

HOUSE BILL NO. HB0077

Uniform Trust Code.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the Uniform Trust Code; creating the
 2 Uniform Trust Code; repealing the Uniform Trustees' Powers
 3 Act; repealing the Uniform Prudent Investor Act and
 4 incorporating provisions of that act within the Uniform
 5 Trust Code; amending the rule against perpetuities as
 6 specified; providing for electronic signatures as
 7 specified; conforming provisions; specifying applicability
 8 of the act; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 4-10-101 through 4-10-111, 4-10-201
 13 through 4-10-204, 4-10-301 through 4-10-305, 4-10-401
 14 through 4-10-418, 4-10-501 through 4-10-508, 4-10-601
 15 through 4-10-604, 4-10-701 through 4-10-717, 4-10-801
 16 through 4-10-817, 4-10-901 through 4-10-913, 4-10-1001

1 through 4-10-1014 and 4-10-1101 through 4-10-1104 are
2 created to read:

3

4 TITLE 4

5 TRUSTS

6

7 CHAPTER 10

8 UNIFORM TRUST CODE

9

10 ARTICLE 1

11 GENERAL PROVISIONS AND DEFINITIONS

12

13 **4-10-101. Short title.**

14

15 This act may be cited as the Uniform Trust Code.

16

17 **4-10-102. Scope.**

18

19 This act applies to charitable or noncharitable express
20 trusts and trusts created pursuant to a statute, judgment
21 or decree that requires the trust to be administered in the
22 manner of an express trust.

23

24 **4-10-103. Definitions.**

1

2 (a) As used in this act:

3

4 (i) "Action," with respect to an act of a
5 trustee, includes a failure to act;

6

7 (ii) "Beneficiary" means a person that:

8

9 (A) Has a present or future beneficial
10 interest in a trust, vested or contingent; or

11

12 (B) In a capacity other than that of
13 trustee, holds a power of appointment over trust property.

14

15 (iii) "Charitable trust" means a trust, or
16 portion of a trust, created for a charitable purpose
17 described in W.S. 4-10-406(a);

18

19 (iv) "Conservator" for the purposes of this act
20 means as defined in W.S. 3-1-101(a)(iii);

21

22 (v) "Environmental law" means a federal, state,
23 or local law, rule, regulation, or ordinance relating to
24 protection of the environment;

1

2 (vi) "Excluded fiduciary" means any fiduciary
3 excluded from exercising certain powers under the trust
4 instrument which powers may be exercised by the settlor,
5 trust advisor, trust protector or other persons designated
6 by the instrument;

7

8 (vii) "Fiduciary" means a trustee under a
9 testamentary or other trust, an executor, administrator, or
10 personal representative of a decedent's estate, or any
11 other party including a trust advisor or a trust protector,
12 who is acting in a fiduciary capacity for any person, trust
13 or estate;

14

15 (viii) "Guardian" for the purposes of this act
16 means as defined in W.S. 3-1-101(a)(v);

17

18 (ix) "Incapacity" or "incompetency" or
19 "incompetent person" means as defined in W.S.
20 3-1-101(a)(ix) unless otherwise defined by the terms of the
21 trust;

22

23 (x) "Interests of the beneficiaries" means the
24 beneficial interests provided in the terms of the trust;

1

2 (xi) "Jurisdiction," with respect to a
3 geographic area, includes a state or country;

4

5 (xii) "Person" means an individual, corporation,
6 business trust, estate, trust, partnership, limited
7 liability company, association, joint venture, government,
8 governmental subdivision, agency or instrumentality, public
9 corporation or any other legal or commercial entity;

10

11 (xiii) "Power of withdrawal" means a presently
12 exercisable general power of appointment other than a power
13 exercisable only upon consent of the trustee or a person
14 holding an adverse interest;

15

16 (xiv) "Property" means anything that may be the
17 subject of ownership, whether real or personal, legal or
18 equitable, or any interest therein;

19

20 (xv) "Qualified beneficiary" means a beneficiary
21 who is currently entitled to distributions of income or
22 principal from the trust or has a vested remainder interest
23 in the trust;

24

1 (xvi) "Regulated financial services institution"
2 means a financial institution as defined in W.S.
3 13-1-101(a)(ix) and any other financial services provider
4 regulated by the state of Wyoming or agency of the federal
5 government;

6

7 (xvii) "Revocable," as applied to a trust, means
8 revocable by the settlor without the consent of the trustee
9 or a person holding an adverse interest;

10

11 (xviii) "Settlor" means a person, including a
12 testator, grantor or trust maker, who creates, or
13 contributes property to, a trust. If more than one (1)
14 person creates or contributes property to a trust, each
15 person is a settlor of the portion of the trust property
16 attributable to that person's contribution except to the
17 extent another person has the power to revoke or withdraw
18 that portion;

19

20 (xix) "Spendthrift provision" means a term of a
21 trust which restrains both voluntary and involuntary
22 transfer of a beneficiary's interest and shall not include
23 or prevent a disclaimer of an interest of a beneficiary;

24

1 (xx) "State" means a state of the United States,
2 the District of Columbia, Puerto Rico, the United States
3 Virgin Islands, or any territory or insular possession
4 subject to the jurisdiction of the United States. The term
5 includes an Indian tribe or band recognized by federal law
6 or formally acknowledged by a state;

7

8 (xxi) "Terms of a trust" means the manifestation
9 of the settlor's intent regarding a trust's provisions as
10 expressed in the trust instrument or as may be established
11 by other evidence that would be admissible in a judicial
12 proceeding;

13

14 (xxii) "Trust advisor" means the settlor of a
15 trust instrument or other parties whose appointment is
16 provided in the trust instrument and whose powers are
17 defined and limited in W.S. 4-10-712;

18

19 (xxiii) "Trust protector" means any
20 disinterested party whose appointment is provided for in
21 the trust instrument or who is appointed by a court of
22 competent jurisdiction and whose powers are defined and
23 limited in W.S. 4-10-710;

24

1 (xxiv) "Trust instrument" means an instrument
2 executed by the settlor that contains terms of the trust,
3 including any amendments thereto;

4

5 (xxv) "Trustee" includes an original, additional
6 and successor trustee and a cotrustee;

7

8 (xxvi) "This act" means W.S. 4-10-101 through
9 4-10-1104.

10

11 **4-10-104. Knowledge.**

12

13 (a) Subject to subsection (b) of this section, a
14 person has knowledge of a fact if the person:

15

16 (i) Has actual knowledge of it;

17

18 (ii) Has received a notice or notification of
19 it; or

20

21 (iii) From all the facts and circumstances known
22 to the person at the time in question, has reason to know
23 it.

24

1 (b) An organization that conducts activities through
2 employees has notice or knowledge of a fact involving a
3 trust only from the time the information was received by an
4 employee having responsibility to act for the trust, or
5 would have been brought to the employee's attention if the
6 organization had exercised reasonable diligence. An
7 organization exercises reasonable diligence if it maintains
8 reasonable routines for communicating significant
9 information to the employee having responsibility to act
10 for the trust and there is reasonable compliance with the
11 routines. Reasonable diligence does not require an employee
12 of the organization to communicate information unless the
13 communication is part of the individual's regular duties or
14 the individual knows a matter involving the trust would be
15 materially affected by the information.

16

17 **4-10-105. Default and mandatory rules.**

18

19 (a) Except as otherwise provided in the terms of the
20 trust, this act governs the duties and powers of a trustee,
21 relations among trustees and the rights and interests of a
22 beneficiary.

23

1 (b) The terms of a trust shall prevail over any
2 provision of this act except:

3

4 (i) The requirements for creating a trust;

5

6 (ii) The duty of a trustee to act in good faith
7 and in accordance with the purposes of the trust;

8

9 (iii) The requirement that a trust and its terms
10 be for the benefit of its beneficiaries, and that the trust
11 have a purpose that is lawful, not contrary to public
12 policy, and possible to achieve;

13

14 (iv) The power of the court to modify or
15 terminate a trust under W.S. 4-10-411 through 4-10-417;

16

17 (v) The effect of a spendthrift provision and
18 the rights of certain creditors and assignees to reach a
19 trust as provided in article 5 of this act;

20

21 (vi) The power of the court under W.S. 4-10-702
22 to require, dispense with, or modify or terminate a bond;

23

1 (vii) The power of the court under W.S.
2 4-10-708(b) to adjust a trustee's compensation specified in
3 the terms of the trust which is unreasonably low or high;

4
5 (viii) The effect of an exculpatory term under
6 W.S. 4-10-1008;

7
8 (ix) The rights under W.S. 4-10-1010 through
9 4-10-1013 of a person other than a trustee or beneficiary;

10
11 (x) Periods of limitation for commencing a
12 judicial proceeding;

13
14 (xi) The power of the court to take such action
15 and exercise such jurisdiction as may be necessary in the
16 interests of justice; and

17
18 (xii) The subject-matter jurisdiction of the
19 court and venue for commencing a proceeding as provided in
20 W.S. 4-10-203 and 4-10-204.

21

22 **4-10-106. Common law of trusts; principles of equity.**

23

1 The common law of trusts and principles of equity
2 supplement this act, except to the extent modified by this
3 act or another statute of this state.

4

5 **4-10-107. Governing law.**

6

7 (a) The meaning and effect of the terms of a trust
8 are determined by:

9

10 (i) The law of the jurisdiction designated in
11 the terms of the trust; or

12

13 (ii) In the absence of a controlling designation
14 in the terms of the trust, the law of the jurisdiction
15 having the most significant relationship to the matter at
16 issue.

17

18 (b) The law of the jurisdiction designated in the
19 terms of the trust may be changed to the principal place of
20 administration by a court with subject matter jurisdiction.

21

22 **4-10-108. Principal place of administration.**

23

1 (a) Without precluding other means for establishing a
2 sufficient connection with the designated jurisdiction,
3 terms of a trust designating the principal place of
4 administration are valid and controlling if:

5

6 (i) A trustee's principal place of business is
7 located in, or a trustee is a resident of, the designated
8 jurisdiction;

9

10 (ii) All or part of the administration occurs in
11 the designated jurisdiction; or

12

13 (iii) The settlor was a resident of the
14 designated jurisdiction at creation of the trust
15 instrument.

16

17 (b) Unless otherwise designated as provided in
18 subsection (a) of this section or changed as provided in
19 subsection (c) of this section, the principal
20 administration of a trust is the usual place where the
21 activity of the trust is carried on by the trustee who is
22 primarily responsible for the day-to-day administration of
23 the trust.

24

1 (c) Without precluding the right of the court to
2 order, approve or disapprove a transfer, the trustee may
3 transfer the trust's principal place of administration to
4 another state or to a jurisdiction outside of the United
5 States.

6
7 (d) The trustee shall notify the qualified
8 beneficiaries in writing of a proposed transfer of a
9 trust's principal place of administration to another
10 jurisdiction not less than sixty (60) days before
11 initiating the transfer, unless waived by written consent
12 of all qualified beneficiaries. The notice of proposed
13 transfer shall include:

14
15 (i) The name of the jurisdiction to which the
16 principal place of administration is to be transferred;

17
18 (ii) The address and telephone number at the new
19 location at which the trustee can be contacted;

20
21 (iii) An explanation of the reasons for the
22 proposed transfer;

23

1 (iv) The date on which the proposed transfer is
2 anticipated to occur; and

3

4 (v) The date, not less than sixty (60) days
5 after the giving of the notice, by which the qualified
6 beneficiary is required to notify the trustee of an
7 objection to the proposed transfer.

8

9 (e) The authority of a trustee under this section to
10 transfer a trust's principal place of administration
11 terminates if a qualified beneficiary notifies the trustee
12 of an objection to the proposed transfer on or before the
13 date specified in the notice.

14

15 (f) In connection with a transfer of the trust's
16 principal place of administration, the trustee may transfer
17 some or all of the trust property to a successor trustee
18 designated in the terms of the trust or appointed pursuant
19 to W.S. 4-10-704.

20

21 **4-10-109. Methods and waiver of notice.**

22

23 (a) Notice to a person under this act or the sending
24 of a document to a person under this act shall be

1 accomplished in a manner reasonably suitable under the
2 circumstances and that results in receipt of the notice or
3 document. Permissible methods of notice, or for sending a
4 document, include first-class mail, personal delivery,
5 delivery to the person's last known place of residence or
6 place of business or a properly directed electronic
7 message.

8

9 (b) Notice otherwise required under this act or a
10 document otherwise required to be sent under this act need
11 not be provided to a person whose identity or location is
12 unknown to and not reasonably ascertainable by the trustee.

13

14 (c) Notice under this act or the sending of a
15 document under this act may be waived in writing by the
16 person to be notified or sent the document.

17

18 (d) Notice of a judicial proceeding shall be given as
19 provided in the Wyoming Rules of Civil Procedure.

20

21 **4-10-110. Others treated as qualified beneficiaries.**

22

23 (a) Whenever notice to qualified beneficiaries of a
24 trust is required under this act before the death of the

1 settlor, the trustee may give notice to any beneficiary
2 from whom the trustee has received a written request for
3 notice if the trustee has the written consent of the
4 settlor.

5

6 (b) Whenever notice to qualified beneficiaries of a
7 trust is required under this act after the death of the
8 settlor, the trustee shall give notice to any beneficiary
9 from whom the trustee has received a written request for
10 notice unless the terms of the trust specify otherwise.

11

12 (c) A charitable organization expressly mandated to
13 receive distributions under the terms of a charitable trust
14 or a person appointed to enforce a trust created for the
15 care of an animal or another noncharitable purpose as
16 provided in W.S. 4-10-409 or 4-10-410 has the rights of a
17 qualified beneficiary under this act.

18

19 (d) The attorney general of this state may exercise
20 the rights of a qualified beneficiary with respect to a
21 charitable trust having its principal place of
22 administration in this state by notifying the trustee by
23 written notice.

24

1 **4-10-111. Nonjudicial settlement agreements.**

2

3 (a) For purposes of this section, "interested
4 persons" means persons whose consent would be required in
5 order to achieve a binding settlement if the settlement is
6 to be approved by the court.

7

8 (b) Except as otherwise provided in subsection (c) of
9 this section, interested persons may enter into a binding
10 nonjudicial settlement agreement with respect to any matter
11 involving a trust.

12

13 (c) A nonjudicial settlement agreement is valid only
14 to the extent it does not violate a material purpose of the
15 trust and includes terms and conditions that could be
16 properly approved by the court under this act or other
17 applicable law.

18

19 (d) Matters that may be resolved by a nonjudicial
20 settlement agreement include:

21

22 (i) The interpretation or construction of the
23 terms of the trust;

24

1 (ii) The approval of a trustee's report or
2 accounting;

3

4 (iii) Direction to a trustee to refrain from
5 performing a particular act or the grant to a trustee of
6 any necessary or desirable power;

7

8 (iv) The resignation or appointment of a trustee
9 and the determination of a trustee's compensation;

10

11 (v) Transfer of a trust's principal place of
12 administration; and

13

14 (vi) Liability of a trustee for an action
15 relating to the trust.

16

17 (e) Any interested person may request the court to
18 approve a nonjudicial settlement agreement, to determine
19 whether the representation as provided in article 3 of this
20 act was adequate, and to determine whether the agreement
21 contains terms and conditions the court could have properly
22 approved.

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ARTICLE 2

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JUDICIAL PROCEEDINGS

4-10-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions, an action to declare rights, or to appoint a trust protector.

4-10-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

1

2 (b) With respect to their interests in the trust, the
3 beneficiaries of a trust having its principal place of
4 administration in this state are subject to the
5 jurisdiction of the courts of this state regarding any
6 matter involving the trust. By accepting a distribution
7 from such a trust, the recipient submits personally to the
8 jurisdiction of the courts of this state regarding any
9 matter involving the trust.

10

11 (c) This section does not preclude other methods of
12 obtaining jurisdiction over a trustee, beneficiary or other
13 person receiving property from the trust.

14

15 **4-10-203. Subject matter jurisdiction.**

16

17 (a) The district court has exclusive jurisdiction of
18 proceedings in this state brought by a trustee or
19 beneficiary concerning the administration of a trust.

20

21 (b) The district court has concurrent jurisdiction
22 with other courts of this state in other proceedings
23 involving a trust.

24

1 **4-10-204. Venue.**

2

3 (a) Except as otherwise provided in subsections (b)
4 and (c) of this section, venue for a judicial proceeding
5 involving a trust is in the county of this state in which
6 the trust's principal place of administration is or will be
7 located and, if the trust is created by will and the estate
8 is not yet closed, in the county in which the decedent's
9 estate is being administered.

10

11 (b) If a trust has no trustee, venue for a judicial
12 proceeding for the appointment of a trustee is in a county
13 of this state in which a beneficiary resides, in a county
14 in which any trust property is located, and if the trust is
15 created by will, in the county in which the decedent's
16 estate was or is being administered.

17

18 (c) If the governing law of a trust designates this
19 state, the venue for judicial proceeding involving a trust
20 is in a county of this state in which a beneficiary
21 resides, in a county in which any trust property is located
22 or in a county where the trustee maintains an office.

23

1 (d) If venue is not established under subsection (c)
2 of this section, venue shall be proper in the first
3 judicial district court in Laramie county.

4

5

ARTICLE 3

6

REPRESENTATION

7

8

4-10-301. Representation; basic effect.

9

10 (a) Notice to a person who may represent and bind
11 another person under this article has the same effect as if
12 notice were given directly to the other person.

13

14 (b) The consent of a person who may represent and
15 bind another person under this article is binding on the
16 person represented unless the person represented objects to
17 the representation by notifying the trustee or the
18 representative before the consent would otherwise have
19 become effective.

20

21 (c) Except as otherwise provided in W.S. 4-10-413 and
22 4-10-602, a person who under this article may represent a
23 settlor who lacks capacity may receive notice and give a
24 binding consent on the settlor's behalf.

1

2 **4-10-302. Representation by holder of general**
3 **testamentary power of appointment.**

4

5 The holder of a general testamentary power of appointment
6 may represent and bind persons whose interests, as
7 permissible appointees, takers in default, or otherwise,
8 are subject to the power.

9

10 **4-10-303. Representation by fiduciaries and parents.**

11

12 (a) To the extent there is no conflict of interest
13 between the representative and the person represented or
14 among those being represented with respect to a particular
15 question or dispute:

16

17 (i) A conservator may represent and bind the
18 estate that the conservator controls;

19

20 (ii) A guardian may represent and bind the ward
21 if a conservator of the ward's estate has not been
22 appointed;

23

1 (iii) An agent having authority to act with
2 respect to the particular question or dispute may represent
3 and bind the principal;

4

5 (iv) A trustee may represent and bind the
6 beneficiaries of the trust;

7

8 (v) A personal representative of a decedent's
9 estate may represent and bind persons interested in the
10 estate;

11

12 (vi) A parent with primary legal custody may
13 represent and bind each of the parent's minor or
14 incapacitated children if no legal representative has been
15 appointed by a court for that child, unborn children of
16 that parent, the unborn descendants of each child, and each
17 minor or incapacitated descendant of each child if no legal
18 representative has been appointed by a court for that
19 descendant, to the extent there is no conflict of interest
20 between the parent and the person or class of persons
21 represented with respect to a particular question or
22 dispute; and

23

1 (vii) A beneficiary who is not a qualified
2 beneficiary shall be represented and bound by the
3 decisions, actions and omissions of the qualified
4 beneficiary through whom, or by reason of whose death or
5 exercise of a power of appointment, the beneficiary will
6 receive his interest, if any, in the trust, including
7 without limitations for the purposes of W.S. 4-10-802,
8 4-10-813, 4-10-1005 and 4-10-1009.

9

10 (b) A trustee may rely on a certificate of the
11 fiduciary described in paragraphs (a)(i) through (v) of
12 this section with regard to whether or not any such
13 conflict of interest exists.

14

15 **4-10-304. Representation by person having**
16 **substantially identical interest.**

17

18 Unless otherwise represented, a minor, incapacitated or
19 unborn individual, or a person whose identity or location
20 is unknown and not reasonably ascertainable, may be
21 represented by and bound by another having a substantially
22 identical interest with respect to the particular question
23 or dispute, but only to the extent there is no conflict of

1 interest between the representative and the person
2 represented.

3

4 **4-10-305. Appointment of representative.**

5

6 (a) If the court determines that an interest is not
7 represented under this article, or that the otherwise
8 available representation might be inadequate, the court may
9 appoint a representative to receive notice, give consent
10 and otherwise represent, bind and act on behalf of a minor,
11 incapacitated or unborn individual, or a person whose
12 identity or location is unknown. A representative may be
13 appointed to represent several persons or interests.

14

15 (b) A representative may act on behalf of the
16 individual represented with respect to any matter arising
17 under this act, whether or not a judicial proceeding
18 concerning the trust is pending.

19

20 (c) In making decisions, a representative may
21 consider general benefit accruing to the living members of
22 the individual's family.

23

24

ARTICLE 4

1 CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

2

3 **4-10-401. Methods of creating trust.**

4

5 (a) A trust may be created by:

6

7 (i) Transfer of property to another person as
8 trustee during the settlor's lifetime or by will or other
9 disposition taking effect upon the settlor's death;

10

11 (ii) Declaration by the owner of property that
12 the owner holds identifiable property as trustee;

13

14 (iii) Exercise of a power of appointment in
15 favor of a trustee;

16

17 (iv) The court as provided in W.S.
18 3-3-607(a)(vi); or

19

20 (v) An agent under a power of attorney where the
21 express authority is designated with the appointment
22 document and where the trust directs distribution upon the
23 settlor's death consistent with an existing will or other
24 testamentary instrument or in absence thereof in accordance

1 with the law of intestate succession as provided in W.S.
2 2-4-101.

3

4 **4-10-402. Title of trust property.**

5

6 (a) Property transferred to a trust shall be titled:

7

8 (i) If it is real property, in accordance with
9 W.S. 34-2-122; and

10

11 (ii) If it is personal property, in:

12

13 (A) The name of the current trustee as the
14 trustee of such trust;

15

16 (B) The name of "the trustee" as the
17 trustee of such trust;

18

19 (C) The name of the nominee of the trustee;

20 or

21

22 (D) The name of the trust.

23

1 (b) Any reference to the trustee shall be deemed to
2 include any successor or substitute trustee serving from
3 time to time.

4

5 **4-10-403. Requirements for creation.**

6

7 (a) A trust is created only if:

8

9 (i) The settlor has capacity to create a trust;

10

11 (ii) The settlor indicates an intention to
12 create the trust;

13

14 (iii) The trust has a definite beneficiary or
15 is:

16

17 (A) A charitable trust;

18

19 (B) A trust for the care of an animal, as
20 provided in W.S. 4-10-409; or

21

22 (C) A trust for a noncharitable purpose, as
23 provided in W.S. 4-10-410.

24

1 (iv) The trustee has duties to perform; and

2

3 (v) The same person is not the sole trustee and
4 sole beneficiary.

5

6 (b) A beneficiary is definite if the beneficiary can
7 be ascertained now or in the future, subject to W.S.
8 34-1-139.

9

10 (c) A power in a trustee, trust advisor, trust
11 protector or other party designated in the trust instrument
12 to select a beneficiary from an indefinite class is valid.
13 If the power is not exercised within a reasonable time, the
14 power fails and the property subject to the power passes to
15 the persons who would have taken the property had the power
16 not been conferred.

17

18 **4-10-404. Trusts created in other jurisdictions.**

19

20 (a) A trust not created by will is validly created if
21 its creation complies with the law of the jurisdiction in
22 which the trust instrument was executed, or the law of the
23 jurisdiction in which, at the time of creation:

24

1 (i) The settlor was domiciled, had a place of
2 abode, or was a national;

3

4 (ii) A trustee was domiciled or had a place of
5 business; or

6

7 (iii) Any trust property was located.

8

9 **4-10-405. Trust purposes.**

10

11 A trust may be created only to the extent its purposes are
12 lawful, not contrary to public policy, and possible to
13 achieve. A trust and its terms shall be for the benefit of
14 its beneficiaries.

15

16 **4-10-406. Charitable purposes; enforcement.**

17

18 (a) A charitable trust may be created for the relief
19 of poverty, the advancement of education or religion, the
20 promotion of health, governmental or municipal purposes, or
21 other purposes the achievement of which is beneficial to
22 the community.

23

1 (b) If the terms of a charitable trust do not
2 indicate or otherwise provide for selection of a particular
3 charitable purpose or beneficiary or if the designated
4 charitable purpose cannot be completed or no longer exists,
5 the court may select one (1) or more charitable purposes or
6 beneficiaries. The selection shall be consistent with the
7 settlor's intention to the extent it can be ascertained.

8

9 (c) The settlor of a charitable trust, among others,
10 may maintain a proceeding to enforce the trust.

11

12 **4-10-407. Creation of trust induced by fraud, duress**
13 **or undue influence.**

14

15 A trust is void to the extent its creation was induced by
16 fraud, duress or undue influence.

17

18 **4-10-408. Evidence of oral trust.**

19

20 Except as required by a statute other than this act, a
21 trust need not be evidenced by a trust instrument, but the
22 creation of an oral trust and its terms may be established
23 only by clear and convincing evidence.

24

1 **4-10-409. Trust for care of animal.**

2

3 (a) A trust may be created to provide for the care of
4 an animal alive during the settlor's lifetime. The trust
5 terminates upon the death of the animal or, if the trust
6 was created to provide for the care of more than one (1)
7 animal alive during the settlor's lifetime, upon the death
8 of the last surviving animal.

9

10 (b) A trust authorized by this section may be
11 enforced by a person appointed in the terms of the trust,
12 trust advisor, trust protector or, if no person is so
13 appointed, by a person appointed by the court. A person
14 having an interest in the welfare of the animal may request
15 the court to appoint a person to enforce the trust or to
16 remove a person appointed.

17

18 (c) Property of a trust authorized by this section
19 may be applied only to its intended use, except to the
20 extent the court determines that the value of the trust
21 property exceeds the amount required for the intended use.
22 Except as otherwise provided in the terms of the trust,
23 property not required for the intended use shall be

1 distributed to the settlor, if then living, otherwise to
2 the settlor's successors in interest.

3

4 **4-10-410. Noncharitable trust without ascertainable**
5 **beneficiary.**

6

7 (a) Except as otherwise provided in W.S. 4-10-409 or
8 by another statute, the following rules apply:

9

10 (i) A trust may be created for a noncharitable
11 purpose without a definite or definitely ascertainable
12 beneficiary or for a noncharitable but otherwise valid
13 purpose to be selected by the trustee;

14

15 (ii) A trust authorized by this section may be
16 enforced by a trust advisor, trust protector, person
17 appointed in the terms of the trust or, if no person is so
18 appointed, by a person appointed by the court;

19

20 (iii) Property of a trust authorized by this
21 section may be applied only to its intended use, except to
22 the extent the court determines that the value of the trust
23 property exceeds the amount required for the intended use.

24 Except as otherwise provided in the terms of the trust,

1 property not required for the intended use shall be
2 distributed to the settlor, if then living, otherwise to
3 the settlor's successors in interest.

4

5 **4-10-411. Modification or termination of trust;**
6 **proceedings for approval or disapproval.**

7

8 (a) In addition to the methods of termination
9 prescribed by W.S. 4-10-412 through 4-10-415, a trust
10 terminates to the extent the trust is revoked or expires
11 pursuant to its terms, no material purpose of the trust
12 remains to be achieved or the purposes of the trust have
13 become unlawful, contrary to public policy or impossible to
14 achieve.

15

16 (b) A proceeding to approve or disapprove a proposed
17 modification or termination under W.S. 4-10-412 through
18 4-10-417, or trust combination or division under W.S.
19 4-10-418, may be commenced by a trustee or beneficiary, and
20 a proceeding to approve or disapprove a proposed
21 modification or termination under W.S. 4-10-412 may be
22 commenced by the settlor. The settlor of a charitable trust
23 may maintain a proceeding to modify the trust under W.S.
24 4-10-414.

1

2 **4-10-412. Modification or termination of**
3 **noncharitable irrevocable trust by consent.**

4

5 (a) A noncharitable irrevocable trust may be modified
6 or terminated upon consent of the settlor and all
7 beneficiaries, even if the modification or termination is
8 inconsistent with a material purpose of the trust. A
9 settlor's power to consent to a modification or termination
10 of a trust may be exercised by an agent under a power of
11 attorney only to the extent expressly authorized by the
12 power of attorney or the terms of the trust or, if no agent
13 is so authorized, then by the settlor's conservator or
14 guardian or, if none, then by the settlor's conservator or
15 guardian, in each case with the approval of the court
16 supervising the conservatorship or guardianship upon a
17 finding by the court that such action is not inconsistent
18 with the settlor's purpose or intent.

19

20 (b) A noncharitable irrevocable trust may be modified
21 or terminated by a trust protector provided that the terms
22 of the trust authorize a protector and grant the trust
23 protector the power to modify or terminate the trust.

24

1 (c) A noncharitable irrevocable trust may be
2 terminated upon consent of all of the beneficiaries if the
3 court concludes that continuance of the trust is not
4 necessary to achieve any material purpose of the trust. A
5 noncharitable irrevocable trust may be modified upon
6 consent of all of the beneficiaries if the court concludes
7 that modification is not inconsistent with a material
8 purpose of the trust.

9

10 (d) A spendthrift provision in the terms of the trust
11 is not presumed to constitute a material purpose of the
12 trust for purposes of this section.

13

14 (e) Upon termination of a trust under subsection (a),
15 (b) or (c) of this section, the trustee shall distribute
16 the trust property as provided in the terms of the trust or
17 in default of such terms of the trust as agreed by all the
18 beneficiaries.

19

20 (f) If not all the beneficiaries consent to a
21 proposed modification or termination of the trust under
22 subsection (a), (b) or (c) of this section, the
23 modification or termination may be approved by the court if
24 the court is satisfied that:

1

2 (i) If all of the beneficiaries had consented,
3 the trust could have been modified or terminated under this
4 section; and

5

6 (ii) The interests of a beneficiary who does not
7 consent will be adequately protected.

8

9 **4-10-413. Modification or termination because of**
10 **unanticipated circumstances or inability to administer**
11 **trust effectively.**

12

13 (a) The court may modify the administrative or
14 dispositive terms of a trust or terminate the trust if,
15 because of circumstances not anticipated by the settlor,
16 modification or termination will further the purposes of
17 the trust. To the extent practicable, the modification
18 shall be made in accordance with the settlor's probable
19 intention.

20

21 (b) The court may modify the administrative terms of
22 a trust if continuation of the trust on its existing terms
23 would be impracticable or wasteful or impair the trust's
24 administration.

1

2 (c) Upon termination of a trust under this section,
3 the trustee shall distribute the trust property in a manner
4 consistent with the purposes of the trust.

5

6 **4-10-414. Cy pres.**

7

8 (a) Except as otherwise provided in the terms of the
9 trust, if a particular charitable purpose becomes unlawful,
10 impracticable, impossible to achieve or wasteful:

11

12 (i) The trust does not fail, in whole or in
13 part;

14

15 (ii) The trust property does not revert to the
16 settlor or the settlor's successors in interest; and

17

18 (iii) The court may apply cy pres to modify or
19 terminate the trust by directing that the trust property be
20 applied or distributed, in whole or in part, in a manner
21 consistent with the settlor's charitable purposes.

22

23 **4-10-415. Modification or termination of uneconomic**
24 **trust.**

1

2 (a) If the fair market value of a trust is less than
3 one hundred fifty thousand dollars (\$150,000.00), the
4 trustee may terminate the trust by the following procedure:

5

6 (i) The trustee shall determine a plan of
7 distribution that agrees, as nearly as possible, with the
8 purposes of the trust;

9

10 (ii) The trustee shall give written notice to
11 all qualified beneficiaries of his intent to distribute the
12 assets in accordance with the plan unless a qualified
13 beneficiary objects in writing within thirty (30) days
14 after receipt of the notice;

15

16 (iii) If no objection is received within thirty
17 (30) days after receipt of the notice, the trustee shall
18 proceed to distribute the trust assets in accordance with
19 the plan;

20

21 (iv) If the trustee receives a written objection
22 to the plan within thirty (30) days after receipt of the
23 notice, the trustee shall not distribute the assets of the
24 trust, but may then petition the court for an order

1 authorizing distribution in accordance with the plan. The
2 court shall have plenary authority to approve, modify or
3 reject the trustee's petition.

4

5 (b) The existence of a spendthrift or similar
6 provision shall not affect the trustee's powers under this
7 section unless the trust instrument specifically provides
8 that the trustee shall not have the power to terminate the
9 trust.

10

11 (c) This section does not apply to an easement for
12 conservation or preservation.

13

14 **4-10-416. Reformation to correct mistakes.**

15

16 The court may reform the terms of a trust, even if
17 unambiguous, to conform the terms to the settlor's
18 intention if it is proved by clear and convincing evidence
19 that both the settlor's intent and the terms of the trust
20 were affected by a mistake of fact or law, whether in
21 expression or inducement.

22

23 **4-10-417. Modification to achieve settlor's tax**
24 **objectives.**

1

2 To achieve the settlor's tax objectives, the court may
3 modify the terms of a trust in a manner that is not
4 contrary to the settlor's probable intention as proved by a
5 preponderance of the evidence. The court may provide that
6 the modification has retroactive effect.

7

8 **4-10-418. Combination and division of trusts.**

9

10 After notice to the qualified beneficiaries, a trustee may
11 combine two (2) or more trusts into a single trust or
12 divide a trust into two (2) or more separate trusts, if the
13 result does not impair the rights of any beneficiary or
14 adversely affect achievement of the purposes of the trust.

15

16 ARTICLE 5

17 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

18

19 **4-10-501. Rights of beneficiary's creditor or**
20 **assignee.**

21

22 To the extent a beneficiary's interest is not protected by
23 a spendthrift provision, the court may authorize a creditor
24 or assignee of the beneficiary to reach the beneficiary's

1 interest by attachment of present or future distributions
2 to, or for the benefit of, the beneficiary or by other
3 means. The court may limit the award to such relief as is
4 appropriate under the circumstances.

5

6 **4-10-502. Spendthrift provision.**

7

8 (a) A spendthrift provision is valid only if it
9 restrains both voluntary and involuntary transfers of a
10 beneficiary's interest.

11

12 (b) A term of a trust providing that the interest of
13 a beneficiary is held subject to a "spendthrift trust," or
14 words of similar import, is sufficient to restrain both
15 voluntary and involuntary transfers of the beneficiary's
16 interest.

17

18 (c) Other than by valid disclaimer under W.S.
19 2-1-401, a beneficiary may not transfer an interest in a
20 trust in violation of a valid spendthrift provision and,
21 except as otherwise provided in this article, a creditor or
22 assignee of the beneficiary may not reach the interest or a
23 distribution by the trustee before its receipt by the
24 beneficiary.

1

2

4-10-503. Exceptions to spendthrift provision.

3

4

5

6

(a) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

7

8

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4-10-504. Discretionary trusts; effect of standard.

17

18

19

20

21

22

23

24

(a) As used in this section, "child" means any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not

1 compel a distribution that is subject to the trustee's
2 discretion, even if:

3

4 (i) The discretion is expressed in the form of a
5 standard of distribution; or

6

7 (ii) The trustee has abused the discretion.

8

9 (c) To the extent a trustee has not complied with a
10 standard of distribution or has abused a discretion:

11

12 (i) A distribution may be ordered by the court
13 to satisfy a judgment or court order against the
14 beneficiary for support or maintenance of the beneficiary's
15 child; and

16

17 (ii) The court shall direct the trustee to pay
18 to the child such amount as is equitable under the
19 circumstances but not more than the amount the trustee
20 would have been required to distribute to or for the
21 benefit of the beneficiary had the trustee complied with
22 the standard or not abused the discretion.

23

1 (d) This section shall not limit the right of a
2 beneficiary to maintain a judicial proceeding against a
3 trustee for an abuse of discretion or failure to comply
4 with a standard for distribution.

5

6 **4-10-505. Creditor's claim against settlor.**

7

8 (a) Whether or not the terms of a trust contain a
9 spendthrift provision, the following rules apply:

10

11 (i) During the lifetime of the settlor, the
12 property of a revocable trust is subject to claims of the
13 settlor's creditors;

14

15 (ii) With respect to an irrevocable trust, a
16 creditor or assignee of the settlor may reach the maximum
17 amount that can be distributed to or for the settlor's
18 benefit. If a trust has more than one (1) settlor, the
19 amount the creditor or assignee of a particular settlor may
20 reach may not exceed the settlor's interest in the portion
21 of the trust attributable to that settlor's contribution;

22

23 (iii) After the death of a settlor, and subject
24 to the settlor's right to direct the source from which

1 liabilities will be paid, the property of a trust that was
2 revocable at the settlor's death is subject to claims of
3 the settlor's creditors, costs of administration of the
4 settlor's estate, the expenses of the settlor's funeral and
5 disposal of remains and statutory allowances as provided in
6 W.S. 2-5-101 and 2-5-103 to a surviving spouse and children
7 to the extent the settlor's probate estate is inadequate to
8 satisfy those claims, costs of administration, expenses and
9 allowances as provided in W.S. 2-5-101 and 2-5-103.

10

11 (b) For purposes of this section:

12

13 (i) During the period the power may be
14 exercised, the holder of a power of withdrawal is treated
15 in the same manner as the settlor of a revocable trust to
16 the extent of the property subject to the power; and

17

18 (ii) Upon the lapse, release or waiver of the
19 power, the holder is treated as the settlor of the trust
20 only to the extent the value of the property affected by
21 the lapse, release or waiver exceeds the greater of the
22 amount specified in Section 2041(b)(2) or 2514(e) of the
23 Internal Revenue Code of 1986, or Section 2503(b) of the

1 Internal Revenue Code of 1986, in each case as in effect on
2 July 1, 2003.

3

4 **4-10-506. Limitation on action by creditors.**

5

6 (a) A creditor may file a claim against the assets of
7 the trust or commence a judicial proceeding to contest the
8 validity of a trust that was revocable at the settlor's
9 death within the earlier of:

10

11 (i) Two (2) years after the settlor's death;

12

13 (ii) One hundred twenty (120) days after a notice
14 of the intent of the trustee to have the property of the
15 settlor distributed as permitted under the terms of the
16 trust has been published for two (2) consecutive weeks in a
17 newspaper of general circulation in the county or counties
18 where venue of the trust is properly established as
19 provided in W.S. 4-10-204; or

20

21 (iii) One hundred twenty (120) days after known
22 creditors have been mailed notice, by certified mail return
23 receipt requested. The notice shall inform the creditor:

24

1 (A) Of the trust's existence;

2

3 (B) Of the trustee's name and address;

4

5 (C) That the creditor shall make all claims
6 in writing to the trustee within thirty (30) days of the
7 date of mailing of the notice; and

8

9 (D) That time allowed for commencing a
10 proceeding to contest the validity of a trust or of the
11 proposed distribution of the trustee is one hundred twenty
12 (120) days from the date of mailing of the notice.

13

14 (b) A creditor failing to file his claim or to
15 commence a judicial proceeding to contest the validity of a
16 trust within the times provided is forever prohibited from
17 making any claim against the assets of the settlor's trust
18 or commencing any judicial proceeding against the settlor
19 or the assets of the settlor's trust.

20

21 **4-10-507. Overdue distribution.**

22

23 Whether or not a trust contains a spendthrift provision, a
24 creditor or assignee of a beneficiary may reach a mandatory

1 distribution of income or principal, including a
2 distribution upon termination of the trust, if the trustee
3 has not made the distribution to the beneficiary within a
4 reasonable time after the mandated distribution date.

5

6 **4-10-508. Personal obligations of trustee.**

7

8 Trust property is not subject to the personal obligations
9 of the trustee, even if the trustee becomes insolvent or
10 bankrupt.

11

12 ARTICLE 6

13 REVOCABLE TRUSTS

14

15 **4-10-601. Capacity of settlor of revocable trust.**

16

17 The capacity required to create, amend, revoke or add
18 property to a revocable trust, or to direct the actions of
19 the trustee of a revocable trust, is the same as that
20 required to make a will.

21

22 **4-10-602. Revocation or amendment of revocable trust.**

23

1 (a) Unless the terms of a trust expressly provide
2 that the trust is irrevocable, the settlor may revoke or
3 amend the trust. This subsection shall not apply to a trust
4 created under an instrument executed before July 1, 2003.

5

6 (b) If a revocable trust is created or funded by more
7 than one (1) settlor:

8

9 (i) To the extent the trust consists of
10 community property, the trust may be revoked by either
11 spouse acting alone but may be amended only by joint action
12 of both spouses; and

13

14 (ii) To the extent the trust consists of
15 property other than community property, each settlor may
16 revoke the trust with regard to the portion of the trust
17 property attributable to that settlor's contribution;
18 however, the trust may only be amended by joint action of
19 all settlors.

20

21 (c) The settlor may revoke or amend a revocable
22 trust:

23

1 (i) By substantial compliance with a method
2 provided in the terms of the trust; or

3

4 (ii) If the terms of the trust do not provide a
5 method, or the method provided in the trust is not made
6 exclusive, by:

7

8 (A) A statement expressly amending or
9 revoking the trust in a writing signed by the settlor or in
10 the settlor's will; or

11

12 (B) Any other method manifesting clear and
13 convincing evidence of the settlor's intent.

14

15 (d) Upon revocation of a revocable trust, the trustee
16 shall deliver the trust property as the settlor directs.

17

18 (e) A settlor's powers with respect to revocation,
19 amendment or distribution of trust property may be
20 exercised by an agent under a power of attorney only to the
21 extent expressly authorized by the terms of the trust or
22 the power of attorney.

23

1 (f) Except to the extent otherwise provided in the
2 terms of the trust, a power to revoke a trust includes the
3 power to amend the trust.

4
5 (g) A conservator of the settlor or, if no
6 conservator has been appointed, a guardian of the settlor
7 may exercise a settlor's powers with respect to revocation,
8 amendment, or distribution of trust property only with the
9 approval of the court supervising the conservatorship or
10 guardianship and finding that it meets the settlor's
11 purpose or intent in establishing the trust.

12
13 (h) A trustee who does not know or have actual
14 knowledge that a trust has been revoked or amended is not
15 liable to the settlor or settlor's successors in interest
16 for distributions made and other actions taken on the
17 assumption that the trust had not been amended or revoked.

18
19 **4-10-603. Settlor's powers; powers of withdrawal.**

20
21 (a) While a trust is revocable and the settlor has
22 capacity to revoke the trust, rights of the beneficiaries
23 are subject to the control of, and the duties of the
24 trustee are owed exclusively to, the settlor.

1

2 (b) If a revocable trust has more than one (1)
3 settlor, the duties of the trustee are owed to all of the
4 settlors having capacity to revoke the trust.

5

6 (c) During the period a power of withdrawal may be
7 exercised, the holder of a power of withdrawal has the
8 rights of a settlor of a revocable trust under this section
9 to the extent of the property subject to the power.

10

11 **4-10-604. Limitation on action contesting validity of**
12 **revocable trust; distribution of trust property.**

13

14 (a) A person may commence a judicial proceeding to
15 contest the validity of a trust that was revocable at the
16 settlor's death within the earlier of:

17

18 (i) Two (2) years after the settlor's death; or

19

20 (ii) One hundred twenty (120) days after the
21 trustee sent the person a copy of the trust instrument and
22 a notice informing the person of the trust's existence, of
23 the trustee's name and address and of the time allowed for
24 commencing a proceeding.

1

2 (b) Upon the death of the settlor of a trust that was
3 revocable at the settlor's death, the trustee may proceed
4 to distribute the trust property in accordance with the
5 terms of the trust. The trustee is not subject to liability
6 for doing so unless:

7

8 (i) The trustee knows of a pending judicial
9 proceeding contesting the validity of the trust; or

10

11 (ii) A potential contestant has notified the
12 trustee in writing of a possible judicial proceeding to
13 contest the trust and a judicial proceeding is commenced
14 within sixty (60) days after the contestant sent the
15 notification.

16

17 (c) A beneficiary of a trust that is determined to
18 have been invalid is liable to return any distribution
19 received.

20

21

ARTICLE 7

22

TRUSTEES, TRUST ADVISORS AND TRUST PROTECTORS

23

24

4-10-701. Accepting or declining trusteeship.

1

2 (a) Except as otherwise provided in subsection (c) of
3 this section, a person designated as trustee accepts the
4 trusteeship:

5

6 (i) By substantially complying with a method of
7 acceptance provided in the terms of the trust; or

8

9 (ii) If the terms of the trust do not provide a
10 method or the method provided in the trust is not made
11 exclusive, by accepting delivery of the trust property,
12 exercising powers or performing duties as trustee, or
13 otherwise indicating acceptance of the trusteeship.

14

15 (b) A person designated as trustee who has not yet
16 accepted the trusteeship may reject the trusteeship. A
17 designated trustee who does not accept the trusteeship
18 within a reasonable time after knowing of the designation
19 is deemed to have rejected the trusteeship.

20

21 (c) A person designated as trustee, without accepting
22 the trusteeship, may:

23

1 (i) Act to preserve the trust property if,
2 within a reasonable time after acting, the person sends a
3 written rejection of the trusteeship to the settlor or, if
4 the settlor is dead or lacks capacity, to a qualified
5 beneficiary; and

6

7 (ii) Inspect or investigate trust property to
8 determine potential liability under environmental or other
9 law or for any other purpose.

10

11 **4-10-702. Trustee's bond.**

12

13 (a) A trustee shall give bond to secure performance
14 of the trustee's duties only if the court finds that a bond
15 is needed to protect the interests of the beneficiaries or
16 is required by the terms of the trust and the court has not
17 dispensed with the requirement.

18

19 (b) The court may specify the amount of a bond, its
20 liabilities, and whether sureties are necessary. The court
21 may modify or terminate a bond at any time.

22

1 (c) A regulated financial services institution
2 qualified to do trust business in this state need not give
3 bond, even if required by the terms of the trust.

4

5 **4-10-703. Cotrustees.**

6

7 (a) Cotrustees who are unable to reach a unanimous
8 decision may act by majority decision.

9

10 (b) If a vacancy occurs in a cotrusteeship, the
11 remaining cotrustees may act for the trust.

12

13 (c) A cotrustee shall participate in the performance
14 of a trustee's function unless the cotrustee is unavailable
15 to perform the function because of absence, illness,
16 disqualification under other law or other temporary
17 incapacity or the cotrustee has properly delegated the
18 performance of the function to another trustee.

19

20 (d) If a cotrustee is unavailable to perform duties
21 because of absence, illness, disqualification under other
22 law or other temporary incapacity, and prompt action is
23 necessary to achieve the purposes of the trust or to avoid

1 injury to the trust property, the remaining cotrustee or a
2 majority of the remaining cotrustees may act for the trust.

3

4 (e) A trustee may delegate to a cotrustee the
5 performance of any function unless the delegation is
6 expressly prohibited in the terms of the trust. Unless a
7 delegation was irrevocable, a trustee may revoke a
8 delegation previously made.

9

10 (f) Except as otherwise provided in subsection (g) of
11 this section, a trustee who does not join in an action of
12 another trustee is not liable for the action.

13

14 (g) Each trustee shall exercise reasonable care to:

15

16 (i) Prevent a cotrustee from committing a
17 serious breach of trust; and

18

19 (ii) Compel a cotrustee to redress a serious
20 breach of trust.

21

22 (h) A dissenting trustee who joins in an action at
23 the direction of the majority of the trustees and who
24 notified any cotrustee of the dissent at or before the time

1 of the action is not liable for the action, unless the
2 action is a serious breach of trust.

3

4 **4-10-704. Vacancy in trusteeship; appointment of**
5 **successor.**

6

7 (a) A vacancy in a trusteeship occurs if:

8

9 (i) A person designated as trustee rejects the
10 trusteeship;

11

12 (ii) A person designated as trustee cannot be
13 identified or does not exist;

14

15 (iii) A trustee resigns;

16

17 (iv) A trustee is disqualified or removed;

18

19 (v) A trustee dies; or

20

21 (vi) A guardian or conservator is appointed for
22 an individual serving as trustee.

23

1 (b) If one (1) or more cotrustees remain in office, a
2 vacancy in a trusteeship need not be filled. A vacancy in a
3 trusteeship shall be filled if the trust has no remaining
4 trustee.

5

6 (c) A vacancy in a trusteeship of a noncharitable
7 trust that is required to be filled shall be filled in the
8 following order of priority:

9

10 (i) By a person designated in the terms of the
11 trust to act as successor trustee or in accordance with a
12 manner specified in the trust;

13

14 (ii) By a person appointed by unanimous
15 agreement of the qualified beneficiaries; or

16

17 (iii) By a person appointed by the court.

18

19 (d) A vacancy in a trusteeship of a charitable trust
20 that is required to be filled shall be filled in the
21 following order of priority:

22

1 (i) By a person designated in the terms of the
2 trust to act as successor trustee or in accordance with a
3 manner specified in the trust;

4
5 (ii) By a person selected by the charitable
6 organization expressly designated to receive distributions
7 and noncharitable beneficiary, if any named, under the
8 terms of the trust if the attorney general of the state of
9 Wyoming concurs in the selection; or

10

11 (iii) By a person appointed by the court.

12

13 (e) Whether or not a vacancy in a trusteeship exists
14 or is required to be filled, the court may appoint an
15 additional trustee or special fiduciary whenever the court
16 considers the appointment necessary for the administration
17 of the trust.

18

19 **4-10-705. Resignation of trustee.**

20

21 (a) For a revocable living trust, a trustee may
22 resign:

23

1 (i) Upon at least thirty (30) days notice to the
2 settlor, if living, and all other cotrustees; or

3

4 (ii) With the approval of the court.

5

6 (b) For an irrevocable, testamentary or charitable
7 trust, a trustee may resign upon:

8

9 (i) At least thirty (30) days notice to all
10 qualified beneficiaries and all other cotrustees; or

11

12 (ii) With approval of the court.

13

14 (c) In approving a resignation, the court may issue
15 orders and impose conditions reasonably necessary for the
16 protection of the trust property.

17

18 (d) Any liability of a resigning trustee or of any
19 sureties on the trustee's bond for acts or omissions of the
20 trustee is not discharged or affected by the trustee's
21 resignation.

22

23 **4-10-706. Removal of trustee.**

24

1 (a) The settlor, a cotrustee or a qualified
2 beneficiary may request the court to remove a trustee, or a
3 trustee may be removed by the court on its own initiative
4 as outlined in subsection (b) of this section.

5

6 (b) The court may remove a trustee if:

7

8 (i) The trustee has committed a serious breach
9 of trust;

10

11 (ii) Lack of cooperation among cotrustees
12 substantially impairs the administration of the trust;

13

14 (iii) Because of unfitness, unwillingness or
15 persistent failure of the trustee to administer the trust
16 effectively, the court determines that removal of the
17 trustee best serves the interests of the beneficiaries; or

18

19 (iv) There has been a substantial change of
20 circumstances, or removal is requested by all of the
21 qualified beneficiaries, and the court finds that removal
22 of the trustee best serves the interests of all of the
23 beneficiaries and is not inconsistent with a material

1 purpose of the trust, and a suitable cotrustee or successor
2 trustee is available.

3

4 (c) Pending a final decision on a request to remove a
5 trustee, or in lieu of or in addition to removing a
6 trustee, the court may order such appropriate relief under
7 W.S. 4-10-1001(b) as may be necessary to protect the trust
8 property or the interests of the beneficiaries.

9

10 **4-10-707. Delivery of property by former trustee.**

11

12 (a) Unless a cotrustee remains in office or the court
13 otherwise orders, and until the trust property is delivered
14 to a successor trustee or other person entitled to it, a
15 trustee who has resigned or been removed has the duties of
16 a trustee and the powers necessary to protect the trust
17 property.

18

19 (b) A trustee who has resigned or been removed shall
20 proceed expeditiously to deliver the trust property within
21 the trustee's possession to the cotrustee, successor
22 trustee or other person entitled to it.

23

24 **4-10-708. Compensation of trustee.**

1

2 (a) If the terms of a trust do not specify the
3 trustee's compensation, a trustee is entitled to
4 compensation that is reasonable under the circumstances.
5 The trustee shall notify the qualified beneficiaries, in
6 writing, of any change in the method or rate of the
7 trustee's compensation. Notice shall be given not less than
8 sixty (60) days in advance of any change, unless the notice
9 is waived by the written consent of all qualified
10 beneficiaries. The notice of a proposed change in the
11 method or rate of trustee's compensation shall include:

12

13 (i) The current trustee's compensation;

14

15 (ii) The proposed change to the trustee's
16 compensation;

17

18 (iii) An explanation of the reasons for the
19 change in compensation;

20

21 (iv) The date upon which the change in
22 compensation is to take effect; and

23

1 (v) The date, not less than sixty (60) days
2 after giving notice, by which a qualified beneficiary is
3 required to notify the trustee in writing of an objection
4 to the change in compensation.

5

6 (b) If the terms of a trust specify the trustee's
7 compensation, the trustee is entitled to be compensated as
8 specified, but the court may allow more or less
9 compensation if:

10

11 (i) The duties of the trustee are substantially
12 different from those contemplated when the trust was
13 created; or

14

15 (ii) The compensation specified by the terms of
16 the trust would be unreasonably low or high.

17

18 (c) The trustee shall be entitled to additional
19 compensation on agreement of all qualified beneficiaries.

20

21 (d) The authority of a trustee under this section to
22 change the trustee's rate or method of compensation
23 terminates if a majority of the qualified beneficiaries

1 notify the trustee of objections to the proposed change in
2 compensation on or before the date specified in the notice.

3

4 **4-10-709. Reimbursement of expenses.**

5

6 (a) A trustee is entitled to be reimbursed out of the
7 trust property, with interest, as appropriate, for:

8

9 (i) Expenses that were properly incurred in the
10 administration of the trust;

11

12 (ii) Expenses that were properly incurred in
13 responding to an objection to a proposed change in the
14 method or rate of the trustee's compensation; and

15

16 (iii) To the extent necessary to prevent unjust
17 enrichment of the trust, expenses that were not properly
18 incurred in the administration of the trust.

19

20 (b) An advance by the trustee of money for the
21 protection of the trust gives rise to a lien against trust
22 property to secure reimbursement with reasonable interest.

23

24 **4-10-710. Trust protector.**

1

2 (a) The powers and discretions of a trust protector
3 shall be provided in the trust instrument or may be
4 established or modified by a judicial order, and may, in
5 the best interests of the trust, be exercised or not
6 exercised in the sole and absolute discretion of the trust
7 protector and shall be binding on all other persons. The
8 powers and discretions may include the following:

9

10 (i) To modify or amend the trust instrument to
11 achieve favorable tax status or because of changes in the
12 Internal Revenue Code, state law or the rulings and
13 regulations implementing such changes;

14

15 (ii) To amend or modify the trust instrument to
16 take advantage of changes in the rule against perpetuities,
17 laws governing restraints on alienation, or other state
18 laws restricting the terms of the trust, the distribution
19 of trust property, or the administration of the trust;

20

21 (iii) To appoint a successor trust protector;

22

23 (iv) To review and approve the accountings of a
24 trustee;

1

2 (v) To change the governing law or principal
3 place of administration of the trust;

4

5 (vi) To remove and replace any trust advisor for
6 the reasons stated in the trust instrument;

7

8 (vii) To remove a trustee, cotrustee or
9 successor trustee, for the reasons stated in the trust
10 instrument, and appoint a replacement;

11

12 (viii) To interpret terms of the trust
13 instrument at the request of the trustee;

14

15 (ix) To advise the trustee or cotrustee on
16 matters concerning any beneficiary;

17

18 (x) To direct, consent or disapprove a trustee's
19 or cotrustee's action or inaction in making distributions
20 to beneficiaries; and

21

22 (xi) To increase or decrease any interest of the
23 beneficiaries to the trust, to grant a power of appointment
24 to one (1) or more trust beneficiaries or to terminate or

1 amend any power of appointment granted by the trust;
2 however, a modification, amendment or grant of a power of
3 appointment may not grant a beneficial interest to any
4 person or class of persons not specifically provided for
5 under the trust instrument or to the trust protector, the
6 trust protector's estate or for the benefit of the
7 creditors of the trust protector.

8

9 **4-10-711. Trust protector as a fiduciary.**

10

11 Trust protectors are fiduciaries to the extent of the
12 powers, duties and discretions granted to them under the
13 terms of the trust instrument.

14

15 **4-10-712. Trust advisor.**

16

17 (a) The powers and discretions of a trust advisor
18 shall be provided in the trust instrument and may, in the
19 best interests of the trust, be exercised or not exercised
20 in the sole and absolute discretion of the trust advisor
21 and shall be binding on all other persons. Such powers and
22 discretions may include the following:

23

1 (i) To perform a specific duty or function that
2 would normally be performed by the trustee, cotrustee or
3 trust protector;

4
5 (ii) To advise the trustee or cotrustee on
6 matters concerning any beneficiary;

7
8 (iii) To direct, consent or disapprove a
9 trustee's or cotrustee's action or inaction relating to
10 investments of trust assets;

11
12 (iv) To direct the acquisition, disposition or
13 retention of any trust investment; and

14
15 (v) To direct, consent or disapprove a trustee's
16 or cotrustee's action or inaction in making distributions
17 to beneficiaries.

18
19 **4-10-713. Trust advisor as a fiduciary.**

20
21 Trust advisors are fiduciaries to the extent of the powers,
22 duties and discretions granted to them under the terms of
23 the trust instrument.

24

1 **4-10-714. Trust advisor and trust protector subject**
2 **to district court jurisdiction.**

3

4 By accepting appointment to serve as a trust advisor or
5 trust protector of a trust that is subject to the laws of
6 the state of Wyoming, the trust advisor or the trust
7 protector submits to the jurisdiction of the courts of the
8 state of Wyoming even if investment advisory agreements or
9 other related agreements provide otherwise, and the trust
10 advisor or trust protector may be made a party to any
11 action or proceeding if issues relate to a decision, action
12 or inaction of the trust advisor or trust protector.

13

14 **4-10-715. Excluded fiduciary liability from actions**
15 **of trust advisor and trust protector.**

16

17 Unless the trust instrument states otherwise, an excluded
18 fiduciary is relieved of any duty or responsibility to
19 review the actions of a trust advisor or trust protector
20 duly named and appointed under the trust instrument. The
21 excluded fiduciary is further relieved of any liability
22 resulting from breach of trust, failure to act, liability
23 resulting from actions taken or any loss resulting from

1 compliance with a direction by a trust advisor or trust
2 protector.

3

4 **4-10-716. Power of trust advisor and trust protector**
5 **to act after death or incapacity of grantor.**

6

7 Unless the trust instrument states otherwise, the power and
8 authority of a trust advisor or trust protector shall not
9 lapse at the death or incapacity of the grantor.

10

11 **4-10-717. Excluded fiduciary liability for loss of**
12 **action or inaction of trust advisor and trust protector.**

13

14 If the trust instrument appoints a trust protector or trust
15 advisor, the excluded fiduciary is not liable for any loss
16 resulting from any action or inaction of the trust advisor
17 or protector.

18

19

ARTICLE 8

20

DUTIES AND POWERS OF TRUSTEE

21

22 **4-10-801. Duty to administer trust.**

23

1 Upon acceptance of a trusteeship, the trustee shall
2 administer the trust in good faith, in accordance with its
3 terms and purposes and the interests of the beneficiaries,
4 and in accordance with this act.

5

6 **4-10-802. Duty of loyalty.**

7

8 (a) A trustee shall administer the trust solely in
9 the interests of the beneficiaries.

10

11 (b) Subject to the rights of persons dealing with or
12 assisting the trustee as provided in W.S. 4-10-1012, a
13 sale, encumbrance or other transaction involving the
14 investment or management of trust property entered into by
15 the trustee for the trustee's own personal account or which
16 is otherwise affected by a conflict between the trustee's
17 fiduciary and personal interests is voidable by a
18 beneficiary affected by the transaction unless:

19

20 (i) The transaction was authorized by the terms
21 of the trust;

22

23 (ii) The transaction was approved by the court;

24

1 (iii) The beneficiary did not commence a
2 judicial proceeding within the time allowed by W.S.
3 4-10-1005;

4
5 (iv) The beneficiary consented to the trustee's
6 conduct, ratified the transaction or released the trustee
7 pursuant to W.S. 4-10-1009; or

8
9 (v) The transaction involves a contract entered
10 into or claim acquired by the trustee before the person
11 became or contemplated becoming trustee.

12
13 (c) A sale, encumbrance or other transaction
14 involving the investment or management of trust property is
15 presumed to be affected by a conflict between personal and
16 fiduciary interests if it is entered into by the trustee
17 with:

18
19 (i) The trustee's spouse;

20
21 (ii) The trustee's descendants, siblings,
22 parents or their spouses;

23
24 (iii) An agent or attorney of the trustee; or

1

2 (iv) A corporation or other person or enterprise
3 in which the trustee, or a person that owns a significant
4 interest in the trustee, has an interest that might affect
5 the trustee's best judgment.

6

7 (d) A transaction between a trustee and a beneficiary
8 that does not concern trust property but that occurs during
9 the existence of the trust or while the trustee retains
10 significant influence over the beneficiary and from which
11 the trustee obtains an advantage is voidable by the
12 beneficiary unless the trustee establishes that the
13 transaction was fair to the beneficiary.

14

15 (e) A transaction not concerning trust property in
16 which the trustee engages in the trustee's individual
17 capacity involves a conflict between personal and fiduciary
18 interests if the transaction concerns an opportunity
19 properly belonging to the trust.

20

21 (f) An investment by a trustee in securities of an
22 investment company or investment trust to which the
23 trustee, or its affiliate, provides services in a capacity
24 other than as trustee is not presumed to be affected by a

1 conflict between personal and fiduciary interests if the
2 investment complies with the prudent investor rule as
3 specified under article 9 of this act. The trustee may be
4 compensated by the investment company or investment trust
5 for providing those services out of fees charged to the
6 trust if, as a condition precedent to receipt of such
7 compensation, and at least annually, the trustee notifies
8 the persons entitled under W.S. 4-10-813 to receive a copy
9 of the trustee's annual report of the rate and method by
10 which the compensation is determined by delivery of a
11 prospectus or other communication.

12

13 (g) In voting shares of stock or in exercising powers
14 of control over similar interests in other forms of
15 enterprise, the trustee shall act in the best interests of
16 the beneficiaries. If the trust is the sole owner of a
17 corporation or other form of enterprise, the trustee shall
18 elect or appoint directors or other managers who will
19 manage the corporation or enterprise in the best interests
20 of the beneficiaries.

21

22 (h) This section does not preclude the following
23 transactions, if fair to the beneficiaries:

24

1 (i) An agreement between a trustee and a
2 majority of the qualified beneficiaries relating to the
3 appointment or compensation of the trustee;

4
5 (ii) Payment of reasonable compensation to the
6 trustee;

7
8 (iii) A transaction between a trust and another
9 trust, decedent's estate or conservatorship of which the
10 trustee is a fiduciary or in which a beneficiary has an
11 interest;

12
13 (iv) A deposit of trust money in a regulated
14 financial services institution operated by the trustee; or

15
16 (v) An advance by the trustee of money for the
17 protection of the trust.

18
19 (j) The court may appoint a special fiduciary to make
20 a decision with respect to any proposed transaction that
21 might violate this section if entered into by the trustee.

22
23 **4-10-803. Impartiality.**

24

1 If a trust has two (2) or more beneficiaries, the trustee
2 shall act impartially in investing, managing and
3 distributing the trust property, giving due regard to the
4 beneficiaries' respective interests.

5

6 **4-10-804. Prudent administration.**

7

8 A trustee shall administer the trust as a prudent person
9 would, by considering the purposes, terms, distributional
10 requirements and other circumstances of the trust. In
11 satisfying this standard, the trustee shall exercise
12 reasonable care, skill and caution.

13

14 **4-10-805. Costs of administration.**

15

16 In administering a trust, the trustee may incur only costs
17 that are reasonable in relation to the trust property, the
18 purposes of the trust and the skills of the trustee.

19

20 **4-10-806. Trustee's skills.**

21

22 A trustee who has special skills or expertise, or is named
23 trustee in reliance upon the trustee's representation that

1 the trustee has special skills or expertise, shall use
2 those special skills or expertise.

3

4 **4-10-807. Delegation by trustee.**

5

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

10

11 (i) Selecting an agent;

12

13 (ii) Establishing the scope and terms of the
14 delegation, consistent with the purposes and terms of the
15 trust; and

16

17 (iii) Periodically reviewing the agent's actions
18 in order to monitor the agent's performance and compliance
19 with the terms of the delegation.

20

21 (b) In performing a delegated function, an agent owes
22 a duty to the trust to exercise reasonable care to comply
23 with the terms of the delegation.

24

1 (c) A trustee who complies with subsection (a) of
2 this section is not liable to the beneficiaries or to the
3 trust for an action of the agent to whom the function was
4 delegated.

5
6 (d) By accepting a delegation of powers or duties
7 from the trustee of a trust that is subject to the law of
8 the state of Wyoming, an agent submits to the jurisdiction
9 of the courts of the state of Wyoming even if the agency
10 agreement provides otherwise, and the agent may be made a
11 party to any action or proceeding if the issues relate to a
12 decision, action or inaction of the agent.

13

14 **4-10-808. Powers to direct.**

15

16 (a) While a trust is revocable, the trustee may
17 follow a written direction of the settlor that is contrary
18 to the terms of the trust.

19

20 (b) If the terms of a trust confer upon a person
21 other than the settlor of a revocable trust power to direct
22 certain actions of the trustee, the trustee shall act in
23 accordance with an exercise of the power unless the
24 attempted exercise is manifestly contrary to the terms of

1 the trust or the trustee knows the attempted exercise would
2 constitute a serious breach of a fiduciary duty that the
3 person holding the power owes to the beneficiaries of the
4 trust.

5

6 (c) The terms of a trust may confer upon a trustee or
7 other person, as provided in article 7 of this act, a power
8 to direct the modification or termination of the trust.

9

10 (d) A person, other than a beneficiary, who holds a
11 power to direct is a fiduciary who, as such, is required to
12 act in good faith with regard to the purposes of the trust
13 and the interests of the beneficiaries. The holder of a
14 power to direct is liable for any loss that results from
15 breach of a fiduciary duty with respect to the holder's
16 power.

17

18 **4-10-809. Control and protection of trust property.**

19

20 A trustee shall take reasonable steps to take control of
21 and protect the trust property.

22

23 **4-10-810. Record keeping and identification of trust**
24 **property.**

1

2 (a) A trustee shall keep adequate records of the
3 administration of the trust.

4

5 (b) A trustee shall keep trust property separate from
6 the trustee's own property.

7

8 (c) Except as otherwise provided in subsection (d) of
9 this section, a trustee shall cause the trust property to
10 be designated or titled as provided in W.S. 4-10-402 so
11 that the interest of the trust, to the extent feasible,
12 appears in records maintained by a party other than a
13 trustee or beneficiary.

14

15 (d) If the trustee maintains records clearly
16 indicating the respective interests, a trustee may invest
17 as a whole the property of two (2) or more separate trusts.

18

19 **4-10-811. Enforcement and defense of claims.**

20

21 A trustee shall take reasonable steps to enforce claims of
22 the trust and to defend claims against the trust.

23

24 **4-10-812. Collecting trust property.**

1

2 A trustee shall take reasonable steps to compel a former
3 trustee or other person to deliver trust property to the
4 trustee, and may redress a breach of trust known to the
5 trustee to have been committed by a former trustee.

6

7 **4-10-813. Duty to inform and report.**

8

9 (a) A trustee shall keep the qualified beneficiaries
10 of the trust reasonably informed about the administration
11 of the trust and of the material facts necessary for them
12 to protect their interests. Unless unreasonable under the
13 circumstances, a trustee shall promptly respond to a
14 qualified beneficiary's request for information related to
15 the administration of the trust.

16

17 (b) A trustee shall comply with the following
18 provisions unless the trust instrument specifically
19 directs, limits or waives this requirement of a trustee:

20

21 (i) Upon request of any qualified beneficiary,
22 the trustee shall promptly furnish to the beneficiary a
23 copy of the trust instrument;

24

1 (ii) Within sixty (60) days after accepting a
2 trusteeship, the trustee shall notify the qualified
3 beneficiaries of the acceptance and of the trustee's name,
4 address and telephone number;

5
6 (iii) Within sixty (60) days after the date the
7 trustee acquires knowledge of the creation of an
8 irrevocable trust, or the date the trustee acquires
9 knowledge that a formerly revocable trust has become
10 irrevocable, whether by the death of the settlor or
11 otherwise, the trustee shall notify the qualified
12 beneficiaries of the trust's existence, of the identity of
13 the settlor or settlors, of the right to request a copy of
14 the trust instrument and of the right to a trustee's report
15 as provided in subsection (c) of this section; and

16
17 (iv) The trustee shall notify the qualified
18 beneficiaries in advance of any change in the method or
19 rate of the trustee's compensation.

20
21 (c) A trustee shall send to qualified beneficiaries,
22 at least annually and at the termination of the trust, a
23 report of the trust property, liabilities, receipts and
24 disbursements, including the amount of the trustee's

1 compensation, the allocation of receipts, disbursements,
2 trustee compensation and expenses of administration between
3 income and principal, a listing of the trust assets and, if
4 feasible, their respective market values. Upon a vacancy in
5 a trusteeship, unless a cotrustee remains in office, a
6 report shall be sent to the qualified beneficiaries by the
7 former trustee. A personal representative, conservator or
8 guardian of a deceased or incapacitated trustee may send
9 the qualified beneficiaries a report on the trustee's
10 behalf.

11

12 (d) A beneficiary may waive the right to a trustee's
13 report or other information otherwise required to be
14 furnished under this section. A beneficiary, with respect
15 to future reports and other information, may withdraw a
16 waiver previously given.

17

18 **4-10-814. Discretionary powers; tax savings.**

19

20 (a) Notwithstanding the breadth of discretion granted
21 to a trustee in the terms of the trust, including the use
22 of such terms as "absolute," "sole" or "uncontrolled," the
23 trustee shall exercise a discretionary power in good faith

1 and in accordance with the terms and purposes of the trust
2 and the interests of the beneficiaries.

3

4 (b) Subject to subsection (d) of this section, and
5 unless the terms of the trust expressly indicate that a
6 rule in this subsection does not apply:

7

8 (i) A person other than a settlor who is a
9 beneficiary and trustee of a trust that confers on the
10 trustee a power to make discretionary distributions to or
11 for the trustee's personal benefit may exercise the power
12 only in accordance with an ascertainable standard relating
13 to the trustee's individual health, education, support or
14 maintenance within the meaning of Section 2041(b)(1)(A) or
15 2514(c)(1) of the Internal Revenue Code of 1986, as in
16 effect on July 1, 2003; and

17

18 (ii) A trustee may not exercise a power to make
19 discretionary distributions to satisfy a legal obligation
20 of support that the trustee personally owes another person.

21

22 (c) A power whose exercise is limited or prohibited
23 by subsection (b) of this section may be exercised by a
24 majority of the remaining trustees whose exercise of the

1 power is not so limited or prohibited. If the power of all
2 trustees is so limited or prohibited, the court may appoint
3 a special fiduciary with authority to exercise the power.

4

5 (d) Subsection (b) of this section does not apply to:

6

7 (i) A power held by the settlor's spouse who is
8 the trustee of a trust for which a marital deduction, as
9 defined in Section 2056(b)(5) or 2523(e) of the Internal
10 Revenue Code of 1986, as in effect on July 1, 2003, was
11 previously allowed;

12

13 (ii) Any trust during any period that the trust
14 may be revoked or amended by its settlor; or

15

16 (iii) Contributions to a trust that qualify for
17 the annual exclusion under Section 2503(c) of the Internal
18 Revenue Code of 1986, as in effect on July 1, 2003, or
19 which are subject to an annual withdrawal right.

20

21 **4-10-815. General powers of trustee.**

22

23 (a) A trustee, without authorization by the court,
24 may exercise:

1

2 (i) Powers conferred by the terms of the trust;

3 and

4

5 (ii) Except as limited by the terms of the
6 trust:

7

8 (A) All powers over the trust property
9 which an unmarried competent owner has over individually
10 owned property;

11

12 (B) Any other powers appropriate to achieve
13 the proper investment, management and distribution of the
14 trust property; and

15

16 (C) Any other powers conferred by this act.

17

18 (b) The exercise of a power under this act is subject
19 to the fiduciary duties prescribed by this article.

20

21 **4-10-816. Specific powers of trustee.**

22

23 (a) Without limiting the authority conferred by W.S.

24 4-10-815, a trustee may:

1

2 (i) Collect trust property and accept or reject
3 additions to the trust property from a settlor or any other
4 person;

5

6 (ii) Acquire or sell property, for cash or on
7 credit, at public or private sale;

8

9 (iii) Exchange, partition or otherwise change
10 the character of trust property;

11

12 (iv) Deposit trust money in an account in a
13 regulated financial services institution;

14

15 (v) Borrow money, with or without security, and
16 mortgage or pledge trust property for a period within or
17 extending beyond the duration of the trust;

18

19 (vi) With respect to an interest in a
20 proprietorship, partnership, limited liability company,
21 business trust, corporation or other form of business or
22 enterprise, continue the business or other enterprise and
23 take any action that may be taken by shareholders,
24 partners, members or property owners, including merging,

1 dissolving or otherwise changing the form of business
2 organization or contributing additional capital;

3

4 (vii) With respect to stocks or other
5 securities, exercise the rights of an absolute owner,
6 including the right to:

7

8 (A) Vote, or give proxies to vote, with or
9 without power of substitution, or enter into or continue a
10 voting trust agreement;

11

12 (B) Hold a security in the name of a
13 nominee or in other form without disclosure of the trust so
14 that title may pass by delivery;

15

16 (C) Pay calls, assessments and other sums
17 chargeable or accruing against the securities, and sell or
18 exercise stock subscription or conversion rights;

19

20 (D) Exercise stock options and other
21 rights; and

22

1 (E) Deposit the securities with a
2 depository or other regulated financial services
3 institution.

4

5 (viii) With respect to an interest in real
6 property, construct, or make ordinary or extraordinary
7 repairs to, alterations to, or improvements in, buildings
8 or other structures, demolish improvements, raze existing
9 or erect new party walls or buildings, subdivide or develop
10 land, dedicate land to public use or grant public or
11 private easements and make or vacate plats and adjust
12 boundaries;

13

14 (ix) Enter into a lease for any purpose as
15 lessor or lessee, including a lease or other arrangement
16 for exploration and removal of natural resources, with or
17 without the option to purchase or renew, for a period
18 within or extending beyond the duration of the trust;

19

20 (x) Grant an option involving a sale, lease or
21 other disposition of trust property or acquire an option
22 for the acquisition of property, including an option
23 exercisable beyond the duration of the trust, and exercise
24 an option so acquired;

1

2 (xi) Insure the property of the trust against
3 damage or loss and insure the trustee, the trustee's agents
4 and beneficiaries against liability arising from the
5 administration of the trust;

6

7 (xii) Abandon or decline to administer property
8 of no value or of insufficient value to justify its
9 collection or continued administration;

10

11 (xiii) With respect to possible liability for
12 violation of environmental law:

13

14 (A) Inspect or investigate property the
15 trustee holds or has been asked to hold, or property owned
16 or operated by an organization in which the trustee holds
17 or has been asked to hold an interest, for the purpose of
18 determining the application of environmental law with
19 respect to the property;

20

21 (B) Take action to prevent, abate or
22 otherwise remedy any actual or potential violation of any
23 environmental law affecting property held directly or
24 indirectly by the trustee, whether taken before or after

1 the assertion of a claim or the initiation of governmental
2 enforcement;

3

4 (C) Decline to accept property into trust
5 or disclaim any power with respect to property that is or
6 may be burdened with liability for violation of
7 environmental law;

8

9 (D) Compromise claims against the trust
10 which may be asserted for an alleged violation of
11 environmental law; and

12

13 (E) Pay the expense of any inspection,
14 review, abatement or remedial action to comply with
15 environmental law.

16

17 (xiv) Pay or contest any claim, settle a claim
18 by or against the trust and release, in whole or in part, a
19 claim belonging to the trust;

20

21 (xv) Pay taxes, assessments, compensation of the
22 trustee and of employees and agents of the trust and other
23 expenses incurred in the administration of the trust;

24

1 (xvi) Exercise elections with respect to
2 federal, state and local taxes;

3

4 (xvii) Select a mode of payment under any
5 employee benefit or retirement plan, annuity or life
6 insurance payable to the trustee, exercise rights
7 thereunder, including exercise of the right to
8 indemnification for expenses and against liabilities, and
9 take appropriate action to collect the proceeds;

10

11 (xviii) Make loans out of trust property,
12 including loans to a beneficiary on terms and conditions
13 the trustee considers to be fair and reasonable under the
14 circumstances, and the trustee has a lien on future
15 distributions for repayment of those loans;

16

17 (xix) Pledge trust property to guarantee loans
18 made by others to the beneficiary;

19

20 (xx) Appoint a trustee to act in another
21 jurisdiction with respect to trust property located in the
22 other jurisdiction, confer upon the appointed trustee all
23 of the powers and duties of the appointing trustee, require

1 that the appointed trustee furnish security and remove any
2 trustee so appointed;

3

4 (xxi) Pay an amount distributable to a
5 beneficiary who is under a legal disability or who the
6 trustee reasonably believes is incapacitated, by paying it
7 directly to the beneficiary or applying it for the
8 beneficiary's benefit, or by:

9

10 (A) Paying it to the beneficiary's
11 conservator or, if the beneficiary does not have a
12 conservator, the beneficiary's guardian;

13

14 (B) Paying it to the beneficiary's
15 custodian under the Uniform Transfers to Minors Act or
16 custodial trustee under the Uniform Custodial Trust Act
17 and, for that purpose, creating a custodianship or
18 custodial trust;

19

20 (C) If the trustee does not know of a
21 conservator, guardian, custodian or custodial trustee,
22 paying it to the person's agent under a power of attorney
23 or, if none, to an adult relative or other person having

1 legal or physical care or custody of the beneficiary, to be
2 expended on the beneficiary's behalf;

3

4 (D) Managing it as a separate fund on the
5 beneficiary's behalf, subject to the beneficiary's
6 continuing right to withdraw the distribution; and

7

8 (E) Creating or funding a plan under
9 Section 529 of the Internal Revenue Code of 1986, in effect
10 on July 1, 2003, for the beneficiary's benefit.

11

12 (xxii) On distribution of trust property or the
13 division or termination of a trust, make distributions in
14 divided or undivided interests, allocate particular assets
15 in proportionate or disproportionate shares, value the
16 trust property for those purposes and adjust for resulting
17 differences in valuation;

18

19 (xxiii) Resolve a dispute concerning the
20 interpretation of the trust or its administration by
21 mediation, arbitration, or other procedure for alternative
22 dispute resolution;

23

1 (xxiv) Prosecute or defend an action, claim or
2 judicial proceeding in any jurisdiction to protect trust
3 property and the trustee in the performance of the
4 trustee's duties;

5

6 (xxv) Sign and deliver contracts and other
7 instruments that are useful to achieve or facilitate the
8 exercise of the trustee's powers;

9

10 (xxvi) Purchase and pay from trust principal the
11 premiums on life insurance; and

12

13 (xxvii) On termination of the trust, exercise
14 the powers appropriate to wind up the administration of the
15 trust and distribute the trust property to the persons
16 entitled to it.

17

18 **4-10-817. Distribution upon termination.**

19

20 (a) Upon termination or partial termination of a
21 trust, the trustee may send to the beneficiaries a proposal
22 for distribution. The right of any beneficiary to object to
23 the proposed distribution terminates if the beneficiary
24 does not notify the trustee of an objection within thirty

1 (30) days after the proposal was sent but only if the
2 proposal informed the beneficiary of the right to object
3 and of the time allowed for objection.

4

5 (b) Upon the occurrence of an event terminating or
6 partially terminating a trust, the trustee shall proceed
7 expeditiously to distribute the trust property to the
8 persons entitled to it, subject to the right of the trustee
9 to retain a reasonable reserve for the payment of debts,
10 expenses and taxes.

11

12 (c) A release by a beneficiary of a trustee from
13 liability for breach of trust is invalid to the extent:

14

15 (i) It was induced by improper conduct of the
16 trustee; or

17

18 (ii) The beneficiary, at the time of the
19 release, did not know of the beneficiary's rights or of the
20 material facts relating to the breach.

21

22

ARTICLE 9

23

UNIFORM PRUDENT INVESTOR ACT

24

1 **4-10-901. Prudent investor rule; definitions.**

2

3 (a) Except as otherwise provided in subsection (b) of
4 this section, a trustee who invests and manages trust
5 assets owes a duty to the beneficiaries of the trust to
6 comply with the prudent investor rule set forth in this
7 article.

8

9 (b) The prudent investor rule, a default rule, may be
10 expanded, restricted, eliminated or otherwise altered by
11 the provisions of a trust. A trustee is not liable to a
12 beneficiary to the extent that the trustee acted in
13 reasonable reliance on the provisions of the trust.

14

15 **4-10-902. Standard of care; portfolio strategy; risk**
16 **and return objectives.**

17

18 (a) A trustee shall invest and manage trust assets as
19 a prudent investor would, by considering the purposes,
20 terms, distribution requirements and other circumstances of
21 the trust. In satisfying this standard, the trustee shall
22 exercise reasonable care, skill and caution.

23

1 (b) A trustee's investment and management decisions
2 respecting individual assets shall be evaluated not in
3 isolation but in the context of the trust portfolio as a
4 whole and as a part of an overall investment strategy
5 having risk and return objectives reasonably suited to the
6 trust.

7

8 (c) Among circumstances that a trustee shall consider
9 in investing and managing trust assets are such of the
10 following as are relevant to the trust or its
11 beneficiaries:

12

13 (i) General economic conditions;

14

15 (ii) The possible effect of inflation or
16 deflation;

17

18 (iii) The expected tax consequences of
19 investment decisions or strategies;

20

21 (iv) The role that each investment or course of
22 action plays within the overall trust portfolio, which may
23 include financial assets, interests in closely held

1 enterprises, tangible and intangible personal property and
2 real property;

3

4 (v) The expected total return from income and
5 the appreciation of capital;

6

7 (vi) Other resources of the beneficiaries;

8

9 (vii) Needs for liquidity, regularity of income
10 and preservation or appreciation of capital; and

11

12 (viii) An asset's special relationship or
13 special value, if any, to the purposes of the trust or to
14 one (1) or more of the beneficiaries.

15

16 (d) A trustee shall make a reasonable effort to
17 verify facts relevant to the investment and management of
18 trust assets.

19

20 (e) A trustee may invest in any kind of property or
21 type of investment consistent with the standards of this
22 article.

23

24 **4-10-903. Diversification.**

1

2 A trustee shall diversify the investments of the trust
3 unless the trustee reasonably determines that, because of
4 special circumstances, the purposes of the trust are better
5 served without diversifying.

6

7 **4-10-904. Duties at inception of trusteeship.**

8

9 Within a reasonable time after accepting a trusteeship or
10 receiving trust assets, a trustee shall review the trust
11 assets and make and implement decisions concerning the
12 retention and disposition of assets, in order to bring the
13 trust portfolio into compliance with the purposes, terms,
14 distribution requirements and other circumstances of the
15 trust, and with the requirements of this article.

16

17 **4-10-905. Loyalty.**

18

19 A trustee shall invest and manage the trust assets solely
20 in the interest of the beneficiaries.

21

22 **4-10-906. Impartiality.**

23

1 If a trust has two (2) or more beneficiaries, the trustee
2 shall act impartially in investing and managing the trust
3 assets, taking into account any differing interests of the
4 beneficiaries.

5

6 **4-10-907. Investment costs.**

7

8 In investing and managing trust assets, a trustee may only
9 incur costs that are appropriate and reasonable in relation
10 to the assets, the purposes of the trust, and the skills of
11 the trustee.

12

13 **4-10-908. Reviewing compliance.**

14

15 Compliance with the prudent investor rule under this
16 article is determined in light of the facts and
17 circumstances existing at the time of a trustee's decision
18 or action and not by hindsight.

19

20 **4-10-909. Delegation of investment and management**
21 **functions.**

22

23 (a) A trustee may delegate investment and management
24 functions that a prudent trustee of comparable skills could

1 properly delegate under the circumstances. The trustee
2 shall exercise reasonable care, skill and caution in:

3

4 (i) Selecting an agent;

5

6 (ii) Establishing the scope and terms of the
7 delegation, consistent with the purposes and terms of the
8 trust; and

9

10 (iii) Periodically reviewing the agent's actions
11 in order to monitor the agent's performance and compliance
12 with the terms of the delegation.

13

14 (b) In performing a delegated function, an agent owes
15 a duty to the trust to exercise reasonable care to comply
16 with the terms of the delegation.

17

18 (c) A trustee who complies with the requirements of
19 subsection (a) of this section is not liable to the
20 beneficiaries or to the trust for the decisions or actions
21 of the agent to whom the function was delegated.

22

23 (d) By accepting the delegation of a trust function
24 from the trustee of a trust that is subject to the law of

1 this state, an agent submits to the jurisdiction of the
2 courts of the state of Wyoming even if investment advisory
3 agreements or other related agreements provide otherwise,
4 and the agent may be made a party to any action or
5 proceeding if issues relate to a decision, action or
6 inaction of the agent.

7

8 **4-10-910. Language invoking standard of this article.**

9

10 (a) The following terms or comparable language in the
11 provisions of a trust, unless otherwise limited or
12 modified, authorizes any investment or strategy permitted
13 under this article:

14

15 (i) "Investments permissible by law for
16 investment of trust funds";

17

18 (ii) "Legal investments";

19

20 (iii) "Authorized investments";

21

22 (iv) "Using the judgment and care under the
23 circumstances then prevailing that persons of prudence,
24 discretion and intelligence exercise in the management of

1 their own affairs, not in regard to speculation but in
2 regard to the permanent disposition of their funds,
3 considering the probable income as well as the probable
4 safety of their capital";

5

6 (v) "Prudent man rule," "prudent trustee rule,"
7 "prudent person rule" or "prudent investor rule."

8

9 **4-10-911. Application to public funds of the state of**
10 **Wyoming.**

11

12 This article does not apply to public funds of the state of
13 Wyoming unless specific reference is made to this article.

14

15 **4-10-912. Application to Wyoming family college**
16 **savings program trust.**

17

18 This act does not apply to the Wyoming family college
19 savings program trust created by W.S. 21-16-811(a), except
20 that this article shall continue to apply as required under
21 W.S. 21-16-813(c)(iii).

22

23 **4-10-913. Short title.**

24

1 This article may be cited as the "Wyoming Uniform Prudent
2 Investor Act."

3

4

ARTICLE 10

5

LIABILITY OF FIDUCIARIES AND RIGHTS OF PERSONS DEALING WITH

6

FIDUCIARIES

7

8

4-10-1001. Remedies for breach of trust.

9

10 (a) A violation by a fiduciary of a duty the
11 fiduciary owes to a beneficiary is a breach of trust.

12

13 (b) To remedy a breach of trust that has occurred or
14 may occur, the court may:

15

16 (i) Compel the fiduciary to perform the
17 fiduciary's duties;

18

19 (ii) Enjoin the fiduciary from committing a
20 breach of trust;

21

22 (iii) Compel the fiduciary to redress a breach
23 of trust by paying money, restoring property or other
24 means;

1

2 (iv) Order a fiduciary to account;

3

4 (v) Appoint a special fiduciary to take
5 possession of the trust property and administer the trust;

6

7 (vi) Suspend the fiduciary;

8

9 (vii) Remove the fiduciary as provided in W.S.
10 4-10-706;

11

12 (viii) Reduce or deny compensation to the
13 fiduciary;

14

15 (ix) Subject to W.S. 4-10-1012, void an act of
16 the fiduciary, impose a lien or a constructive trust on
17 trust property or trace trust property wrongfully disposed
18 of and recover the property or its proceeds; or

19

20 (x) Order any other appropriate relief.

21

22 **4-10-1002. Damages for breach of trust.**

23

1 (a) A fiduciary who commits a breach of trust is
2 liable to the beneficiaries affected for the greater of:

3

4 (i) The amount required to restore the value of
5 the trust property and trust distributions to what they
6 would have been had the breach not occurred; or

7

8 (ii) The profit the fiduciary made by reason of
9 the breach.

10

11 (b) Except as otherwise provided in this subsection,
12 if more than one (1) fiduciary is liable to the
13 beneficiaries for a breach of trust, a fiduciary is
14 entitled to contribution from the other fiduciary or
15 fiduciaries. A fiduciary is not entitled to contribution if
16 the fiduciary was substantially more at fault than another
17 fiduciary or if the fiduciary committed the breach of trust
18 in bad faith or with reckless indifference to the purposes
19 of the trust or the interests of the beneficiaries. A
20 fiduciary who received a benefit from the breach of trust
21 is not entitled to contribution from another fiduciary to
22 the extent of the benefit received.

23

24 **4-10-1003. Damages in absence of breach.**

1

2 (a) A fiduciary is accountable to an affected
3 beneficiary for any profit made by the fiduciary arising
4 from the administration of the trust, even absent a breach
5 of trust.

6

7 (b) Absent a breach of trust, a fiduciary is not
8 liable to a beneficiary for a loss or depreciation in the
9 value of trust property or for not having made a profit.

10

11 **4-10-1004. Attorney's fees and costs.**

12

13 In a judicial proceeding involving the administration of a
14 trust, the court, as justice and equity may require, may
15 award costs and expenses, including reasonable attorney's
16 fees, to any party, to be paid by another party or from the
17 trust that is the subject of the controversy.

18

19 **4-10-1005. Limitation of action against fiduciary.**

20

21 (a) A beneficiary may not commence a proceeding
22 against a fiduciary for breach of trust more than two (2)
23 years after the date the beneficiary or a representative of
24 the beneficiary received a report that adequately disclosed

1 the existence of a potential claim for breach of trust and
2 informed the beneficiary of the time allowed for commencing
3 a proceeding.

4

5 (b) A report adequately discloses the existence of a
6 potential claim for breach of trust if it provides
7 sufficient information so that the beneficiary or
8 representative knows of the potential claim or should have
9 inquired into its existence.

10

11 (c) If subsection (a) of this section does not apply,
12 a judicial proceeding by a beneficiary against a fiduciary
13 for breach of trust shall be commenced within three (3)
14 years after the first of the following to occur:

15

16 (i) The removal, resignation or death of the
17 fiduciary;

18

19 (ii) The termination of the beneficiary's
20 interest in the trust; or

21

22 (iii) The termination of the trust.

23

24 **4-10-1006. Reliance on trust instrument.**

1

2 A fiduciary who acts in reasonable reliance on the terms of
3 the trust as expressed in the trust instrument is not
4 liable to a beneficiary for a breach of trust to the extent
5 the breach resulted from the reliance.

6

7 **4-10-1007. Event affecting administration or**
8 **distribution.**

9

10 If the happening of an event, including marriage, divorce,
11 performance of educational requirements or death, affects
12 the administration or distribution of a trust, a fiduciary
13 who has exercised reasonable care to ascertain the
14 happening of the event is not liable for a loss resulting
15 from the fiduciary's lack of knowledge.

16

17 **4-10-1008. Exculpation of fiduciaries.**

18

19 (a) A term of a trust relieving a fiduciary of
20 liability for breach of trust is unenforceable to the
21 extent that it:

22

23 (i) Relieves the fiduciary of liability for
24 breach of trust committed in bad faith or with reckless

1 indifference to the purposes of the trust or the interests
2 of the beneficiaries; or

3

4 (ii) Was inserted as the result of an abuse by
5 the fiduciary of a fiduciary or confidential relationship
6 to the settlor.

7

8 (b) An exculpatory term drafted or caused to be
9 drafted by the fiduciary is invalid as an abuse of a
10 fiduciary or confidential relationship unless the fiduciary
11 proves that the exculpatory term is fair under the
12 circumstances and that its existence and contents were
13 adequately communicated to the settlor.

14

15 **4-10-1009. Beneficiary's consent, release or**
16 **ratification.**

17

18 (a) A fiduciary is not liable to a beneficiary for
19 breach of trust if the beneficiary consented in writing to
20 the conduct constituting the breach, released the fiduciary
21 from liability for the breach or ratified the transaction
22 constituting the breach, unless:

23

1 (i) The consent, release or ratification of the
2 beneficiary was induced by improper conduct of the
3 fiduciary; or

4
5 (ii) At the time of the consent, release or
6 ratification, the beneficiary did not know of the
7 beneficiary's rights or of the material facts relating to
8 the breach.

9
10 **4-10-1010. Limitation on personal liability of**
11 **fiduciary.**

12
13 (a) Except as otherwise provided in the contract, a
14 fiduciary is not personally liable on a contract properly
15 entered into in its capacity as a fiduciary in the course
16 of administering the trust if the fiduciary in the contract
17 disclosed the fiduciary capacity.

18
19 (b) A fiduciary is personally liable for torts
20 committed in the course of administering a trust, or for
21 obligations arising from ownership or control of trust
22 property, including liability for violation of
23 environmental law, only if the fiduciary is personally at
24 fault.

1

2 (c) A claim based on a contract entered into by a
3 fiduciary in its capacity as a fiduciary, on an obligation
4 arising from ownership or control of trust property, or on
5 a tort committed in the course of administering a trust,
6 may be asserted in a judicial proceeding against the
7 fiduciary in its capacity as a fiduciary, whether or not
8 the fiduciary is personally liable for the claim.

9

10 **4-10-1011. Liability of successor fiduciaries for**
11 **actions of predecessor.**

12

13 Successor fiduciaries are not liable for actions, errors or
14 omissions of any prior or predecessor fiduciaries.

15

16 **4-10-1012. Interest of trustee as general partner.**

17

18 (a) Except as otherwise provided in subsection (c) of
19 this section or unless personal liability is imposed in the
20 contract, a trustee who holds an interest as a general
21 partner in a general or limited partnership is not
22 personally liable on a contract entered into by the
23 partnership after the trust's acquisition of the interest
24 if the fiduciary capacity was disclosed in the contract or

1 in a statement previously filed pursuant to W.S. 17-14-201
2 through 17-14-209 or 17-21-101 through 17-21-1105.

3

4 (b) Except as otherwise provided in subsection (c) of
5 this section, a trustee who holds an interest as a general
6 partner is not personally liable for torts committed by the
7 partnership or for obligations arising from ownership or
8 control of the interest unless the trustee is personally at
9 fault.

10

11 (c) The immunity provided by this section does not
12 apply if an interest in the partnership is held by the
13 trustee in a capacity other than that of trustee or is held
14 by the trustee's spouse or one (1) or more of the trustee's
15 descendants, siblings, or parents or the spouse of any of
16 them.

17

18 (d) If the trustee of a revocable trust holds an
19 interest as a general partner, the settlor is personally
20 liable for contracts and other obligations of the
21 partnership as if the settlor were a general partner.

22

23 **4-10-1013. Protection of person dealing with**
24 **fiduciary.**

1

2 (a) A person other than a beneficiary who in good
3 faith assists a fiduciary, or who in good faith and for
4 value deals with a fiduciary, without knowledge that the
5 fiduciary is exceeding or improperly exercising the
6 fiduciary's powers is protected from liability as if the
7 fiduciary properly exercised the power.

8

9 (b) A person other than a beneficiary who in good
10 faith deals with a fiduciary is not required to inquire
11 into the extent of the fiduciary's powers or the propriety
12 of their exercise.

13

14 (c) A person who in good faith delivers assets to a
15 fiduciary need not ensure their proper application.

16

17 (d) A person other than a beneficiary who in good
18 faith assists a former fiduciary, or who in good faith and
19 for value deals with a former fiduciary, without knowledge
20 that the appointment has terminated is protected from
21 liability as if the former fiduciary were still a
22 fiduciary.

23

1 (e) Comparable protective provisions of other laws
2 relating to commercial transactions or transfer of
3 securities by fiduciaries prevail over the protection
4 provided by this section.

5

6 **4-10-1014. Certification or affidavit of trust.**

7

8 (a) Instead of furnishing a copy of the trust
9 instrument to a person other than a beneficiary, the
10 trustee may furnish to the person a certification or
11 affidavit of trust containing the following information:

12

13 (i) That the trust exists and the date the trust
14 instrument was executed;

15

16 (ii) The identity of the settlor;

17

18 (iii) The identity and address of the currently
19 acting trustee;

20

21 (iv) The powers of the trustee;

22

1 (v) The revocability or irrevocability of the
2 trust and the identity of any person holding a power to
3 revoke the trust;

4

5 (vi) The authority of cotrustees to sign or
6 otherwise authenticate and whether all or less than all are
7 required in order to exercise powers of the trustee;

8

9 (vii) The trust's taxpayer identification
10 number; and

11

12 (viii) The manner of taking title to trust
13 property.

14

15 (b) A certification or affidavit of trust may be
16 signed or otherwise authenticated by any trustee.

17

18 (c) A certification or affidavit of trust shall state
19 that the trust has not been revoked, modified or amended in
20 any manner that would cause the representations contained
21 in the certification of trust to be incorrect.

22

23 (d) A certification or affidavit of trust need not
24 contain the dispositive terms of a trust.

1

2 (e) A recipient of a certification or affidavit of
3 trust may require the trustee to furnish copies of those
4 excerpts from the original trust instrument and later
5 amendments which designate the trustee and confer upon the
6 trustee the power to act in the pending transaction.

7

8 (f) A person who acts in reliance upon a
9 certification or affidavit of trust without knowledge that
10 the representations contained therein are incorrect is not
11 liable to any person for so acting and may assume without
12 inquiry the existence of the facts contained in the
13 certification or affidavit. Knowledge of the terms of the
14 trust may not be inferred solely from the fact that a copy
15 of all or part of the trust instrument is held by the
16 person relying upon the certification or affidavit.

17

18 (g) A person who in good faith enters into a
19 transaction in reliance upon a certification or affidavit
20 of trust may enforce the transaction against the trust
21 property as if the representations contained in the
22 certification or affidavit were correct.

23

1 (h) A person making a demand for the trust instrument
2 in addition to a certification or affidavit of trust or
3 excerpts is liable for damages if the court determines that
4 the person did not act in good faith in demanding the trust
5 instrument.

6

7 (j) This section does not limit the right of a person
8 to obtain a copy of the trust instrument in a judicial
9 proceeding concerning the trust.

10

11

ARTICLE 11

12

MISCELLANEOUS PROVISIONS

13

14 **4-10-1101. Uniformity of application and**
15 **construction.**

16

17 In applying and construing this act, consideration shall be
18 given to the need to promote uniformity of the law with
19 respect to its subject matter among states that enact it.

20

21 **4-10-1102. Electronic records and signatures.**

22

23 The provisions of this act governing the legal effect,
24 validity or enforceability of electronic records or

1 electronic signatures, and of contracts formed or performed
2 with the use of such records or signatures, conform to the
3 requirements of Section 102 of the Electronic Signatures in
4 Global and National Commerce Act (15 U.S.C. Section 7002)
5 and supersede, modify, and limit the requirements of the
6 Electronic Signatures in Global and National Commerce Act.

7

8 **4-10-1103. Severability clause.**

9

10 If any provision of this act or its application to any
11 person or circumstances is held invalid, the invalidity
12 does not affect other provisions or applications of this
13 act which can be given effect without the invalid provision
14 or application, and to this end the provisions of this act
15 are severable.

16

17 **4-10-1104. Application to existing relationships.**

18

19 (a) Except as otherwise provided in this act, on July
20 1, 2003:

21

22 (i) This act, applies to all trusts created
23 before, on or after July 1, 2003;

24

1 (ii) This act applies to all judicial
2 proceedings concerning trusts commenced on or after July 1,
3 2003;

4
5 (iii) This act applies to judicial proceedings
6 concerning trusts commenced before July 1, 2003, unless the
7 court finds that application of a particular provision of
8 this act would substantially interfere with the effective
9 conduct of the judicial proceedings or prejudice the rights
10 of the parties, in which case the particular provision of
11 this act, does not apply and the superseded law applies;

12
13 (iv) Any rule of construction or presumption
14 provided in this act applies to trust instruments executed
15 before July 1, 2003, unless there is a clear indication of
16 a contrary intent in the terms of the trust; and

17
18 (v) An action taken before July 1, 2003, is not
19 affected by this act.

20
21 (b) If a right is acquired, extinguished or barred
22 upon the expiration of a prescribed period that has
23 commenced to run under any other statute before July 1,

1 2003, that statute continues to apply to the right even if
2 it has been repealed or superseded.

3

4 **Section 2.** W.S. 2-3-301(a), 13-5-108(c) and 34-1-139
5 are amended to read:

6

7 **2-3-301. Standard for fiduciaries; authority to**
8 **acquire and retain property and investments.**

9

10 (a) In acquiring, investing, reinvesting, exchanging,
11 retaining, selling and managing property for the benefit of
12 another, a fiduciary shall exercise the judgment and care
13 of a prudent investor as specified under W.S. ~~4-9-101~~
14 4-10-901 through ~~4-9-113~~ 4-10-913.

15

16 **13-5-108. Laws applicable; matters of contract.**

17

18 (c) In performing its duties under a trust, a trust
19 company shall be subject to the provisions of the Uniform
20 Trustees' Powers Act, W.S. ~~4-8-101~~ 4-10-801 et seq.

21

22 **34-1-139. Perpetuities; time limits for vesting;**
23 **restrictions on selected lives; legislative intent.**

24

1 (a) No interest in real or personal property shall be
2 good unless it must vest not later than twenty-one (21)
3 years after some life in being at the creation of the
4 interest and any period of gestation involved in the
5 situation to which the limitation applies. The lives
6 selected to govern the time of vesting must not be so
7 numerous nor so situated that evidence of their deaths is
8 likely to be unreasonably difficult to obtain. It is
9 intended by the enactment of this statute to make effective
10 in this state the American common-law rule against
11 perpetuities.

12

13 (b) Subsection (a) of this section shall not apply to
14 a trust created after July 1, 2003 if:

15

16 (i) The instrument creating the trust states
17 that the rule against perpetuities as provided in
18 subsection (a) of this section shall not apply to the
19 trust;

20

21 (ii) The instrument creating the trust states
22 that the trust shall terminate no later than one thousand
23 (1,000) years after the trust's creation; and

24

