

ENROLLED ACT NO. 74, HOUSE OF REPRESENTATIVES

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

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

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

Section 1. W.S. 4-10-101 through 4-10-111, 4-10-201 through 4-10-204, 4-10-301 through 4-10-305, 4-10-401 through 4-10-418, 4-10-501 through 4-10-508, 4-10-601 through 4-10-604, 4-10-701 through 4-10-717, 4-10-801 through 4-10-817, 4-10-901 through 4-10-913, 4-10-1001 through 4-10-1014 and 4-10-1101 through 4-10-1103 are created to read:

TITLE 4
TRUSTS

CHAPTER 10
UNIFORM TRUST CODE

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

4-10-101. Short title.

This act may be cited as the Uniform Trust Code.

4-10-102. Scope.

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

4-10-103. Definitions.

(a) As used in this act:

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

(ii) "Beneficiary" means a person that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xxvi) "This act" means W.S. 4-10-101 through 4-10-1103.

4-10-104. Knowledge.

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

(i) Has actual knowledge of it;

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

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

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

4-10-105. Default and mandatory rules.

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

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

(i) The requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

4-10-107. Governing law.

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

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

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

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

4-10-108. Principal place of administration.

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

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

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

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

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries unless otherwise provided in subsection (a) of this section or changed as provided in subsection (c) of this section.

(c) Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

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

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

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

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

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

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

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

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

(a) Notice to a person under this act or the sending of a document to a person under this act shall be accomplished in a manner reasonably suitable under the circumstances and that results in receipt of the notice or document. Permissible methods of notice, or for sending a document, include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message.

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

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

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

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

(a) Whenever notice to qualified beneficiaries of a trust is required under this act before the death of the settlor, the trustee may give notice to any beneficiary from whom the trustee has received a written request for notice if the trustee has the written consent of the settlor.

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

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

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

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4-10-111. Nonjudicial settlement agreements.

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

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

(c) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this act or other applicable law.

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

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

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

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

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

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

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

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

ARTICLE 2
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

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courts of this state regarding any matter involving the trust.

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

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

4-10-203. Subject matter jurisdiction.

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

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

4-10-204. Venue.

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

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

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

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

ARTICLE 3
REPRESENTATION

4-10-301. Representation; basic effect.

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

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

(c) Except as otherwise provided in W.S. 4-10-413 and 4-10-602, a person who under this article may represent a

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settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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interest between the representative and the person represented.

4-10-305. Appointment of representative.

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

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

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

ARTICLE 4
CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

4-10-401. Methods of creating trust.

(a) A trust may be created by:

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

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

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

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

(v) An agent under a power of attorney where the express authority is designated with the appointment document and where the trust directs distribution upon the settlor's death consistent with an existing will or other testamentary instrument or in absence thereof in accordance with the law of intestate succession as provided in W.S. 2-4-101.

4-10-402. Title of trust property.

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

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

(ii) If it is personal property, in:

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

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

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

(D) The name of the trust.

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

4-10-403. Requirements for creation.

(a) A trust is created only if:

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

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

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

(A) A charitable trust;

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

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

(iv) The trustee has duties to perform; and

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

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

(c) A power in a trustee, trust advisor, trust protector or other party designated in the trust instrument to select a beneficiary from an indefinite class is valid.

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If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

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

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

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

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

(iii) Any trust property was located.

4-10-405. Trust purposes.

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

4-10-406. Charitable purposes; enforcement.

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

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

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

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

Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a trust is void to the extent its creation was induced by fraud, duress or undue influence.

4-10-408. Evidence of oral trust.

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

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

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

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

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

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

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

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

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

(iii) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust

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property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

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

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

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

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

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a modification or termination of a trust may be exercised by an agent under a power of

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attorney only to the extent expressly authorized by the power of attorney or the terms of the trust or, if no agent is so authorized, then by the settlor's conservator or guardian or, if none, then by the settlor's conservator or guardian, in each case with the approval of the court supervising the conservatorship or guardianship upon a finding by the court that such action is not inconsistent with the settlor's purpose or intent.

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

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

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

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

(f) If not all the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b) or (c) of this section, the

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modification or termination may be approved by the court if the court is satisfied that:

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

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

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

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

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

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

4-10-414. Cy pres.

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

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

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

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

4-10-415. Modification or termination of uneconomic trust.

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

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

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

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

(iv) If the trustee receives a written objection to the plan within thirty (30) days after receipt of the

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notice, the trustee shall not distribute the assets of the trust, but may then petition the court for an order authorizing distribution in accordance with the plan. The court shall have plenary authority to approve, modify or reject the trustee's petition.

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

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

4-10-416. Reformation to correct mistakes.

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

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

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

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

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

ARTICLE 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to, or for the benefit of, the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

4-10-502. Spendthrift provision.

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

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

(c) Other than by valid disclaimer under W.S. 2-1-401, a beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or

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assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

4-10-503. Exceptions to spendthrift provision.

(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.

(b) Even if a trust contains a spendthrift provision, a beneficiary's child, who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to, or for the benefit of, the beneficiary.

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

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

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

(ii) The trustee has abused the discretion.

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

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

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

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

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

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

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

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

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(iii) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and statutory allowances as provided in W.S. 2-5-101 and 2-5-103 to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs of administration, expenses and allowances as provided in W.S. 2-5-101 and 2-5-103.

(b) For purposes of this section:

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

(ii) Upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on July 1, 2003.

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

(a) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a creditor may file a claim against the assets of the trust or commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

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

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

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

(A) Of the trust's existence;

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

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

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

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

4-10-507. Overdue distribution.

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Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

4-10-508. Personal obligations of trustee.

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

ARTICLE 6
REVOCABLE TRUSTS

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

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

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

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

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

(i) To the extent the trust consists of community property, the trust may be revoked by either

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spouse acting alone but may be amended only by joint action of both spouses; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(a) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

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

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

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

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

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

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

ARTICLE 7
TRUSTEES, TRUST ADVISORS AND TRUST PROTECTORS

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4-10-701. Accepting or declining trusteeship.

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

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

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

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

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

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

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

4-10-702. Trustee's bond.

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

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

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

4-10-703. Cotrustees.

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

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

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

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

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

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

(g) Each trustee shall exercise reasonable care to:

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

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

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action, unless the action is a serious breach of trust.

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

(a) A vacancy in a trusteeship occurs if:

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

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

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- (iii) A trustee resigns;
- (iv) A trustee is disqualified or removed;
- (v) A trustee dies; or
- (vi) A guardian or conservator is appointed for an individual serving as trustee.

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

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

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

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

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

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

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

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

(iii) By a person appointed by the court.

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

4-10-705. Resignation of trustee.

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

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

(ii) With the approval of the court.

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

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

(ii) With approval of the court.

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

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

4-10-706. Removal of trustee.

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

(b) The court may remove a trustee if:

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

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

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

(iv) There has been a substantial change of circumstances, or removal is requested by all of the qualified beneficiaries, and the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under

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W.S. 4-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

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

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

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

4-10-708. Compensation of trustee.

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

(i) The current trustee's compensation;

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

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

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

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

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

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

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

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

(d) The authority of a trustee under this section to change the trustee's rate or method of compensation terminates if a majority of the qualified beneficiaries notify the trustee of objections to the proposed change in compensation on or before the date specified in the notice.

4-10-709. Reimbursement of expenses.

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

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

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

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

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

4-10-710. Trust protector.

(a) The powers and discretions of a trust protector shall be provided in the trust instrument or may be established or modified by a judicial order, and may, in the best interests of the trust, be exercised or not exercised. The powers and discretions may include the following:

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

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

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- (iii) To appoint a successor trust protector;
- (iv) To review and approve the accountings of a trustee;
- (v) To change the governing law or principal place of administration of the trust;
- (vi) To remove and replace any trust advisor for the reasons stated in the trust instrument;
- (vii) To remove a trustee, cotrustee or successor trustee, for the reasons stated in the trust instrument, and appoint a replacement;
- (viii) To interpret terms of the trust instrument at the request of the trustee;
- (ix) To advise the trustee or cotrustee on matters concerning any beneficiary;
- (x) To direct, consent or disapprove a trustee's or cotrustee's action or inaction in making distributions to beneficiaries; and
- (xi) To increase or decrease any interest of the beneficiaries to the trust, to grant a power of appointment to one (1) or more trust beneficiaries or to terminate or amend any power of appointment granted by the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest to any person or class of persons not specifically provided for under the trust instrument or to the trust protector, the trust protector's estate or for the benefit of the creditors of the trust protector.

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

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

4-10-712. Trust advisor.

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

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

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

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

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

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

4-10-713. Trust advisor as a fiduciary.

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

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

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

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

Unless the trust instrument states otherwise, an excluded fiduciary is relieved of any duty or responsibility to review the actions of a trust advisor or trust protector duly named and appointed under the trust instrument. The excluded fiduciary is further relieved of any liability resulting from breach of trust, failure to act, liability resulting from actions taken or any loss resulting from compliance with a direction by a trust advisor or trust protector.

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

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

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

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

ARTICLE 8
DUTIES AND POWERS OF TRUSTEE

4-10-801. Duty to administer trust.

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

4-10-802. Duty of loyalty.

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

(b) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

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(ii) The transaction was approved by the court;

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

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

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

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

(i) The trustee's spouse;

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

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

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

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which

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the trustee obtains an advantage beyond the normal commercial advantage from such a transaction, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule as specified under article 9 of this act. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if, as a condition precedent to receipt of such compensation, and at least annually, the trustee notifies the persons entitled under W.S. 4-10-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation is determined by delivery of a prospectus or other communication.

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

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

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

(ii) Payment of reasonable compensation to the trustee;

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

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

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

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

4-10-803. Impartiality.

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

4-10-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional

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requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

4-10-805. Costs of administration.

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

4-10-806. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

4-10-807. Delegation by trustee.

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

(i) Selecting an agent;

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

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

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

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

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

4-10-808. Powers to direct.

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

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

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

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

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

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

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

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

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

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

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

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

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

4-10-812. Collecting trust property.

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

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

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

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

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

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

(iii) Within sixty (60) days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires

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knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection (c) of this section; and

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

(c) A trustee shall send to qualified beneficiaries, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the amount of the trustee's compensation, the allocation of receipts, disbursements, trustee compensation and expenses of administration between income and principal, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian of a deceased or incapacitated trustee may send the qualified beneficiaries a report on the trustee's behalf.

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

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

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(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

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

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

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

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

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

(i) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as

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defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on July 1, 2003, was previously allowed;

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

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

4-10-815. General powers of trustee.

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

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

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

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

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

(C) Any other powers conferred by this act.

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

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4-10-816. Specific powers of trustee.

(a) Without limiting the authority conferred by W.S. 4-10-815, a trustee may:

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

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

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

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

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

(vi) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, partners, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital;

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

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

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

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

(D) Exercise stock options and other rights; and

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

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

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

(x) Grant an option involving a sale, lease or other disposition of trust property or acquire an option

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for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

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

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

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

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

(B) Take action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

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

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

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

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

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

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

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

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

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

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(xx) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove any trustee so appointed;

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

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

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

(C) If the trustee does not know of a conservator, guardian, custodian or custodial trustee, paying it to the person's agent under a power of attorney or, if none, to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;

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

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

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

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

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

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

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

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

4-10-817. Distribution upon termination.

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(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

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

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

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

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

ARTICLE 9
UNIFORM PRUDENT INVESTOR ACT

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

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

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

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

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

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

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

(i) General economic conditions;

(ii) The possible effect of inflation or deflation;

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

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(iv) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

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

(vi) Other resources of the beneficiaries;

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

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

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

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

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

4-10-903. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of

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special circumstances, the purposes of the trust are better served without diversifying.

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

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

4-10-905. Loyalty.

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

4-10-906. Impartiality.

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

4-10-907. Investment costs.

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

4-10-908. Reviewing compliance.

Compliance with the prudent investor rule under this article is determined in light of the facts and

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circumstances existing at the time of a trustee's decision or action and not by hindsight.

4-10-909. Delegation of investment and management functions.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(i) Selecting an agent;

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

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

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

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

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of the state of Wyoming even if investment advisory agreements or other related agreements provide otherwise, and the agent may be made a party to any action or

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proceeding if issues relate to a decision, action or inaction of the agent.

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

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

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

(ii) "Legal investments";

(iii) "Authorized investments";

(iv) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital";

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

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

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

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

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

4-10-913. Short title.

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

ARTICLE 10
LIABILITY OF FIDUCIARIES AND RIGHTS OF PERSONS DEALING WITH
FIDUCIARIES

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

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

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

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

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

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

(iv) Order a fiduciary to account;

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

(vi) Suspend the fiduciary;

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

(viii) Reduce or deny compensation to the fiduciary;

(ix) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, void an act of the fiduciary, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(x) Order any other appropriate relief.

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

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

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

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

(b) Except as otherwise provided in this subsection, if more than one (1) fiduciary is liable to the beneficiaries for a breach of trust, a fiduciary is entitled to contribution from the other fiduciary or fiduciaries. A fiduciary is not entitled to contribution if

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the fiduciary was substantially more at fault than another fiduciary or if the fiduciary committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A fiduciary who received a benefit from the breach of trust is not entitled to contribution from another fiduciary to the extent of the benefit received.

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

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

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

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

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

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

(a) A beneficiary may not commence a proceeding against a fiduciary for breach of trust more than two (2) years after the date the beneficiary or a representative of the beneficiary received a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

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

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

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

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

(iii) The termination of the trust.

4-10-1006. Reliance on trust instrument.

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

4-10-1007. Event affecting administration or distribution.

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

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4-10-1008. Exculpation of fiduciaries.

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

(i) Relieves the fiduciary of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

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

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

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

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

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

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

4-10-1010. Limitation on personal liability of fiduciary.

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

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

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

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

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

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

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(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to W.S. 17-14-201 through 17-14-209 or 17-21-101 through 17-21-1105.

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

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

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

4-10-1013. Protection of person dealing with fiduciary.

(a) A person other than a beneficiary who in good faith assists a fiduciary, or who in good faith and for value deals with a fiduciary, without knowledge that the

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fiduciary is exceeding or improperly exercising the fiduciary's powers is protected from liability as if the fiduciary properly exercised the power.

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

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

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

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

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

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

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

(ii) The identity of the settlor;

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

(iv) The powers of the trustee;

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11
MISCELLANEOUS PROVISIONS

4-10-1101. Uniformity of application and construction.

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

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4-10-1102. Electronic records and signatures.

The provisions of this act governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

4-10-1103. Application to existing relationships.

(a) Except as otherwise provided in this act and subsection (c) of this section, on July 1, 2003:

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

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

(iii) An action taken before July 1, 2003, is not affected by this act.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2003, that statute continues to apply to the right even if it has been repealed or superseded.

(c) This act applies to a trust created before July 1, 2003 if the settlor, if living, and all qualified beneficiaries consent to the application. If the settlor is not living, this act may apply to a trust created before

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July 1, 2003 if all qualified beneficiaries consent to the application. If all of the qualified beneficiaries do not consent to a proposed application of this act to the trust, the court may apply this act to the trust after determining that the interests of the nonconsenting qualified beneficiary will be adequately protected.

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

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

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

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

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

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

(a) No interest in real or personal property shall be good unless it must vest not later than twenty-one (21) years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of vesting must not be so numerous nor so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. It is

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intended by the enactment of this statute to make effective in this state the American common-law rule against perpetuities.

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

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

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

(iii) The trust is governed by the laws of this state and the trustee maintains a place of business, administers the trust in this state or is a resident of this state.

(c) The election provided in subsection (b) of this section shall not be available to real property owned and held in a trust making an election under subsection (b) of this section. Subsection (a) of this section shall apply to such real property held in a trust making an election under subsection (b) of this section. Subsection (b) of this section shall apply to the remaining assets of such trust.

(d) Real property for the purpose of subsection (b) of this section shall not include a mineral interest or an interest in a corporation, limited liability company, partnership, business trust or other entity.

Section 3. W.S. 4-8-101 through 4-8-112 and 4-9-101 through 4-9-113 are repealed.

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Section 4. This act is effective July 1, 2003.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk