provides for a beneficial owner’s right to information.  
36

37 **SECTION 509. INDEMNIFICATION, ADVANCEMENT, AND EXONERATION.**

38 (a) A statutory trust may indemnify and hold harmless a trustee or beneficial owner or

1 other person with respect to any claim or demand on the person by reason of the person's  
2 relationship with the trust if the claim or demand does not arise from the person's bad faith, willful  
3 misconduct, or reckless indifference.

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

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

### 13 **Comment**

14  
15 **Principal Sources** – Delaware Statutory Trust Act §3817; Connecticut Statutory Trust Act  
16 §34-524; Delaware General Corporation Law §145; Uniform Trust Code §§105, 1008 (2000).  
17

18 This Section confirms that the governing instrument may provide for indemnification,  
19 advancement, or exoneration, and it states limitations on any such provisions. This Section does  
20 not, by itself, compel indemnification, advancement, or exoneration. Under Section 103(f)(8), this  
21 section's prohibition against indemnification, advancement, or exoneration for conduct involving  
22 bad faith, willful misconduct, or reckless indifference is not subject to override by the governing  
23 instrument. Prohibiting indemnification, advancement, or exoneration for such conduct is  
24 consistent with traditional trust doctrine. See Uniform Trust Code §1008 (2000); Restatement  
25 (Third) of Trusts §96, cmt. d (T.D. No. 5, 2009); 4 Austin Wakeman Scott, William Franklin  
26 Fratcher, and Mark L. Ascher, Scott and Ascher on Trusts §24.27.3 (5th ed. 2007).  
27

28 The Delaware Statutory Trust Act likewise limits the permissible scope of exoneration.  
29 See Delaware Statutory Trust Act §3806(e), which provides that the "governing instrument may  
30 provide for the limitation or elimination of any and all liabilities for breach of contract and breach  
31 of duty (including fiduciary duties) of a trustee . . . ; provided, that the governing instrument may  
32 not eliminate the implied contractual covenant of good faith and fair dealing."  
33

34 In *Nakahara v. The NS 1991 American Trust*, 739 A.2d 770 (Del. Ch. 1998), the Delaware

1 Chancery Court held that a Delaware statutory trust had the power to advance litigation expenses,  
2 but denied the trustees' request for indemnification on the ground of unclean hands.  
3

4 Limitations on permissible exoneration are also familiar corporate and alternative entity  
5 law. See, e.g., Delaware General Corporation Law §102(b)(7); Delaware Limited Liability  
6 Company Act §18-1101; [to come: Citation to MBCA 2.02(b)(4) and/or other uniform acts].  
7

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

15 The SEC has taken the position that, before advancing legal fees to a trustee of a mutual  
16 fund, the fund's "board must either (1) obtain assurances, such as by obtaining insurance or  
17 receiving collateral provided by the [trustee], that the advance will be repaid if the trustee is found  
18 to have engaged in disabling conduct, or (2) have a reasonable belief that the [trustee] has not  
19 engaged in disabling conduct and ultimately will be entitled to indemnification." SEC  
20 Interpretation: Matters Concerning Independent Directors of Investment Companies, Investment  
21 Company Act Rel. No. 24083 (Oct. 14, 1999), 1999 WL 820629, \*10. The SEC has also taken the  
22 position that there is a rebuttable presumption that an independent trustee (see Section 512) has not  
23 engaged in disabling conduct. *Id.*  
24

## 25 **SECTION 510. DIRECTION OF TRUSTEES.**

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

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

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

1 fiduciary duty by the trustee.

2 **Comment**

3 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust Act  
4 §34-517; Uniform Trust Code §808 (2000).

5  
6 Paragraph (a) ratifies the use of a directed trustee, meaning a trustee that must act in  
7 accordance with the directions of another person. Under paragraph (b), however, the trustee must  
8 not follow a direction that is manifestly contrary to the terms of the governing instrument or that  
9 the trustee knows or has reason to know would constitute a serious breach of fiduciary duty. For  
10 discussion, see Restatement (Third) of Trusts §75 (2007); Mary Clarke and Diana S.C. Zeydel,  
11 Directed Trusts: The Statutory Approaches to Authority and Liability, 35 Est. Plan. 14 (2008);  
12 Richard W. Nenno, Directed Trusts: Can Directed Trustees Limit Their Liability?, 21 Prob. and  
13 Prop. 45 (Nov./Dec. 2007).

14  
15 Paragraph (b) confirms that the governing instrument may provide that a person that has  
16 the power to direct the trustee is not a trustee and owes no duties, fiduciary or otherwise, to the  
17 statutory trust or a beneficial owner.

18  
19 The reference in paragraph (c) to “serious” breach of fiduciary duty is designed to exclude  
20 an inconsequential, immaterial, or technical breach that does not harm a beneficial owner. For  
21 some purposes, such as trustee removal, trust law distinguishes between “serious” and not serious  
22 breaches of trust. See Uniform Trust Code §706(b)(1) (2000); 2 Scott and Ascher on Trusts,  
23 supra, §11.10, at 661; Restatement (Second) of Trusts §107, cmt. b (1959).

24  
25 The trustee’s determination whether a direction is “manifestly contrary to the terms of the  
26 governing instrument” or “would constitute a serious breach of fiduciary duty by the trustee” is  
27 subject to the trustee’s fiduciary obligations. The drafting committee contemplated that, in accord  
28 with conventional trust practice, a trustee could seek judicial resolution of whether an instruction  
29 falls within the exclusion of paragraph (b) by applying to the appropriate court for instructions.  
30 See Restatement (Third) of Trusts §71 (2007).

31  
32 Under Section 103(f)(9), the obligation of a trustee not to follow a direction that is  
33 manifestly contrary to the terms of the governing instrument or that would constitute a serious  
34 breach of trust is not subject to override by the governing instrument.

35  
36 In conjunction with Section 511, this section facilitates the current practice in existing  
37 statutory trusts of creating a limited purpose trustee — for example in a securitization transaction  
38 with a person who is responsible for distribution computations or whose consent is required before  
39 the statutory trust can petition for bankruptcy.

40  
41 **SECTION 511. DELEGATION BY TRUSTEE.**

42 (a) A trustee may delegate duties and powers. The trustee shall exercise the care a person

1 in a similar position would reasonably believe appropriate under similar circumstances in:

2 (1) selecting an agent;

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

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

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

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

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

11 (e) An agent of a trustee submits to the jurisdiction of the courts of this state by accepting  
12 a delegation of powers or duties from a trustee.

13 **Comment**

14 **Principal Sources** – Delaware Statutory Trust Act §3806; Connecticut Statutory Trust Act  
15 §34-517; Uniform Trust Code §807.

16  
17 This section is intended to facilitate delegation to specialists. To that end, it reverses the  
18 outmoded common law rule against delegation by a trustee. In authorizing delegation, this section  
19 follows the Delaware Statutory Trust Act and the modern trend with respect to common-law trusts.  
20 Most states have abrogated the common law nondelegation rule with legislation based on one or  
21 more of Uniform Trust Code §807 (2000); Uniform Prudent Investor Act §9 (1994); Restatement  
22 (Third) of Trusts §80 (2007). See also John H. Langbein, Reversing the Nondelegation Rule of  
23 Trust-Investment Law, 59 Mo. L. Rev. 105 (1994).

24  
25 Paragraphs (a), (c), (d), and (e) are patterned on UTC §807 (2000), which is derived from  
26 Uniform Prudent Investor Act §9. This section deviates from prior uniform acts, however, on the  
27 issue of delegation to a co-trustee. Following the Delaware Statutory Trust Act, paragraph (b)  
28 treats delegation to a co-trustee in the same manner as delegation to another person. Traditional  
29 law, by contrast, disfavors delegation by one co-trustee to another. See Uniform Trust Code  
30 §703(e) (2000); Restatement (Third) of Trusts §81, cmt. c(1) (2007). The traditional rule is based  
31 on the assumption that, if the donor named more than one trustee, the donor intended each to be a  
32 check on the others. That policy does not fit commercial statutory trust practice, in which limited  
33 purpose trustees are common.

1  
2       There is an intrinsic tension in trust law between granting trustees broad powers that  
3 facilitate flexible and efficient trust administration, on the one hand, and protecting trust  
4 beneficiaries from the misuse of such powers on the other hand. Delegation, which is a species of  
5 trustee power, raises the same tension. If the trustee delegates effectively, the beneficiaries obtain  
6 the advantage of the agent’s specialized skills or whatever other attributes induced the trustee to  
7 delegate. But if the trustee delegates to a knave or an incompetent, the delegation can work harm  
8 upon the beneficiaries.  
9

10       This section is designed to strike the appropriate balance between the advantages and the  
11 hazards of delegation. It authorizes delegation under the limitations of paragraphs (a) and (c).  
12 Paragraph (a) requires the trustee to exercise the care a person in a similar position would  
13 reasonably believe appropriate under similar circumstances in selecting the agent, in establishing  
14 the terms of the delegation, and in reviewing the agent’s compliance with the terms of the  
15 delegation.  
16

17       The trustee’s duty of care in framing the terms of the delegation should protect the  
18 beneficial owners against overbroad delegation. For example, a trustee could not prudently agree  
19 to a delegation agreement containing an exculpation clause that leaves the statutory trust without  
20 recourse against reckless action or bad faith by the agent. Leaving the trust without a remedy for  
21 willful wrongdoing is inconsistent with the trustee’s duty of care in formulating the terms of the  
22 delegation.  
23

24       Although paragraph (d) exonerates the trustee from personal responsibility for the agent’s  
25 conduct when the delegation satisfies the standards of paragraph (a), paragraph (c) makes the agent  
26 responsible to the statutory trust. The beneficial owners can, therefore, rely upon the trustee to  
27 enforce the terms of the delegation.  
28

29       Mutual funds often receive a common set of services from an organization that specializes  
30 in operating mutual funds, which is typically the investment adviser or an affiliate. The trustees  
31 monitor the service providers and the Investment Company Act of 1940 requires the trustees to  
32 approve the contracts with the adviser and distributor. See 15 U.S.C. § 80a-15.  
33

34       **SECTION 512. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT**  
35 **COMPANY.**

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

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

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

8 **Comment**  
9

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

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

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

1 [ARTICLE] 6

2 BENEFICIARIES AND BENEFICIAL RIGHTS

3  
4 SECTION 601. BENEFICIAL INTEREST.

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

6 (b) A beneficial owner’s interest in a statutory trust is personal property regardless of the  
7 nature of the property of the trust.

8 (c) A beneficial owner’s interest is not an interest in specific property of a statutory trust.

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

11 Comment

12  
13 Principal Source – Delaware Statutory Trust Act §3805; Connecticut Statutory Trust Act  
14 §34-516; Revised Uniform Limited Liability Company Act §404 (2006).

15  
16 Paragraph (a) provides as a default rule that a beneficial owner’s interest in the statutory  
17 trust is freely transferable. This paragraph therefore overrides the rule in some states, which would  
18 otherwise be applicable to a statutory trust under Section 105, that makes a common-law trust  
19 spendthrift by default. See Jeffrey A. Schoenblum, 2009 Multistate Guide to Estate Planning Table  
20 9.05, Part 1, Column 2 (collecting authority). However, because the rule stated in paragraph (a) is not  
21 scheduled in Section 103(f), it is subject to override by the governing instrument. Section 104(e)(2)  
22 confirms that the governing instrument may limit a beneficial owner’s right to transfer its  
23 beneficial interest. Section 606 provides for a charging order against a beneficial owner’s rights to  
24 distributions in the event that the beneficial owner’s beneficial interest is not freely transferable.  
25

26 SECTION 602. VOTING OR CONSENT BY BENEFICIAL OWNERS. On any

27 matter that is to be acted on by beneficial owners, the following rules apply:

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

29 (2) The beneficial owners may take the action without a meeting, without notice, and  
30 without a vote, if beneficial owners having at least the minimum number of votes necessary to

1 authorize or take the action at a meeting at which all beneficial owners entitled to vote thereon  
2 were present and voted consent in a signed record. However, prompt notice of the action must be  
3 given to those beneficial owners that did not consent.

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

6 **Comment**  
7

8 **Principal Source** – Delaware Statutory Trust Act §3806; Delaware General Corporation  
9 Law §228.  
10

11 Except for a conversion, merger, or dissolution under Articles 7 and 8, nothing in this act  
12 provides for the beneficial owners to act on any matter. However, because the beneficial owners  
13 may be given such a right by the terms of the governing instrument, paragraph (a) supplies a  
14 default rule requiring a majority of the number of beneficial owners. The drafting committee  
15 contemplated that the governing instrument typically will address voting rules by providing a per  
16 capital or other share-based allocation of voting rights. However, the drafting committee declined  
17 the suggestion to try to incorporate such a rule as a default. Such rules are necessarily transaction-  
18 specific and hence infeasible to specify in a one-size-fits-all default. Compare Revised Uniform  
19 Partnership Act §401(f) (1997), which provides that “[e]ach partner has equal rights in the  
20 management and conduct of the partnership business.”  
21

22 The Investment Company Act of 1940, as amended, specifies the percentage of vote  
23 necessary to approve certain actions related to the investment company. In other instances, 1940  
24 Act requires the action to be approved at a shareholders’ meeting called for that purpose. In such  
25 instances, approval of the action by written consent without notice would not be valid. For  
26 example, Section 16(a) of the 1940 Act provides that “no person shall serve as a director of an  
27 investment company unless elected to that office by the holders of the outstanding voting  
28 securities of such company, at an annual or a special meeting duly called for that purpose.” In  
29 addition, investment companies seeking the vote of shareholders on specific actions must comply  
30 with rules governing the communication to, and solicitation of, their shareholders. See Rules 14a-  
31 1 to 14b-2 under the Securities Exchange Act of 1934, as amended. These rules are significantly  
32 more comprehensive than most state statutes and rules governing communications to shareholders  
33 and other aspects of a shareholder meeting.  
34

35 Section 104(c)(4) confirms that the rules stated in this Section are subject to override by  
36 the governing instrument.  
37

38 **SECTION 603. CONTRIBUTION BY BENEFICIAL OWNER.**

39 (a) A contribution of a beneficial owner to a statutory trust may be in cash, property, or

1 services rendered or a promissory note or other obligation to contribute cash or property or to  
2 perform services. A person may become a beneficial owner of a statutory trust and may receive a  
3 beneficial interest in a statutory trust without making a contribution or being obligated to make a  
4 contribution to the trust.

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

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

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

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

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

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

23 (5) redemption or sale of the defaulting beneficial owner's beneficial interest at a

1 value fixed by appraisal or by formula.

2 **Comment**

3  
4 **Principal Sources** – Delaware Statutory Trust Act §3802; Connecticut Statutory Trust Act  
5 §34-515.

6  
7 Although statutory trusts are used primarily as a mode of business organization in  
8 commercial transactions, paragraph (a) acknowledges that a beneficial owner may obtain a  
9 beneficial interest without an exchange of consideration, an event that is not uncommon in existing  
10 commercial practice. However, a statutory trust may not be used to effect a donative transfer  
11 because Section 302 prohibits a statutory trust from having a “predominantly donative purpose.”  
12

13 Paragraph (c) repudiates the hostility of traditional law to penalties, thereby resolving the  
14 doubts that arose prior to statutory confirmation about the validity of particular remedies for a  
15 beneficial owner’s breach.

16  
17 Section 104(e)(1) confirms that the governing instrument may provide the means by which  
18 beneficial ownership is determined and evidenced. Section 104(e)(12) confirms that the governing  
19 instrument may specify the conditions under which a person becomes a beneficial owner.  
20

21 **SECTION 604. DISTRIBUTION TO BENEFICIAL OWNER.**

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

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

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

30 **Comment**

31  
32 **Principal Source** – Delaware Statutory Trust Act §3805; Connecticut Statutory Trust Act  
33 §34-516; Revised Uniform Limited Liability Company Act §404 (2006).

34  
35 In the case of a statutory trust that is a registered investment company organized as an

1 open-end mutual fund, a shareholder (beneficial owner) may request a redemption of any or all of  
2 his shares (beneficial interests) and the statutory trust is obligated to honor the redemption request  
3 and pay the redemption proceeds within seven days (except under limited circumstances such as  
4 an emergency). See 15 U.S.C. Sec.80(a)-22(e). The redemption proceeds must be in the form  
5 of cash unless the open-end mutual fund has filed with the Securities and Exchange Commission a  
6 notification of election on Form N-18F-1. See 17 C.F.R. Sec. 270.18f-1. In such a case, the open-  
7 end mutual fund may pay the redemption in-kind (i.e., pay assets of the fund instead of cash) to a  
8 shareholder who during the previous 90-day period has redeemed \$250,000 or more of shares or  
9 shares equal to one or more percent of the net asset value of the fund. Id.

10  
11 Section 104(e)(14) confirms that the governing instrument may provide for the  
12 establishment of record dates for distributions.  
13

14 **SECTION 605. REDEMPTION OF BENEFICIAL INTEREST.** A statutory trust may  
15 acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series thereof.  
16 A beneficial interest so acquired is canceled.

17 **Comment**

18  
19 **Principal Source** – Delaware Statutory Trust Act §3818.  
20

21 A registered investment company organized as an open-end mutual fund generally is  
22 obligated to honor redemption requests by its shareholders at the net asset value per share next  
23 calculated after receipt of the request, with payment to be made in cash (or, in some cases, in kind)  
24 within seven days of the request. See 15 U.S.C. §80a-22(e); 17 CFR §270.22c-1. In narrowly  
25 defined circumstances, this redemption right and obligation may be postponed. See 15 U.S.C.  
26 §80a-22(e). The redemption proceeds may be reduced by various fees retained by the fund and/or  
27 its selling agent (i.e., sales loads and redemption fees). See 17 CFR §§270.22c-2; 270.6c-10.  
28

29 **SECTION 606. CHARGING ORDER.**

30 (a) If a beneficial interest is not freely transferable by a beneficial owner so that the  
31 transferee has all rights of the transferor, a judgment creditor of a beneficial owner may satisfy the  
32 judgment against the beneficial owner's beneficial interest only as provided in this section.

33 (b) On application by a judgment creditor of a beneficial owner, the [appropriate court]  
34 may issue a charging order against the beneficial owner's right to distributions from the trust for  
35 the unsatisfied part of the judgment and:

1 (1) appoint a receiver of the distributions subject to the charging order, with the  
2 power to enforce the beneficial owner's right to a distribution; and

3 (2) make all other orders necessary to give effect to the charging order.

4 (c) A charging order issued under subsection (b) constitutes a lien on the beneficial  
5 owner's right to distributions and requires the statutory trust to pay over to the judgment creditor  
6 any distribution that would otherwise be paid to the beneficial owner until the unsatisfied amount  
7 of the judgment has been satisfied.

8 (d) A statutory trust or beneficial owner that is not subject to the charging order may pay to  
9 the judgment creditor the full amount due under the judgment lien and thereby succeed to the  
10 rights of the judgment creditor, including the charging order.

11 (e) This [act] does not deprive a beneficial owner or a transferee of the beneficial interest  
12 of any exemption law applicable to the beneficial interest.

13 **Comment**

14 **Principal Source** - Revised Uniform Limited Liability Company Act §503 (2006).

15 [Commentary to come.]  
16

17 Under Section 103(f)(10), the right of a judgment creditor of a beneficial owner to seek a  
18 charging order may not be restricted by the governing instrument.  
19  
20  
21

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

27 **Comment**  
28



1 prevail without showing an injury or breach of duty to the trust.

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

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

7 (2) a demand would be futile.

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

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

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

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

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

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

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

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

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

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

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

6 **Comment**  
7

8 **Principal Sources** - Uniform Limited Partnership Act §§1002-1005 (2001); ALI Principles  
9 of Corporate Governance §7.01 (1994); Delaware Statutory Trust Act §3816; Connecticut  
10 Statutory Trust Act §34-522.  
11

12 Under Section 103(f)(12), the right of a beneficial owner to bring an action under this  
13 Section may not be eliminated by the governing instrument. However, Section 103(f)(12) permits  
14 the governing instrument to subject the right to additional standards and restrictions, including the  
15 requirement that beneficial owners owning a specified amount or type of beneficial interest join in  
16 bringing the action, provided that the additional standards and restrictions are not manifestly  
17 unreasonable.  
18

19 In preserving a mandatory right to bring suit, but allowing that right to be subjected to  
20 additional standards and restrictions that are not manifestly unreasonable, this section balances two  
21 policy aims that are in tension. On the one hand, without the right to bring an action, a beneficial  
22 owner might have no recourse in the event of trustee misconduct. On the other hand, without  
23 appropriate safeguards, a meritless action might be brought with the aim of extracting a quick  
24 settlement. See Reinier Kraakman, Hyun Park, and Steven Shavell, *When Are Shareholder Suits in*  
25 *Shareholder Interests?*, 82 *Georgetown L.J.* 1733 (1994).  
26

27 For a discussion of remedies, see the comment to Section 105.  
28

1 [ARTICLE] 7

2 CONVERSION AND MERGER

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

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

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

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

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

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

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

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

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

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

24 **Comment**

1           **Principal Source** – Uniform Limited Partnership Act §1101 (2001).

2  
3           This section contains definitions specific to this Article.

4  
5           Paragraph (7) includes a common-law trust that does not have a predominantly donative  
6 purpose within the definition of organization. Hence, such a common-law trust may convert to or  
7 merge with a statutory trust under this Article if such a conversion or merger is permitted by the  
8 trust’s governing law. Unlike the formation of a new statutory trust by filing a certificate of trust  
9 under Section 201, an option expressly afforded to a common-law trust under Section 1005,  
10 conversion or merger under this Article preserves continuity in the organization’s relationships  
11 with third parties. See Sections 705 and 709 and the comments thereto.

12  
13           [Discussion/cross-reference re exclusion of predominantly donative purpose to come].

14  
15           Under Section 103(f)(13), this definitions stated in this Section are not subject to override  
16 by the governing instrument.

17  
18           **SECTION 702. CONVERSION.**

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

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

23           and

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

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

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

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

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

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

2 **Comment**

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

4  
5 In a statutory conversion an existing organization changes its form, the jurisdiction of its  
6 governing law, or both. For example, a statutory trust formed under the laws of one jurisdiction  
7 might convert to a corporation, limited liability company, or limited partnership under the laws of  
8 the same or another jurisdiction (referred to in some statutes as “domestication”).

9  
10 In contrast to a merger, which involves at least two entities, a conversion involves only  
11 one. The converting and converted organization are the same organization. See Section 705(a).  
12 For this Act to apply to a conversion, either the converting or converted organization must be a  
13 statutory trust subject to this Act.

14  
15 A plan of conversion may provide that some persons with interests in the converting  
16 organization will receive interests in the converted organization while other persons with interests  
17 in the converting organization will receive some other form of consideration. Thus, a “squeeze  
18 out” conversion is possible.

19  
20 For a general discussion of conversion and its effect, see Model Entity Transactions Act  
21 §406 (2006) and comment 1 thereto.

22  
23 **SECTION 703. ACTION ON PLAN OF CONVERSION BY CONVERTING**  
24 **STATUTORY TRUST.**

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

27 (b) A converting statutory trust may amend a plan of conversion 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**

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

1 The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries is  
2 a default rule that may be overridden by the governing instrument. See Section 103(e)(6)(B).  
3 Hence, the governing instrument may state a different quantum of consent or provide a different  
4 approval mechanism. Varying this subsection’s rule means that a beneficial owner might be  
5 subject to a conversion (including a “squeeze out” conversion) without consent and with no  
6 appraisal remedy. If the converting organization is a statutory trust subject to this Act, the trustee  
7 of the converting organization is subject to the duties and obligations stated in this Act. Those  
8 duties would apply to the process and terms under which the conversion occurs. However, if the  
9 governing instrument allows for a conversion with less than unanimous consent, the mere fact that  
10 a beneficial owner objects to a conversion does not mean that a trustee that is favoring, arranging,  
11 consenting to, or effecting the conversion has breached a duty under this Act.  
12

13 In the case of a statutory trust that is a registered investment company organized as an  
14 open-end mutual fund, a shareholder may elect to redeem any or all beneficial interests in the  
15 statutory trust at the current net asset value per share, see 17 C.F.R. §270.22c-1, which is a price  
16 that is akin to an appraisal value. Except for limited circumstances, a mutual fund is required to  
17 pay proceeds to the redeeming shareholder within seven days of the date of redemption request.  
18 See 15 U.S.C. §80a-22(e). Thus, a mutual fund generally does not afford dissenting rights to its  
19 shareholders because any shareholder of a mutual fund being converted may redeem fund shares at  
20 net asset value prior to the closing date of the proposed conversion.  
21

#### 22 **SECTION 704. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

23 (a) After a conversion is approved:

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

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

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

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

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

32 (E) if the converted organization is a foreign organization not authorized to  
33 do business in this state, the street and mailing address of an office that the [Secretary of State]

1 may use for the purposes of Section 705(c); and

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

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

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

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

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

12 **Comment**

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

14  
15 Under paragraph (b) the effective date of a conversion is determined under the governing  
16 law of the converted organization.

17  
18 Under Section 103(f)(13), this Section is not subject to override by the governing  
19 instrument.

20

21 **SECTION 705. EFFECT OF CONVERSION.**

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

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

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

27 (2) all debts, obligations, and other liabilities of the converting organization,

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

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

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

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

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

14 (c) A converted organization that is a foreign organization consents to the jurisdiction of  
15 the courts of this state to enforce any debt, obligation, or other liability for which the converting  
16 statutory trust is liable, if, before the conversion, the converting statutory trust was subject to suit  
17 in this state on the debt, obligation, or other liability. A converted organization that is a foreign  
18 organization and not authorized to do business in this state may be served in accordance with  
19 Section 212.

20 **Comment**

21  
22 Principal Source – Uniform Limited Partnership Act §1105 (2001).

23  
24 Paragraph (a) confirms that conversion changes an organization’s legal type, but does not  
25 create a new organization. Unlike a merger, a conversion involves a single organization.  
26 Therefore under paragraph (b) a conversion does not transfer any of the organization’s rights or  
27 obligations. For further discussion, see Model Entity Transactions Act §406 (2006) and comment

1 1 thereto.

2

3 Under Section 103(f)(13), this Section is not subject to override by the governing  
4 instrument.

5

6 **SECTION 706. MERGER.**

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

9 (1) the merger is not prohibited by the governing law of any constituent  
10 organization; and

11 (2) each of the other organizations complies with its governing law in effecting the  
12 merger.

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

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

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

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

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

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

24

**Comment**

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

26

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

3  
4 A plan of merger may provide that some persons with interests in a constituent  
5 organization will receive interests in the surviving organization, while other persons with interests  
6 in the same constituent organization will receive some other form of consideration. Thus, a  
7 “squeeze out” merger is possible. As noted in the comment to Section 703, the duties and  
8 obligations stated in this Act apply to a trustee of a constituent organization that is a statutory trust  
9 subject to this Act. Those duties would apply to the process and terms under which a “squeeze  
10 out” merger occurs.  
11

## 12 SECTION 707. ACTION ON PLAN OF MERGER BY CONSTITUENT

### 13 STATUTORY TRUST.

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

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

18 (1) as provided in the plan; and

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

### 21 Comment

22 **Principal Sources** – Uniform Limited Partnership Act §1107 (2001).  
23

24 The requirement in paragraph (a) of unanimous consent by all trustees and beneficiaries is  
25 a default rule that may be overridden by the governing instrument. See Section 104(e)(6)(B).  
26 Hence, the governing instrument may state a different quantum of consent or provide a completely  
27 different approval mechanism. Varying this subsection’s rule means that a beneficial owner might  
28 be subject to a merger (including a “squeeze out” merger) without consent and with no appraisal  
29 remedy. The trustee of a constituent statutory trust is subject to the duties and obligations stated in  
30 this Act, and those duties would apply to the process and terms under which the merger occurs.  
31 However, if the governing instrument allows for a merger with less than unanimous consent, the  
32 mere fact a beneficial owner objects to a merger does not mean that a trustee that is favoring,  
33 arranging, consenting to, or effecting the merger has breached a duty under this Act.  
34

35 For the reasons discussed in the comment to Section 703, a mutual fund generally does not

1 afford dissenting rights to its shareholders because any shareholder of an acquired mutual fund  
2 may redeem acquired fund shares at net asset value prior to the closing date of the proposed  
3 reorganization of the acquired fund.  
4

5 **SECTION 708. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

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

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

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

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

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

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

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

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

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

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

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

25 (6) if the surviving organization is a foreign organization not authorized to do

1 business in this state, the street and mailing address of an office that the [Secretary of State] may  
2 use for the purposes of Section 709(b); and

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

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

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

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

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

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

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

14 **Comment**

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

16  
17 Under Section 103(f)(13), this Section is not subject to override by the governing  
18 instrument.  
19

20 **SECTION 709. EFFECT OF MERGER.**

21 (a) When a merger becomes effective:

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

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

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

1 the surviving organization;

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

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

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

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

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

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

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

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

20 (b) A surviving organization that is a foreign organization consents to the jurisdiction of  
21 the courts of this state to enforce any debt, obligation, or other liability owed by a constituent  
22 organization if, before the merger, the constituent organization was subject to suit in this state on  
23 the obligation. A surviving organization that is a foreign organization not authorized to do

1 business in this state may be served in accordance with Section 212.

2 **Comment**

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

4  
5 Under Section 103(f)(13), this Section is not subject to override by the governing  
6 instrument.

7

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

10 **Comment**

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

12

1 [ARTICLE] 8

2 DISSOLUTION AND WINDING UP

3  
4 SECTION 801. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved  
5 only by an administrative dissolution under Section 806 or by the filing of articles of dissolution  
6 under Section 802:

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

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

10 Comment

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

12  
13 This Section provides that a statutory trust may be dissolved only by administrative  
14 dissolution under Statute 806, or by the filing of articles of dissolution under Section 802 upon  
15 either the occurrence of an event or circumstance stated in the governing instrument or the  
16 unanimous consent of the beneficial owners. However, as confirmed by Section 306, the governing  
17 instrument need not provide for an event or circumstance that causes dissolution, or may provide  
18 that the trust is not dissolved even with the consent of all the beneficial owners.

19  
20 Under Section 103(f)(14), the provisions of this section other than paragraph (2) are not  
21 subject to override by the governing instrument.  
22

23 SECTION 802. ARTICLES OF DISSOLUTION.

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

26 (1) the name of the trust; and

27 (2) the date of the dissolution.

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

1 **Comment**

2 **Principal Source** – Revised Model Business Corporation Act §14.03 (2005).  
3

4 **SECTION 803. WINDING UP.**

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

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

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

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

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

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

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

17 (3) transfer the trust's property;

18 (4) settle disputes; and

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

20 (d) Trustees of a dissolved statutory trust that has disposed of claims under Sections 804 or  
21 805 are not liable for breach of duty with respect to claims against the trust that are barred or  
22 satisfied under Section 804 or 805.

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

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

5 **Comment**

6 **Principal Source** – Revised Uniform Limited Liability Company Act §§702, 708 (2006);  
7 Revised Model Business Corporation Act §14.09 (2005); Delaware Limited Liability Company  
8 Act §18-805.

9  
10 If the governing instrument of a statutory trust provides for the dissolution of the trust, then  
11 upon the event or circumstance that triggers dissolution, the statutory trust may continue only for  
12 the purpose of winding up.

13  
14 In winding up the statutory trust within a reasonable time, the trustees are neither required  
15 to undertake a fire sale of the property of the statutory trust on unfavorable terms nor permitted to  
16 continue the trust endlessly under the guise of winding down. The question of what period of time  
17 is “reasonable” under paragraph (c)(1) turns on the totality of the circumstances.

18  
19 Paragraph (e) provides for the possibility that after dissolution additional unfinished  
20 business of the statutory trust is discovered. [Discussion of property that comes in after  
21 termination, referencing Restatement (Third) of Trusts and Scott and Ascher on Trusts, to come.]

22  
23 Under Section 103(f)(14), the provisions of this section are not subject to override by the  
24 governing instrument.

25  
26 **SECTION 804. NOTICE TO CLAIMANT.**

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

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

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

32 (3) state the deadline for receipt of the claim, which may not be less than 120 days

33 after the date the notice is received by the claimant; and

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

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

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

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

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

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

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

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

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

13 **Comment**

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

15 [Commentary to come, drawing on the MBCA provision that is the ultimate source of these  
16 provisions.]  
17

18 Under Section 103(f)(14), the provisions of this section are not subject to override by the  
19 governing instrument.  
20

21

22 **SECTION 805. PUBLICATION OF NOTICE.**

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

25 (b) A notice under subsection (a) must:

26 (1) be published at least once in a newspaper of general circulation in the [county]

27 in this state in which the dissolved statutory trust’s principal office is located or, if it has none in

1 this state, in the [county] in which the trust’s designated office was last located;

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

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

6 (c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), unless  
7 the claimant commences an action to enforce the claim against the trust not later than [three] years  
8 after the publication date of the notice, the claim of each of the following claimants is barred:

9 (1) a claimant that did not receive notice in a record under Section 804;

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

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

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

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

19 **Comment**

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

21 [Commentary to come, including treatment of the three year bracketed term, drawing on  
22 the MBCA provision that is the ultimate source of these provisions.]

23  
24  
25 Under Section 103(f)(14), the provisions of this section are not subject to override by the  
26 governing instrument.

27





1 reason for rejection to the trust’s agent for service of process.

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

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

8 **Comment**

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

10  
11 Under Section 103(f)(14), the provisions of this section are not subject to override by the  
12 governing instrument.

13  
14

1 [ARTICLE] 9

2 FOREIGN STATUTORY TRUSTS

3  
4 SECTION 901. GOVERNING LAW.

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

6 (1) the internal affairs of the trust;

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

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

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

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

16 Comment

17  
18 **Principal Sources** – Revised Uniform Limited Liability Company §801 (2006); Uniform  
19 Limited Partnership Act §901 (2001); Delaware Statutory Trust Act §3851; Connecticut Statutory  
20 Trust Act §34-530.

21  
22 Paragraph (a) parallels and is analogous in scope and effect to Section 301 for a domestic  
23 statutory trust. Paragraph (b) allows for a foreign statutory trust to operate domestically even if  
24 the law governing it is different from the laws governing domestic statutory trusts, but under  
25 paragraph (c) a foreign statutory trust cannot engage in any business or exercise any power that a  
26 domestic statutory trust could not.

27  
28 [To come: Discussion of statutory trust from a nonseries state.]

29  
30 Under Section 103(f)(15), this Section is not subject to override by the governing  
31 instrument.



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

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

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

6 (3) maintaining accounts or depositing assets in financial institutions;

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

10 (5) selling through independent contractors;

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

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

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

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

20 (10) transacting business in interstate commerce.

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

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

3 **Comment**

4  
5 **Principal Sources** – Uniform Limited Partnership Act §903 (2001).  
6

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

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

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

21 **Comment**

22  
23 **Principal Source** –Uniform Limited Partnership Act §904 (2001).  
24

25 Under Section 103(f)(14), this Section is not subject to override by the governing  
26 instrument.  
27

28 **SECTION 905. CERTIFIED COPY OF CERTIFICATE OF REGISTRATION.**

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

1 cancellation.

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

6 **Comment**

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

8 [Comment to come.]  
9

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

13 **SECTION 906. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.**

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

22 (b) If a qualified foreign statutory trust changes its name to one that does not comply with  
23 Section 207, it may not thereafter transact business in this state until it complies with subsection

24 (a) and obtains an amended certificate of registration.

25 **Comment**  
26

1           **Principal Source** – Uniform Limited Partnership Act §905 (2001).  
2

3           Under Section 103(f)(14), this Section is not subject to override by the governing  
4 instrument.  
5

6           **SECTION 907. REVOCATION OF CERTIFICATE OF REGISTRATION.**

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

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

10                   (2) deliver for filing a statement of change by the 60th day after a change has  
11 occurred in the name or address of the agent;

12                   (3) file an annual report pursuant to Section 213 by the 60th day after it is due; or

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

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

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

21                   (2) the basis for the revocation.

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

25           (d) If a foreign statutory trust cures the failure stated in the notice of revocation under

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

5 **Comment**

6  
7 **Principal Source** – Uniform Limited Partnership Act §906 (2001).

8  
9 Under Section 103(f)(14), this Section is not subject to override by the governing  
10 instrument.  
11

12 **SECTION 908. CANCELLATION OF CERTIFICATE OF REGISTRATION.**

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

- 16 (1) the name of the trust;  
17 (2) the date of filing of its initial certificate of registration;  
18 (3) that the certificate of registration is being canceled; and  
19 (4) any other information as determined by the trustee filing the statement.

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

22 **Comment**

23  
24 **Principal Source** – Uniform Limited Partnership Act §907 (2001).

25  
26 Under Section 103(f)(14), this Section is not subject to override by the governing  
27 instrument.  
28

29 **SECTION 909. EFFECT OF FAILURE TO HAVE CERTIFICATE OF**

1 **REGISTRATION.**

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

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

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

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

13 **Comment**

14 **Principal Source** – Uniform Limited Partnership Act §907 (2001).

15  
16 Under Section 103(f)(14), this Section is not subject to override by the governing  
17 instrument.  
18  
19

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

23 **Comment**

24 **Principal Source** – Uniform Limited Partnership Act §908 (2001).

25  
26 Under Section 103(f)(14), this Section is not subject to override by the governing  
27 instrument.  
28  
29

1 [ARTICLE] 10

2 MISCELLANEOUS PROVISIONS

3  
4 SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

7 Comment

8  
9 Principal Source – Uniform Limited Partnership Act §1201 (2001).

10  
11 Under Section 103(f)(16), this Section is not subject to override by the governing  
12 instrument.

13  
14 SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

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

20 Comment

21  
22 Principal Source – Uniform Limited Partnership Act §1203 (2001).

23  
24 Under Section 103(f)(16), this Section is not subject to override by the governing  
25 instrument.

26  
27  
28 SECTION 1003. SAVING CLAUSE. This [act] does not affect an action commenced,

29 proceeding brought, or right accrued before this [act] takes effect.

30 Comment





1 become a statutory trust is provided by the conversion provisions of Article 6. Unlike the  
2 formation of a new statutory trust by filing a certificate of trust under Section 201, the conversion  
3 provisions of Article 6 allow for the conversion of another organization into the statutory trust  
4 form while preserving continuity in the converting organization’s relationships with third parties.  
5 See the Comments to Sections 701 and 705.  
6

7 The drafting committee contemplated that some enacting jurisdictions might modify this  
8 section—particularly paragraphs (c) and (d), which are bracketed to signal that uniformity is not  
9 expected—to address other transition problems arising from differences between this Act and prior  
10 law. For example, an enacting jurisdiction might choose to allow trusts formed under a prior  
11 statute to remain governed by the prior statute for longer than the two years suggested in paragraph  
12 (d).  
13

14 Under Section 103(f)(16), this Section is not subject to override by the governing  
15 instrument.  
16

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

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

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

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

24 **Comment**

25 **Principal Sources** – Uniform Limited Partnership Act §1205 (2001).  
26

27 Paragraphs (1) and (2) supply model language for enacting jurisdictions that have  
28 previously enacted a Statutory Trust Act or a Business Trust Act.  
29

30 Paragraph (3) supplies model language for enacting jurisdictions that have previously  
31 enacted a Real Estate Investment Trust statute. A real estate investment trust, also known as a  
32 REIT, is not a type of trust but rather is a tax status awarded to any entity that qualifies under 26  
33 U.S.C. §§856 et seq., or that qualifies as a real estate mortgage investment conduit under 26 U.S.C.  
34 §860D. Although the Internal Revenue Code at one time favored the trust form for the  
35 organization of a REIT, the code today does not regulate the form of entity. [Citation to come.]  
36 Accordingly, there is no longer any reason why a REIT must be organized as a trust, whether  
37 statutory or common law. Indeed, data assembled by the reporter shows that in contemporary

1 practice most publicly-traded REITs are organized as Maryland corporations, not as trusts.  
2 Nonetheless, prior to the liberalization of the tax code, a number of states enacted REIT statutes  
3 that authorize the creation of a trust entity designed to qualify as a REIT under the code. Because  
4 a statutory trust under this Act could serve the same purpose, the drafting committee contemplated  
5 that enacting jurisdictions might take the occasion of enacting this act to repeal their REIT statutes.  
6

7 Under Section 103(f)(16), this Section is not subject to override by the governing  
8 instrument.  
9

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

11 **Comment**

12

13 **Principal Source** – Uniform Limited Partnership Act §1204 (2001).  
14

15 Section 1005 specifies how this Act affects statutory trusts, with special provisions  
16 pertaining to statutory trusts formed before the Act’s effective date. There are no comparable  
17 provisions for foreign statutory trusts. Therefore, once this Act is effective, it applies immediately  
18 to all foreign statutory trusts, whether formed before or after the Act’s effective date.  
19

20 Under Section 103(f)(16), this Section is not subject to override by the governing  
21 instrument.