

<p>Article 7.Part 10. Liability of Trustees and Rights of persons dealing with Trustees</p>	<p>Article 7.Part 10.</p>
<p>GENERAL COMMENT Sections 1001 through 1009 identify the remedies for breach of trust, describe how money damages are to be determined, and specify potential defenses. Section 1001 lists the remedies for breach of trust and specifies when a breach of trust occurs. A breach of trust occurs when the trustee breaches one of the duties contained in Article 8 or elsewhere in the Code. The remedies for breach of trust in Section 1001 are broad and flexible. Section 1002 provides how money damages for breach of trust are to be determined. The standard for determining money damages rests on two principles: (1) the trust should be restored to the position it would have been in had the harm not occurred; and (2) the trustee should not be permitted to profit from the trustee’s own wrong. Section 1003 holds a trustee accountable for profits made from the trust even in the absence of a breach of trust. Section 1004 reaffirms the court’s power in equity to award costs and attorney’s fees as justice requires. Sections 1005 through 1009 deal with potential defenses. Section 1005 provides a statute of limitations on actions against a trustee. Section 1006 protects a trustee who acts in reasonable reliance on the terms of a written trust instrument. Section 1007 protects a trustee who has exercised reasonable care to ascertain the happening of events that might affect distribution, such as a beneficiary’s marriage or death. Section 1008 describes the effect and limits on the use of an exculpatory clause. Section 1009 deals with the standards for recognizing beneficiary approval of acts of the trustee that might otherwise constitute a breach of trust. Sections 1010 through 1013 address trustee relations with persons other than beneficiaries. The emphasis is on encouraging third parties to the same</p>	<p>GENERAL COMMENT Sections 62-7-1001 through 62-7-1009 identify the remedies for breach of trust, describe how money damages are to be determined, and specify potential defenses. Section 62-7-1001 lists the remedies for breach of trust and specifies when a breach of trust occurs. A breach of trust occurs when the trustee breaches one of the duties contained in Article 8 or elsewhere in the Code. The remedies for breach of trust in Section 62-7-1001 are broad and flexible. Section 62-7-1002 provides how money damages for breach of trust are to be determined. The standard for determining money damages rests on two principles: (1) the trust should be restored to the position it would have been in had the harm not occurred; and (2) the trustee should not be permitted to profit from the trustee’s own wrong. Section 62-7-1003 holds a trustee accountable for profits made from the trust even in the absence of a breach of trust. Section 62-7-1004 reaffirms the court’s power in equity to award costs and attorney’s fees as justice requires. Sections 62-7-1005 through 62-7-1009 deal with potential defenses. Section 62-7-1005 provides a statute of limitations on actions against a trustee. Section 62-7-1006 protects a trustee who acts in reasonable reliance on the terms of a written trust instrument. Section 62-7-1007 protects a trustee who has exercised reasonable care to ascertain the happening of events that might affect distribution, such as a beneficiary’s marriage or death. Section 62-7-1008 describes the effect and limits on the use of an exculpatory clause. Section 62-7-1009 deals with the standards for recognizing beneficiary approval of acts of the trustee that might otherwise constitute a breach of trust. Sections 62-7-1010 through 62-7-1013 address trustee relations with persons other than beneficiaries. The emphasis is on</p>

extent as if the property were not held in trust. Section 1010 negates personal liability on contracts entered into by the trustee if the fiduciary capacity was properly disclosed. The trustee is also relieved from liability for torts committed in the course of administration unless the trustee was personally at fault. Section 1011 negates personal liability for contracts entered into by partnerships in which the trustee is a general partner as long as the fiduciary capacity was disclosed in the contract or partnership certificate. Section 1012 protects persons other than beneficiaries who deal with a trustee in good faith and without knowledge that the trustee is exceeding or improperly exercising a power. Section 1013 permits a third party to rely on a certification of trust, thereby reducing the need for a third party to request a copy of the complete trust instrument.

Much of this article is not subject to override in the terms of the trust. The settlor may not limit the rights of persons other than beneficiaries as provided in Sections 1010 through 1013, nor interfere with the court's ability to take such action to remedy a breach of trust as may be necessary in the interests of justice. See Section 105.

SECTION 62-7-1001. Remedies for breach of trust.

- (a) A violation by a trustee of a duty the trustee 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:
 - (1) compel the trustee to perform the trustee's duties;
 - (2) enjoin the trustee from committing a breach of trust;
 - (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
 - (4) order a trustee to account;

encouraging third parties to engage in commercial transactions to the same extent as if the property were not held in trust. Section 62-7-1010 negates personal liability on contracts entered into by the trustee if the fiduciary capacity was properly disclosed. The trustee is also relieved from liability for torts committed in the course of administration unless the trustee was personally at fault. Section 62-7-1011 negates personal liability for contracts entered into by partnerships in which the trustee is a general partner as long as the fiduciary capacity was disclosed in the contract or partnership certificate. Section 62-7-1012 protects persons other than beneficiaries who deal with a trustee in good faith and without knowledge that the trustee is exceeding or improperly exercising a power. Section 62-7-1013 permits a third party to rely on a certification of trust, thereby reducing the need for a third party to request a copy of the complete trust instrument.

Much of this Part is not subject to override in the terms of the trust. The settlor may not limit the rights of persons other than beneficiaries as provided in Sections 62-7-1010 through 62-7-1013, nor interfere with the court's ability to take such action to remedy a breach of trust as may be necessary in the interests of justice. See Section 62-7-105.

SECTION 62-7-1001.

- (a) A violation by a trustee of a duty the trustee 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:
 - (1) compel the trustee to perform the trustee's duties;
 - (2) enjoin the trustee from committing a breach of trust;
 - (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in Section 62-7-706;
- (8) reduce or deny compensation to the trustee;
- (9) subject to Section 62-7-1012, void an act of the trustee, 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
- (10) order any other appropriate relief.

COMMENT

This section codifies the remedies available to rectify or to prevent a breach of trust for violation of a duty owed to a beneficiary. The duties that a trust might breach include those contained in Article 8 in addition to those specified elsewhere in the Code.

This section identifies the available remedies but does not attempt to cover the refinements and exceptions developed in case law. The availability of a remedy in a particular circumstance will be determined not only by this Code but also by the common law of trusts and principles of equity. See Section 106.

Beneficiaries and cotrustees have standing to bring a petition to remedy a breach of trust. Following a successor trustee's acceptance of office, a successor trustee has standing to sue a predecessor for breach of trust. See Restatement (Second) of Trusts Section 200 (1959). A person who may represent a beneficiary's interest under Article 3 would have standing to bring a petition on behalf of the person represented. In the case of a charitable trust, those with standing include the state attorney general, a charitable organization expressly designated to receive distributions under the terms of the trust, and other persons with a special interest. See Section 110 & Restatement (Second) of Trusts Section 391 (1959). A person appointed to enforce a trust for an animal or a trust for a noncharitable

- (4) order a trustee to account;
- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in Section 62-7-706;
- (8) reduce or deny compensation to the trustee;
- (9) subject to Section 62-7-1012, void an act of the trustee, 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
- (10) order any other appropriate relief.

REPORTER'S COMMENT

This section codifies the remedies available to rectify or to prevent a breach of trust for violation of a duty owed to a beneficiary. The duties that a trust might breach include those contained in Part 8 in addition to those specified elsewhere in the Code.

Although subsections (b)(2) through (b)(9) list specific remedies, subsection (b)(10) provides a general statement of available remedies, which essentially confirms broad authority in the court to fashion an appropriate remedy for breach of trust.

This section identifies the available remedies but does not attempt to cover the refinements and exceptions developed in case law. The availability of a remedy in a particular circumstance will be determined not only by this Code but also by the common law of trusts and principles of equity. See Section 62-7-106.

Beneficiaries and cotrustees have standing to bring a petition to remedy a breach of trust. Following a successor trustee's acceptance of office, a successor trustee has standing to sue a predecessor for breach of trust. See Restatement (Second) of Trusts Section 200 (1959). A person who may represent a beneficiary's interest under Part 3 would have standing to bring a petition on behalf of the person represented. In the case of a charitable

purpose would have standing to sue for a breach of trust. See Sections 110(b), 408, 409. Traditionally, remedies for breach of trust at law were limited to suits to enforce unconditional obligations to pay money or deliver chattels. See Restatement (Second) of Trusts Section 198 (1959). Otherwise, remedies for breach of trust were exclusively equitable, and as such, punitive damages were not available and findings of fact were made by the judge and not a jury. See Restatement (Second) of Trusts Section 197 (1959). The Uniform Trust Code does not preclude the possibility that a particular enacting jurisdiction might not follow these norms. The remedies identified in this section are derived from Restatement (Second) of Trusts Section 199 (1959). The reference to payment of money in subsection (b)(3) includes liability that might be characterized as damages, restitution, or surcharge. For the measure of liability, see Section 1002. Subsection (b)(5) makes explicit the court's authority to appoint a special fiduciary, also sometimes referred to as a receiver. See Restatement (Second) of Trusts Section 199(d) (1959). The authority of the court to appoint a special fiduciary is not limited to actions alleging breach of trust but is available whenever the court, exercising its equitable jurisdiction, concludes that an appointment would promote administration of the trust. See Section 704(d) (special fiduciary may be appointed whenever court considers such appointment necessary for administration). Subsection (b)(8), which allows the court to reduce or deny compensation, is in accord with Restatement (Second) of Trusts Section 243 (1959). For the factors to consider in setting a trustee's compensation absent breach of trust, see Section 708 and Comment. In deciding whether to reduce or deny a trustee compensation, the court may wish to consider (1) whether the trustee acted in good faith; (2) whether the breach of trust was intentional; (3) the nature of the breach and the extent of the

trust, those with standing include the state attorney general, a charitable organization expressly designated to receive distributions under the terms of the trust, and other persons with a special interest. See Section 62-7-110 & Restatement (Second) of Trusts Section 391 (1959). A person appointed to enforce a trust for an animal or a trust for a noncharitable purpose would have standing to sue for a breach of trust. See Sections 62-7-110(c), 62-7-408, 62-7-409.

Traditionally, remedies for breach of trust at law were limited to suits to enforce unconditional obligations to pay money or deliver chattels. See Restatement (Second) of Trusts Section 198 (1959). Otherwise, remedies for breach of trust were exclusively equitable, and as such, punitive damages were not available and findings of fact were made by the judge and not a jury. See Restatement (Second) of Trusts Section 197 (1959).

The remedies identified in this section are derived from Restatement (Second) of Trusts Section 199 (1959). The reference to payment of money in subsection (b)(3) includes liability that might be characterized as damages, restitution, or surcharge. For the measure of liability, see Section 62-7-1002. Subsection (b)(5) makes explicit the court's authority to appoint a special fiduciary, also sometimes referred to as a receiver. See Restatement (Second) of Trusts Section 199(d) (1959). The authority of the court to appoint a special fiduciary is not limited to actions alleging breach of trust but is available whenever the court, exercising its equitable jurisdiction, concludes that an appointment would promote administration of the trust. See Section 62-7-704(e) (special fiduciary may be appointed whenever court considers such appointment necessary for administration).

Subsection (b)(8), which allows the court to reduce or deny compensation, is in accord with Restatement (Second) of Trusts Section 243 (1959). For the factors to consider in setting a trustee's compensation absent breach of trust,

loss; (4) whether the trustee has restored the loss; and (5) the value of the trustee's services to the trust. See Restatement (Second) of Trusts Section 243 cmt. c (1959).

The authority under subsection (b)(9) to set aside wrongful acts of the trustee is a corollary of the power to enjoin a threatened breach as provided in subsection (b)(2). However, in setting aside the wrongful acts of the trustee the court may not impair the rights of bona fide purchasers protected under Section 1012. See Restatement (Second) of Trusts Section 284 (1959).

SOUTH CAROLINA COMMENT

This section lists the remedies available to a beneficiary for a breach of trust by the trustee. Although subsections (b)(2) through (b)(9) list specific remedies, subsection (b)(10) provides a general statement of available remedies, which essentially confirms broad authority in the court to fashion an appropriate remedy for breach of trust.

SECTION 62-7-1002. Damages for breach of trust.

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

(1) 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

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the

see Section 62-7-708 and Comment. In deciding whether to reduce or deny a trustee compensation, the court may wish to consider (1) whether the trustee acted in good faith; (2) whether the breach of trust was intentional; (3) the nature of the breach and the extent of the loss; (4) whether the trustee has restored the loss; and (5) the value of the trustee's services to the trust. See Restatement (Second) of Trusts Section 243 cmt. c (1959).

The authority under subsection (b)(9) to set aside wrongful acts of the trustee is a corollary of the power to enjoin a threatened breach as provided in subsection (b)(2). However, in setting aside the wrongful acts of the trustee the court may not impair the rights of bona fide purchasers protected under Section 62-7-1012. See Restatement (Second) of Trusts Section 284 (1959).

SECTION 62-7-1002.

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beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

COMMENT

Subsection (a) is based on Restatement (Third) of Trusts: Prudent Investor Rule Section 205 (1992). If a trustee commits a breach of trust, the beneficiaries may either affirm the transaction or, if a loss has occurred, hold the trustee liable for the amount necessary to compensate fully for the consequences of the breach. This may include recovery of lost income, capital gain, or appreciation that would have resulted from proper administration. Even if a loss has not occurred, the trustee may not benefit from the improper action and is accountable for any profit the trustee made by reason of the breach. For extensive commentary on the determination of damages, traditionally known as trustee surcharge, with numerous specific applications, see Restatement (Third) of Trusts: Prudent Investor Rule Sections 205-213 (1992). For the use of benchmark portfolios to determine damages, see Restatement (Third) of Trusts: Prudent Investor Rule Reporter's Notes to Sections 205 and 208-211 (1992). On the authority of a court of equity to reduce or excuse damages for breach of trust, see Restatement (Second) of Trusts Section 205 cmt. g (1959). For purposes of this section and Section 1003, "profit" does not include the trustee's compensation. A trustee who has committed a breach of trust is entitled to reasonable compensation for administering the trust unless the court reduces or denies the trustee compensation pursuant to Section 1001(b)(8). Subsection (b) is based on Restatement (Second) of Trusts Section 258 (1959). Cotrustees are jointly and severally liable for a breach of trust if there was joint participation in the breach. Joint and several liability also is imposed on a nonparticipating cotrustee who,

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REPORTER'S COMMENT

Subsection (a) is based on Restatement (Third) of Trusts: Prudent Investor Rule Section 205 (1992). If a trustee commits a breach of trust, the beneficiaries may either affirm the transaction or, if a loss has occurred, hold the trustee liable for the amount necessary to compensate fully for the consequences of the breach. This may include recovery of lost income, capital gain, or appreciation that would have resulted from proper administration. Even if a loss has not occurred, the trustee may not benefit from the improper action and is accountable for any profit the trustee made by reason of the breach. For extensive commentary on the determination of damages, traditionally known as trustee surcharge, with numerous specific applications, see Restatement (Third) of Trusts: Prudent Investor Rule Sections 205-213 (1992). For the use of benchmark portfolios to determine damages, see Restatement (Third) of Trusts: Prudent Investor Rule Reporter's Notes to Sections 205 and 208-211 (1992). On the authority of a court of equity to reduce or excuse damages for breach of trust, see Restatement (Second) of Trusts Section 205 cmt. g (1959). For purposes of this section and Section 62-7-1003, "profit" does not include the trustee's compensation. A trustee who has committed a breach of trust is entitled to reasonable compensation for administering the trust unless the court reduces or denies the trustee compensation pursuant to Section 62-7-1001(b)(8). Subsection (b) is based on Restatement (Second) of Trusts Section 258 (1959). Cotrustees are jointly and severally liable for a breach of trust if there was joint participation in the breach. Joint and several liability also is imposed on a nonparticipating cotrustee who,

as provided in Section 703(g), failed to exercise reasonable care (1) to prevent a cotrustee from committing a serious breach of trust, or (2) to compel a cotrustee to redress a serious breach of trust. Joint and several liability normally carries with it a right in any trustee to seek contribution from a cotrustee to the extent the trustee has paid more than the trustee's proportionate share of the liability. Subsection (b), consistent with Restatement (Second) of Trusts Section 258 (1959), creates an exception. A trustee who was substantially more at fault or committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries is not entitled to contribution from the other trustees.

Determining degrees of comparative fault is a question of fact. The fact that one trustee was more culpable or more active than another does not necessarily establish that this trustee was substantially more at fault. Nor is a trustee substantially less at fault because the trustee did not actively participate in the breach. See Restatement (Second) of Trusts Section 258 cmt. e (1959). Among the factors to consider: (1) Did the trustee fraudulently induce the other trustee to join in the breach? (2) Did the trustee commit the breach intentionally while the other trustee was at most negligent? (3) Did the trustee, because of greater experience or expertise, control the actions of the other trustee? (4) Did the trustee alone commit the breach with liability imposed on the other trustee only because of an improper delegation or failure to properly monitor the actions of the cotrustee? See Restatement (Second) of Trusts Section 258 cmt. d (1959).

SOUTH CAROLINA COMMENT

For purposes of this section and Section 62-7-1003, "profit" does not include the trustee's compensation. A trustee who has committed a breach of trust is entitled to reasonable compensation for administering the trust unless the court reduces or denies the

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trustee compensation pursuant to Section 62-7-1001(b)(8).

SECTION 62-7-1003. Damages in absence of breach.

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

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

COMMENT

The principle on which a trustee's duty of loyalty is premised is that a trustee should not be allowed to use the trust as a means for personal profit other than for routine compensation earned. While most instances of personal profit involve situations where the trustee has breached the duty of loyalty, not all cases of personal profit involve a breach of trust. Subsection (a), which holds a trustee accountable for any profit made, even absent a breach of trust, is based on Restatement (Second) of Trusts Section 203 (1959). A typical example of a profit is receipt by the trustee of a commission or bonus from a third party for actions relating to the trust's administration. See Restatement (Second) of Trusts Section 203 cmt. a (1959).

A trustee is not an insurer. Similar to Restatement (Second) of Trusts Section 204 (1959), subsection (b) provides that absent a breach of trust a trustee is not liable for a loss or depreciation in the value of the trust property or for failure to make a profit.

SOUTH CAROLINA COMMENT

For purposes of this section and Section 62-7-1002, "profit" does not include the trustee's compensation. A trustee who has committed a breach of trust is entitled to reasonable compensation for administering the

SECTION 62-7-1003.

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REPORTER'S COMMENT

The principle on which a trustee's duty of loyalty is premised is that a trustee should not be allowed to use the trust as a means for personal profit other than for routine compensation earned. While most instances of personal profit involve situations where the trustee has breached the duty of loyalty, not all cases of personal profit involve a breach of trust. Subsection (a), which holds a trustee accountable for any profit made, even absent a breach of trust, is based on Restatement (Second) of Trusts Section 203 (1959). A typical example of a profit is receipt by the trustee of a commission or bonus from a third party for actions relating to the trust's administration. See Restatement (Second) of Trusts Section 203 cmt. a (1959).

A trustee is not an insurer. Similar to Restatement (Second) of Trusts Section 204 (1959), subsection (b) provides that absent a breach of trust a trustee is not liable for a loss or depreciation in the value of the trust property or for failure to make a profit.

For purposes of this section and Section 62-7-1002, "profit" does not include the trustee's compensation. A trustee who has committed a breach of trust is entitled to reasonable compensation for administering the trust unless the court reduces or denies the trustee compensation pursuant to Section

trust unless the court reduces or denies the trustee compensation pursuant to Section 62-7-1001(b)(8).

SECTION 62-7-1004. 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.

COMMENT

This section, which is based on Massachusetts General Laws chapter 215, Section 45, codifies the court’s historic authority to award costs and fees, including reasonable attorney’s fees, in judicial proceedings grounded in equity. The court may award a party its own fees and costs from the trust. The court may also charge a party’s costs and fees against another party to the litigation. Generally, litigation expenses were at common law chargeable against another party only in the case of egregious conduct such as bad faith or fraud. With respect to a party’s own fees, Section 709 authorizes a trustee to recover expenditures properly incurred in the administration of the trust. The court may award a beneficiary litigation costs if the litigation is deemed beneficial to the trust. Sometimes, litigation brought by a beneficiary involves an allegation that the trustee has committed a breach of trust. On other occasions, the suit by the beneficiary is brought because of the trustee’s failure to take action against a third party, such as to recover property properly belonging to the trust. For the authority of a beneficiary to bring an action when the trustee fails to take action against a third party, see Restatement (Second) of Trusts Sections 281-282 (1959). For the case law on the award of attorney’s fees and other litigation costs, see 3 Austin W.

62-7-1001(b)(8).

SECTION 62-7-1004.

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REPORTER’S COMMENT

This section is similar to former South Carolina Probate Code Section 62-7-204 Paragraph (B) which granted to the probate court concurrent jurisdiction with the circuit courts of South Carolina over attorney’s fees. As that section states, “Attorney’s fees may be set at a fixed or hourly rate or by contingency fee.” SCTC Section 62-7-1004 goes further by codifying the power of the courts to award costs and expenses. This section codifies the court’s historic authority to award costs and fees, including reasonable attorney’s fees, in judicial proceedings grounded in equity. The court may award a party its own fees and costs from the trust. The court may also charge a party’s costs and fees against another party to the litigation. Generally, litigation expenses were at common law chargeable against another party only in the case of egregious conduct such as bad faith or fraud. With respect to a party’s own fees, Section 62-7-709 authorizes a trustee to recover expenditures properly incurred in the administration of the trust. The court may award a beneficiary litigation costs if the litigation is deemed beneficial to the trust. Sometimes, litigation brought by a beneficiary involves an allegation that the trustee has committed a breach of trust. On other occasions, the suit by the beneficiary is brought because of the trustee’s failure to

Scott & William F. Fratcher, The Law of Trusts Sections 188.4 (4th ed. 1988).

SOUTH CAROLINA COMMENT

This section is similar to former South Carolina Probate Code Section 62-7-204. Paragraph (B) of that section granted to the probate court concurrent jurisdiction with the circuit courts of South Carolina over attorney's fees. As that section states, "Attorney's fees may be set at a fixed or hourly rate or by contingency fee." SCTC Section 62-7-1004 goes further by codifying the power of the courts to award costs and expenses. Generally, litigation expenses were at common law chargeable against another party only in the case of egregious conduct such as bad faith or fraud.

SECTION 62-7-1005. Limitation of action against trustee.

- (a) Unless previously barred by adjudication, consent, or limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.
- (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) does not apply, a judicial proceeding by a beneficiary or on behalf of a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:
 - (1) the removal, resignation, or death of the trustee;
 - (2) the termination of the beneficiary's interest in the trust; or
 - (3) the termination of the trust.

take action against a third party, such as to recover property properly belonging to the trust. For the authority of a beneficiary to bring an action when the trustee fails to take action against a third party, see Restatement (Second) of Trusts Sections 281-282 (1959). For the case law on the award of attorney's fees and other litigation costs, see 3 Austin W. Scott & William F. Fratcher, The Law of Trusts Sections 188.4 (4th ed. 1988).

SECTION 62-7-1005.

- (a) Unless previously barred by adjudication, consent, or limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.
- (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) does not apply, a judicial proceeding by a beneficiary or on behalf of a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:
 - (1) the removal, resignation, or death of the trustee;
 - (2) the termination of the beneficiary's interest in the trust; or
 - (3) the termination of the trust.

COMMENT

The one-year and five-year limitations periods under this section are not the only means for barring an action by a beneficiary. A beneficiary may be foreclosed by consent, release, or ratification as provided in Section 1009. Claims may also be barred by principles such as estoppel and laches arising in equity under the common law of trusts. See Section 106.

The representative referred to in subsection (a) is the person who may represent and bind a beneficiary as provided in Article 3. During the time that a trust is revocable and the settlor has capacity, the person holding the power to revoke is the one who must receive the report. See Section 603(a) (rights of settlor of revocable trust).

This section addresses only the issue of when the clock will start to run for purposes of the statute of limitations. If the trustee wishes to foreclose possible claims immediately, a consent to the report or other information may be obtained pursuant to Section 1009. For the provisions relating to the duty to report to beneficiaries, see Section 813.

Subsection (a) applies only if the trustee has furnished a report. The one-year statute of limitations does not begin to run against a beneficiary who has waived the furnishing of a report as provided in Section 813(d).

Subsection (c) is intended to provide some ultimate repose for actions against a trustee. It applies to cases in which the trustee has failed to report to the beneficiaries or the report did not meet the disclosure requirements of subsection (b). It also applies to beneficiaries who did not receive notice of the report, whether personally or through representation. While the five-year limitations period will normally begin to run on termination of the trust, it can also begin earlier. If a trustee leaves office prior to the termination of the trust, the limitations period for actions against that particular trustee begins to run on the date

REPORTER'S COMMENT

This section is similar in content to former South Carolina Probate Code Section 62-7-307. Both sections establish a statute of limitations especially applicable to trustees' liabilities to trust beneficiaries for breach of trust. SCTC Section 62-7-1005 sets the limit for commencing a proceeding against a trustee for breach of trust at one year after receiving a report from the trustee or its representative that provides sufficient information so that the beneficiary or representative should know of or be on inquiry notice about the claim. In other cases, the three-year limitation period applies.

SCTC Section 62-7-1005(a) does not adopt the Uniform Trust Code requirement that, for the one-year statute to commence, the report inform the beneficiary of the limitations period. SCTC Section 62-7-1005(c) reduces the UTC limitations period from five to three years.

The one-year and three-year limitations periods under this section are not the only means for barring an action by a beneficiary. A beneficiary may be foreclosed by consent, release, or ratification as provided in Section 62-7-1009. Claims may also be barred by principles such as estoppel and laches arising in equity under the common law of trusts. See Section 62-7-106.

The representative referred to in subsection (a) is the person who may represent and bind a beneficiary as provided in Part 3. During the time that a trust is revocable and the settlor has capacity, the person holding the power to revoke is the one who must receive the report. See Section 62-7-603(a) (rights of settlor of revocable trust).

This section addresses only the issue of when the clock will start to run for purposes of the statute of limitations. If the trustee wishes to foreclose possible claims immediately, a consent to the report or other information may be obtained pursuant to Section 62-7-1009. For the provisions relating to the duty to report

the trustee leaves office. If a beneficiary receives a final distribution prior to the date the trust terminates, the limitations period for actions by that particular beneficiary begins to run on the date of final distribution.

If a trusteeship terminates by reason of death, a claim against the trustee's estate for breach of fiduciary duty would, like other claims against the trustee's estate, be barred by a probate creditor's claim statute even though the statutory period prescribed by this section has not yet expired.

This section does not specifically provide that the statutes of limitations under this section are tolled for fraud or other misdeeds, the drafters preferring to leave the resolution of this question to other law of the State.

SOUTH CAROLINA COMMENT

This section is similar in content to former South Carolina Probate Code Section 62-7-307. Both sections establish a statute of limitations especially applicable to trustees' liabilities to trust beneficiaries for breach of trust. SCTC Section 62-7-1005 sets the limit for commencing a proceeding against a trustee for breach of trust at one year after receiving a report from the Trustee or its representative that provides sufficient information so that the beneficiary or representative should know of or be on inquiry notice about the claim. In other cases, the three-year limitation period applies.

SCTC Section 62-7-1005(a) does not adopt the Uniform Trust Code requirement that, for the one-year statute to commence, the report inform the beneficiary of the limitations period. SCTC Section 62-7-1005(c) reduces the UTC limitations period from five to three years.

to beneficiaries, see Section 62-7-813.

Subsection (a) applies only if the trustee has furnished a report. The one-year statute of limitations does not begin to run against a beneficiary who has waived the furnishing of a report as provided in Section 62-7-813(e).

Subsection (c) is intended to provide some ultimate repose for actions against a trustee. It applies to cases in which the trustee has failed to report to the beneficiaries or the report did not meet the disclosure requirements of subsection (b). It also applies to beneficiaries who did not receive notice of the report, whether personally or through representation. While the three-year limitations period will normally begin to run on termination of the trust, it can also begin earlier. If a trustee leaves office prior to the termination of the trust, the limitations period for actions against that particular trustee begins to run on the date the trustee leaves office. If a beneficiary receives a final distribution prior to the date the trust terminates, the limitations period for actions by that particular beneficiary begins to run on the date of final distribution.

If a trusteeship terminates by reason of death, a claim against the trustee's estate for breach of fiduciary duty would, like other claims against the trustee's estate, be barred by a probate creditor's claim statute even though the statutory period prescribed by this section has not yet expired.

This section does not specifically provide that the statutes of limitations under this section are tolled for fraud or other misdeeds, leaving the resolution of this question to other law of the State.

SECTION 62-7-1005A.

(A) If a trust instrument provides that a trustee is to follow the direction of a trust protector and the trustee acts in accordance with such direction, then except in cases of wilful

misconduct on the part of the trustee so directed, the trustee is not liable directly or indirectly from any such act.

(B) If a trust instrument provides that a trustee is to make decisions with the consent of a trust protector, then except in cases of wilful misconduct or gross negligence on the part of the trustee, the trustee is not liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such trust protector's failure to provide such consent after having been requested to do so by the trustee.

(C) If the trust document provides for a trust protector and the serving trust protector is unwilling or unable to serve or continue to serve and there is no provision for a successor trust protector, the then serving trustee may petition the court having jurisdiction over the trust estate to appoint an individual or a bank or trust company qualified to do business in the state of the settlor's domicile at the time of the settlor's death as successor trust protector.

(D) A trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust protector. In exercising a power or refraining from exercising any power, a trust protector shall act in good faith and in accordance with the terms and purposes of the trust.

(E) A trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

SECTION 62-7-1005B.

(A) If a trust instrument provides that a trustee is to follow the direction of a trust investment advisor, and the trustee acts in accordance with such a direction, then except in cases of wilful misconduct on the part of the trustee so directed, the trustee is not liable directly or indirectly from any such act.

(B) If a trust instrument provides that a trustee is to make decisions with the consent of a trust investment advisor, then except in cases of

<p>SECTION 62-7-1006. Reliance on trust instrument.</p> <p>A trustee 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.</p> <p>COMMENT It sometimes happens that the intended terms of the trust differ from the apparent meaning of the trust instrument. This can occur because the court, in determining the terms of the trust, is allowed to consider evidence extrinsic to the trust instrument. See Section 103(17) (definition of “ terms of a trust”). Furthermore,</p>	<p><u>wilful misconduct or gross negligence on the part of the trustee, the trustee shall not be liable directly or indirectly from any act taken or omitted as a result of such trust investment advisor’s failure to provide such consent after having been requested to do so by the trustee.</u></p> <p><u>(C) If a trust instrument provides for a trust investment advisor and the serving trust investment advisor is unwilling or unable to serve or continue to serve and there is no provision for a successor trust investment advisor, the then serving trustee may petition the court having jurisdiction over the trust estate to appoint an individual or a bank or trust company qualified to do business in the state of the settlor’s domicile at the time of the settlor’s death as successor trust investment advisor.</u></p> <p><u>(D) A trust investment advisor, other than a beneficiary, is a fiduciary with respect to each power granted to such trust investment advisor. In exercising any power or refraining from exercising any power, a trust investment advisor shall act in good faith and in accordance with the terms and purposes of the trust.</u></p> <p><u>(E) A trust investment advisor is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.</u></p> <p>SECTION 62-7-1006.</p> <p>A trustee 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.</p> <p>REPORTER’S COMMENT Former South Carolina statutes and case law resembled SCTC Section 62-7-1006. Former South Carolina Probate Code Section 62-7-302(B)(2), retained and incorporated in Part 9, stated “[a] trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the</p>
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if a trust is reformed on account of mistake of fact or law, as authorized by Section 415, provisions of a trust instrument can be deleted or contradicted and provisions not in the trust instrument may be added. The concept of the “terms of a trust,” both as defined in this Code and as used in the doctrine of reformation, is intended to effectuate the principle that a trust should be administered and distributed in accordance with the settlor’s intent. However, a trustee should also be able to administer a trust with some dispatch and without concern that a reasonable reliance on the terms of the trust instrument is misplaced. This section protects a trustee who so relies on a trust instrument but only to the extent the breach of trust resulted from such reliance. This section is similar to Section 1(b) of the Uniform Prudent Investor Act, which protects a trustee from liability to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

This section protects a trustee only if the trustee’s reliance is reasonable. For example, a trustee’s reliance on the trust instrument would not be justified if the trustee is aware of a prior court decree or binding nonjudicial settlement agreement clarifying or changing the terms of the trust.

SOUTH CAROLINA COMMENT

Former South Carolina statutes and case law resembled SCTC Section 62-7-1006. Former South Carolina Probate Code Section 62-7-302(B)(2), retained and incorporated in Part 9, stated “[a] trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.” That section is part of the South Carolina Uniform Prudent Investor Act, retained and incorporated in Part 9, which provides trustee guidelines for the administration of trusts, and specifically relates to the investment and management of trust assets. As a result, that section arguably applies to only the investment and

trust.” That section is part of the South Carolina Uniform Prudent Investor Act, retained and incorporated in Section 62-7-933, which provides trustee guidelines for the administration of trusts, and specifically relates to the investment and management of trust assets. As a result, that section arguably applies to only the investment and management of the trust corpus. SCTC Section 62-7-1006, however, covers a broader scope because it does not contain language limiting its application to investment and management of trust assets.

Prior South Carolina case law could be interpreted to allow trustees to rely not only on terms pertaining to investment and management of the trust, but also to other terms contained in the trust document. South Carolina courts have held “[i]n ascertaining the Settlor’s intent, [a] court must resort first to the language of the trust instrument” *Sarlin v. Sarlin*, 312 S.C. 27, 29, 430 S.E. 2d 530, 532 (S.C. Ct. App. 1993). One could infer that a trustee should follow the same canons of interpretation as applied by the courts. Additionally, former SCPC Section 62-7-704 encouraged trustees to perform without the assistance of the courts in providing that “a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purpose of the trust” This combination of case law and statutory law seems to hold (or at the very least imply) that a trustee could reasonably rely on the terms contained in the trust instrument for all types of provisions, not only those pertaining to the investment and management of trust assets. SCTC Section 62-7-1006 provides more certainty with respect to this issue.

It sometimes happens that the intended terms of the trust differ from the apparent meaning of the trust instrument. This can occur because the court, in determining the terms of the trust, is allowed to consider evidence extrinsic to the trust instrument. *See* Section 62-7-103(17) (definition of “terms of a trust”). Furthermore,

management of the trust corpus. SCTC Section 62-7-1006, however, covers a broader scope because it does not contain language limiting its application to investment and management of trust assets.

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SECTION 62-7-1007. 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 trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee’s lack of knowledge.

COMMENT

This section, which is based on Washington

if a trust is reformed on account of mistake of fact or law, as authorized by Section 62-7-415, provisions of a trust instrument can be deleted or contradicted and provisions not in the trust instrument may be added. The concept of the “terms of a trust,” both as defined in this Code and as used in the doctrine of reformation, is intended to effectuate the principle that a trust should be administered and distributed in accordance with the settlor’s intent. However, a trustee should also be able to administer a trust with some dispatch and without concern that a reasonable reliance on the terms of the trust instrument is misplaced. This section protects a trustee who so relies on a trust instrument but only to the extent the breach of trust resulted from such reliance. This section is similar to Section 62-7-933(B)(2), which protects a trustee from liability to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

This section protects a trustee only if the trustee’s reliance is reasonable. For example, a trustee’s reliance on the trust instrument would not be justified if the trustee is aware of a prior court decree or binding nonjudicial settlement agreement clarifying or changing the terms of the trust.

SECTION 62-7-1007.

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

REPORTER’S COMMENT

There was no prior South Carolina statute

Revised Code Section 11.98.100, is designed to encourage trustees to administer trusts expeditiously and without undue concern about liability for failure to ascertain external facts, often of a personal nature, that might affect administration or distribution of the trust. The common law, contrary to this section, imposed absolute liability against a trustee for misdelivery regardless of the trustee's level of care. See Restatement (Second) of Trusts Section 226 (1959). The events listed in this section are not exclusive. A trustee who has exercised reasonable care to ascertain the occurrence of other events, such as the attainment by a beneficiary of a certain age, is also protected from liability.

SOUTH CAROLINA COMMENT

There was no prior South Carolina statute specifically addressing the issue of a trustee's duty to ascertain the happening of events affecting the administration or distribution of a trust.

Prior South Carolina case law essentially stated that a trustee could be held liable for negligently failing to investigate events affecting the status of a beneficiary's rights to distributions. See *Rogers v. Herron*, 226 S.C. 317, 85 S.E.2d 104 (S.C. 1954); see also *First Union Nat. Bank of South Carolina v. Soden*, 511 S.E.2d 372 (Ct. App.1998) (essentially applying the same standards to a remainder beneficiary for failing to disclose her father's remarriage). SCTC Section 62-7-1007 expressly provides protection from liability for trustees who do exercise reasonable care.

SECTION 62-7-1008. Exculpation of trustee.

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

(a) relieves the trustee 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

specifically addressing the issue of a trustee's duty to ascertain the happening of events affecting the administration or distribution of a trust.

Prior South Carolina case law essentially stated that a trustee could be held liable for negligently failing to investigate events affecting the status of a beneficiary's rights to distributions. See *Rogers v. Herron*, 226 S.C. 317, 85 S.E.2d 104 (S.C. 1954); see also *First Union Nat. Bank of South Carolina v. Soden*, 511 S.E.2d 372 (Ct. App.1998) (essentially applying the same standards to a remainder beneficiary for failing to disclose her father's remarriage). SCTC Section 62-7-1007 expressly provides protection from liability for trustees who do exercise reasonable care.

SECTION 62-7-1008.

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

(a)relieves the trustee 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

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

COMMENT

Even if the terms of the trust attempt to completely exculpate a trustee for the trustee's acts, the trustee must always comply with a certain minimum standard. As provided in subsection (a), a trustee must always act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. Subsection (a) is consistent with the standards expressed in Sections 105 and 814(a), which, similar to this section, place limits on the power of a settlor to negate trustee duties. This section is also similar to Section 222 of the Restatement (Second) of Trusts (1959), except that this Code, unlike the Restatement, allows a settlor to exculpate a trustee for a profit that the trustee made from the trust.

Subsection (b) disapproves of cases such as *Marsman v. Nasca*, 573 N.E.2d 1025 (Mass. App. Ct. 1991), which held that an exculpatory clause in a trust instrument drafted by the trustee was valid because the beneficiary could not prove that the clause was inserted as a result of an abuse of a fiduciary relationship. For a later case where sufficient proof of abuse was present, see *Rutanan v. Ballard*, 678 N.E.2d 133 (Mass. 1997). Subsection (b) responds to the danger that the insertion of such a clause by the fiduciary or its agent may have been undisclosed or inadequately understood by the settlor. To overcome the presumption of abuse in subsection (b), the trustee must establish that the clause was fair and that its existence and contents were adequately communicated to the settlor. In determining whether the clause was fair, the court may wish to examine: (1) the extent of the prior relationship between the settlor and trustee; (2) whether the settlor received independent advice; (3) the sophistication of the settlor with respect to business and fiduciary matters; (4) the trustee's reasons for

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

REPORTER'S COMMENT

Even if the terms of the trust attempt to completely exculpate a trustee for the trustee's acts, the trustee must always comply with a certain minimum standard. As provided in subsection (a), a trustee must always act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. Subsection (a) is consistent with the standards expressed in Sections 62-7-105 and 62-7-814(a), which, similar to this section, place limits on the power of a settlor to negate trustee duties. This section is also similar to Section 222 of the Restatement (Second) of Trusts (1959), except that this Code, unlike the Restatement, allows a settlor to exculpate a trustee for a profit that the trustee made from the trust.

South Carolina Trust Code Section 62-7-1008 does not include Uniform Trust Code Section 1008(b) concerning exculpatory terms drafted or caused to be drafted by the trustee.

inserting the clause; and (5) the scope of the particular provision inserted. See Restatement (Second) of Trusts Section 222 cmt. d (1959).

The requirements of subsection (b) are satisfied if the settlor was represented by independent counsel. If the settlor was represented by independent counsel, the settlor's attorney is considered the drafter of the instrument even if the attorney used the trustee's form. Because the settlor's attorney is an agent of the settlor, disclosure of an exculpatory term to the settlor's attorney is disclosure to the settlor.

SOUTH CAROLINA COMMENT

South Carolina Trust Code Section 62-7-1008 does not include Uniform Trust Code Section 1008(b) concerning exculpatory terms drafted or caused to be drafted by the trustee.

SECTION 62-7-1009. Beneficiary's consent, release, or ratification.

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

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not have knowledge of the beneficiary's rights or of the material facts relating to the breach.

(b) No consideration is required for the consent, release or ratification to be valid.

COMMENT

This section is based on Sections 216 through 218 of the Restatement (Second) of Trusts (1959). A consent, release, or affirmance under this section may occur either before or after the approved conduct. This section requires an affirmative act by the beneficiary. A failure to object is not sufficient. See

SECTION 62-7-1009.

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

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not have knowledge of the beneficiary's rights or of the material facts relating to the breach.

(b) No consideration is required for the consent, release or ratification to be valid.

REPORTER'S COMMENT

This section is based on Sections 216 through 218 of the Restatement (Second) of Trusts (1959). A consent, release, or affirmance under this section may occur either before or after the approved conduct. This section requires an affirmative act by the beneficiary. A failure to object is not sufficient. See

Restatement (Second) of Trusts Section 216 cmt. a (1959). A consent is binding on a consenting beneficiary although other beneficiaries have not consented. See Restatement (Second) of Trusts Section 216 cmt. g (1959). To constitute a valid consent, the beneficiary must know of the beneficiary's rights and of the material facts relating to the breach. See Restatement (Second) of Trusts Section 216 cmt. k (1959). If the beneficiary's approval involves a self-dealing transaction, the approval is binding only if the transaction was fair and reasonable. See Restatement (Second) of Trusts Sections 170(2), 216(3) & cmt. n (1959).

An approval by the settlor of a revocable trust or by the holder of a presently exercisable power of withdrawal binds all the beneficiaries. See Section 603. A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in Article 3.

2001 Amendment. By a 2001 amendment, the limitation of this section to beneficiaries "having capacity" was deleted. This limitation was included by mistake. As indicated in the second paragraph of the comment, the drafting committee did not intend to prohibit the use of the representation provisions of Article 3, several of which address representation of and the giving of a binding consent on behalf of an incapacitated beneficiary.

SOUTH CAROLINA COMMENT

The South Carolina Trust Code adds Section 62-7-1009(b) not found in the Uniform Trust Code version.

SECTION 62-7-1010. Limitation on personal liability of trustee.

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

Restatement (Second) of Trusts Section 216 cmt. a (1959). A consent is binding on a consenting beneficiary although other beneficiaries have not consented. See Restatement (Second) of Trusts Section 216 cmt. g (1959). To constitute a valid consent, the beneficiary must know of the beneficiary's rights and of the material facts relating to the breach. See Restatement (Second) of Trusts Section 216 cmt. k (1959). If the beneficiary's approval involves a self-dealing transaction, the approval is binding only if the transaction was fair and reasonable. See Restatement (Second) of Trusts Sections 170(2), 216(3) & cmt. n (1959).

An approval by the settlor of a revocable trust or by the holder of a presently exercisable power of withdrawal binds all the beneficiaries. See Section 62-7-603. A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in Part 3.

The South Carolina Trust Code adds Section 62-7-1009(b) not found in the Uniform Trust Code version.

SECTION 62-7-1010.

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

<p>contract disclosed the fiduciary capacity.</p> <p>(b) A trustee 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 trustee is personally at fault.</p> <p>(c) A claim based on a contract entered into by a trustee in the trustee’s fiduciary capacity, 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 trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable for the claim.</p> <p>(d) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.</p> <p>COMMENT</p> <p>This section is based on Section 7-306 of the Uniform Probate Code. However, unlike the Uniform Probate Code, which requires that the contract both disclose the representative capacity and identify the trust, subsection (a) protects a trustee who reveals the fiduciary relationship either by indicating a signature as trustee or by simply referring to the trust. The protection afforded the trustee by this section applies only to contracts that are properly entered into in the trustee’s fiduciary capacity, meaning that the trustee is exercising an available power and is not violating a duty. This section does not excuse any liability the trustee may have for breach of trust.</p> <p>Subsection (b) addresses trustee liability arising from ownership or control of trust property and for torts occurring incident to the administration of the trust. Liability in such situations is imposed on the trustee personally only if the trustee was personally at fault, either intentionally or negligently. This is contrary to Restatement (Second) of Trusts Section 264 (1959), which imposes liability on</p>	<p>contract disclosed the fiduciary capacity.</p> <p>(b)A trustee 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 trustee is personally at fault.</p> <p>(c)A claim based on a contract entered into by a trustee in the trustee’s fiduciary capacity, 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 trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable for the claim.</p> <p>(d)The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.</p> <p>REPORTER’S COMMENT</p> <p>Section 62-7-1010(b) is substantially similar to former South Carolina Probate Code Section 62-7-306(b). Section 62-7-1010(b) could be viewed as expanding on a trustee’s exemption from tort liability by its specific reference to excluding trustees from liabilities arising from violation of environmental laws. This specific exemption is not contained in former SCPC Section 62-7-306(b). It could be assumed, however, that the general exemption for liability from torts provided by former SCPC Section 62-7-306(b) would cover tort liabilities associated with environmental laws by virtue of the all encompassing general reference to the term “torts.” This assumption, however, is less than certain in light of the Uniform Trust Code Comment to Section 1010, which indicates that UTC subsection 62-7-1010(b) was enacted in response to particular concerns from trustees over this type of liability. UTC Section 1010(c) essentially mirrors Section 62-7-306(c) of the South Carolina Probate Code.</p> <p>SCTC Section 62-7-1010(d) retains and</p>
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<p>a trustee regardless of fault, including liability for acts of agents under respondeat superior. Responding to a particular concern of trustees, subsection (b) specifically protects a trustee from personal liability for violations of environmental law such as CERCLA (42 U.S.C. Section 9607) or its state law counterparts, unless the trustee was personally at fault. See also Sections 701(c)(2) (nominated trustee may investigate trust property to determine potential violation of environmental law without having accepted trusteeship) and 816(13) (trustee powers with respect to possible liability for violation of environmental law).</p> <p>Subsection (c) alters the common law rule that a trustee could not be sued in a representative capacity if the trust estate was not liable.</p> <p>SOUTH CAROLINA COMMENT South Carolina Trust Code Section 62-7-1010(a) is substantially similar to former South Carolina Probate Code Section 62-7-306(a). Section 62-7-1010(b) is substantially similar to former South Carolina Probate Code Section 62-7-306(b). Section 62-7-1010(b) could be viewed as expanding on a trustee’s exemption from tort liability by its specific reference to excluding trustees from liabilities arising from violation of environmental laws. This specific exemption is not contained in former SCPC Section 62-7-306(b). It could be assumed, however, that the general exemption for liability from torts provided by former SCPC Section 62-7-306(b) would cover tort liabilities associated with environmental laws by virtue of the all encompassing general reference to the term “torts.” This assumption, however, is less than certain in light of the Uniform Trust Code Comment to Section 1010, which indicates that UTC subsection 1010(b) was enacted in response to particular concerns from trustees over this type of liability. UTC Section 1010(c) essentially mirrors Section 62-7-306(c) of the South Carolina Probate</p>	<p>incorporates the provisions of former SCPC Section 62-7-306(d), not found in the UTC version of Section 62-7-1010.</p>
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Code.

SCTC Section 62-7-1010(d) retains and incorporates the provisions of former SCPC Section 62-7-306(d), not found in the UTC version of Section 1010.

SECTION 62-7-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) 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 the South Carolina versions of the Uniform Partnership Act or Uniform Limited Partnership Act.

(b) Except as otherwise provided in subsection (c), 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 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.

COMMENT

Section 1010 protects a trustee from personal liability on contracts that the trustee enters into on behalf of the trust. Section 1010 also absolves a trustee from liability for torts committed in administering the trust unless the

SECTION 62-7-1011.

(a) Except as otherwise provided in subsection (c) 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 the South Carolina versions of the Uniform Partnership Act or Uniform Limited Partnership Act.

(b) Except as otherwise provided in subsection (c), 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 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.

REPORTER'S COMMENT

Section 62-7-1011 protects a trustee from personal liability on contracts that the trustee enters into on behalf of the trust. Section 62-7-1011 also absolves a trustee from liability for torts committed in administering the trust

<p>trustee was personally at fault. It does not protect a trustee from personal liability for contracts entered into or torts committed by a general or limited partnership of which the trustee was a general partner. That is the purpose of this section, which is modeled after Ohio Revised Code Section 1339.65. Subsection (a) protects the trustee from personal liability for such partnership obligations whether the trustee signed the contract or it was signed by another general partner. Subsection (b) protects a trustee from personal liability for torts committed by the partnership unless the trustee was personally at fault. Protection from the partnership's contractual obligations is available under subsection (a) only if the other party is on notice of the fiduciary relationship, either in the contract itself or in the partnership certificate on file.</p> <p>Special protection is not needed for other business interests that the trustee may own, such as an interest as a limited partner, a membership interest in an LLC, or an interest as a corporate shareholder. In these cases the nature of the entity or the interest owned by the trustee carries with it its own limitation on liability.</p> <p>Certain exceptions apply. The section is not intended to be used as a device for individuals or their families to shield assets from creditor claims. Consequently, subsection (c) excludes from the protections provided by this section trustees who own an interest in the partnership in another capacity or if an interest is owned by the trustee's spouse or the trustee's descendants, siblings, parents, or the spouse of any of them.</p> <p>Nor can a revocable trust be used as a device for avoiding claims against the partnership. Subsection (d) imposes personal liability on the settlor for partnership contracts and other obligations of the partnership the same as if the settlor were a general partner.</p> <p>This section has been placed in brackets to alert enacting jurisdictions to consider</p>	<p>unless the trustee was personally at fault. It does not protect a trustee from personal liability for contracts entered into or torts committed by a general or limited partnership of which the trustee was a general partner. That is the purpose of this section. Subsection (a) protects the trustee from personal liability for such partnership obligations whether the trustee signed the contract or it was signed by another general partner. Subsection (b) protects a trustee from personal liability for torts committed by the partnership unless the trustee was personally at fault. Protection from the partnership's contractual obligations is available under subsection (a) only if the other party is on notice of the fiduciary relationship, either in the contract itself or in the partnership certificate on file.</p> <p>Special protection is not needed for other business interests that the trustee may own, such as an interest as a limited partner, a membership interest in an LLC, or an interest as a corporate shareholder. In these cases the nature of the entity or the interest owned by the trustee carries with it its own limitation on liability.</p> <p>Certain exceptions apply. The section is not intended to be used as a device for individuals or their families to shield assets from creditor claims. Consequently, subsection (c) excludes from the protections provided by this section trustees who own an interest in the partnership in another capacity or if an interest is owned by the trustee's spouse or the trustee's descendants, siblings, parents, or the spouse of any of them.</p> <p>Nor can a revocable trust be used as a device for avoiding claims against the partnership. Subsection (d) imposes personal liability on the settlor for partnership contracts and other obligations of the partnership the same as if the settlor were a general partner.</p> <p>There was no prior South Carolina statutory or case law counterpart.</p>
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modifying the section to conform it to the State's specific laws on partnerships and other forms of unincorporated businesses.

SOUTH CAROLINA COMMENT

There was no prior South Carolina statutory or case law counterpart.

SECTION 62-7-1012. Protection of person dealing with trustee.

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

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

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

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

(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.

COMMENT

This section is derived from Section 7 of the Uniform Trustee Powers Act.

Subsection (a) protects two different classes; persons other than beneficiaries who assist a trustee with a transaction, and persons other than beneficiaries who deal with the trustee for value. As long as the assistance was provided or the transaction was entered into in good faith and without knowledge, third persons in

SECTION 62-7-1012.

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

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

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

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

(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.

REPORTER'S COMMENT

SCTC Section 62-7-1012 is similar to former South Carolina Probate Code Section 62-7-708. SCTC Section 62-7-1012 protects third parties who act in good faith in dealings with trustees. While good faith is not defined in the South Carolina Trust Code, definitions of good faith in the commercial context should be consistent with the purpose of this section, which is to treat commercial transactions with

<p>either category are protected in the transaction even if the trustee was exceeding or improperly exercising the power. For the definition of “know,” see Section 104. This Code does not define “good faith” for purposes of this and the next section. Defining good faith with reference to the definition used in the State’s commercial statutes would be consistent with the purpose of this section, which is to treat commercial transactions with trustees similar to other commercial transactions.</p> <p>Subsection (b) confirms that a third party who is acting in good faith is not charged with a duty to inquire into the extent of a trustee’s powers or the propriety of their exercise. The third party may assume that the trustee has the necessary power. Consequently, there is no need to request or examine a copy of the trust instrument. A third party who wishes assurance that the trustee has the necessary authority instead should request a certification of trust as provided in Section 1013. Subsection (b), and the comparable provisions enacted in numerous States, are intended to negate the rule, followed by some courts, that a third party is charged with constructive notice of the trust instrument and its contents. The cases are collected in George G. Bogert & George T. Bogert, <i>The Law of Trusts and Trustees</i> Section 897 (Rev. 2d ed. 1995); and 4 Austin W. Scott & William F. Fratcher, <i>The Law of Trusts</i> Section 297 (4th ed. 1989).</p> <p>Subsection (c) protects any person, including a beneficiary, who in good faith delivers property to a trustee. The standard of protection in the Restatement is phrased differently although the result is similar. Under Restatement (Second) of Trusts Section 321 (1959), the person delivering property to a trustee is liable if at the time of the delivery the person had notice that the trustee was misapplying or intending to misapply the property.</p> <p>Subsection (d) extends the protections afforded by the section to assistance provided to or dealings for value with a former trustee. The</p>	<p>trustees similar to other commercial transactions. In addition, SCTC section 62-7-1012 protects a third party who in good faith deals with a former trustee without knowledge that the trusteeship has terminated.</p> <p>This section is derived from Section 7 of the Uniform Trustee Powers Act.</p> <p>Subsection (a) protects two different classes; persons other than beneficiaries who assist a trustee with a transaction, and persons other than beneficiaries who deal with the trustee for value. As long as the assistance was provided or the transaction was entered into in good faith and without knowledge, third persons in either category are protected in the transaction even if the trustee was exceeding or improperly exercising the power. For the definition of “know,” see Section 62-7-104</p> <p>Subsection (b) confirms that a third party who is acting in good faith is not charged with a duty to inquire into the extent of a trustee’s powers or the propriety of their exercise. The third party may assume that the trustee has the necessary power. Consequently, there is no need to request or examine a copy of the trust instrument. A third party who wishes assurance that the trustee has the necessary authority instead should request a certification of trust as provided in Section 62-7-1013. Subsection (b) is intended to negate the rule, followed by some courts, that a third party is charged with constructive notice of the trust instrument and its contents. The cases are collected in George G. Bogert & George T. Bogert, <i>The Law of Trusts and Trustees</i> Section 897 (Rev. 2d ed. 1995); and 4 Austin W. Scott & William F. Fratcher, <i>The Law of Trusts</i> Section 297 (4th ed. 1989).</p> <p>Subsection (c) protects any person, including a beneficiary, who in good faith delivers property to a trustee. The standard of protection in the Restatement is phrased differently although the result is similar. Under Restatement (Second) of Trusts Section 321 (1959), the person delivering property to a trustee is liable if at the time of the delivery the</p>
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third party is protected the same as if the former trustee still held the office.

Subsection (e) clarifies that a statute relating to commercial transactions controls whenever both it and this section could apply to a transaction. Consequently, the protections provided by this section are superseded by comparable protective provisions of these other laws. The principal statutes in question are the various articles of the Uniform Commercial Code, including Article 8 on the transfer of securities, as well as the Uniform Simplification of Fiduciary Securities Transfer Act.

SOUTH CAROLINA COMMENT

South Carolina Trust Code Section 62-7-1012 is similar to former South Carolina Probate Code Section 62-7-708. SCTC Section 62-7-1012 protects third parties who act in good faith in dealings with trustees. While good faith is not defined in the South Carolina Trust Code, definitions of good faith in the commercial context should be consistent with the purpose of this section, which is to treat commercial transactions with trustees similar to other commercial transactions. In addition, SCTC Section 62-7-1012 protects a third party who in good faith deals with a former trustee without knowledge that the trusteeship has terminated.

SECTION 62-7-1013. Certification 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 of trust containing the following information:

- (1) that the trust exists and the date the trust instrument was executed;
- (2) the identity of the settlor;
- (3) the identity and address of the currently acting trustee;
- (4) the powers of the trustee which may make a reference to the powers set forth in the South

person had notice that the trustee was misapplying or intending to misapply the property

Subsection (d) extends the protections afforded by the section to assistance provided to or dealings for value with a former trustee. The third party is protected the same as if the former trustee still held the office.

Subsection (e) clarifies that a statute relating to commercial transactions controls whenever both it and this section could apply to a transaction. Consequently, the protections provided by this section are superseded by comparable protective provisions of these other laws. The principal statutes in question are the various articles of the Uniform Commercial Code, including Article 8 on the transfer of securities, as well as the Uniform Simplification of Fiduciary Securities Transfer Act.

SECTION 62-7-1013.

(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 of trust containing the following information:

- (1) that the trust exists and the date the trust instrument was executed;
- (2) the identity of the settlor;
- (3) the identity and address of the currently acting trustee;
- (4) the powers of the trustee which may make a reference to the powers set forth in the South

<p>Carolina Trust Code;</p> <p>(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;</p> <p>(6) 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; and</p> <p>(7) the manner of taking title to trust property.</p> <p>(b) A certification of trust may be signed or otherwise authenticated by any trustee.</p> <p>(c) A certification of trust must 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.</p> <p>(d) A certification of trust need not contain the dispositive terms of a trust.</p> <p>(e) A recipient of a certification 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.</p> <p>(f) A person who acts in reliance upon a certification 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. 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.</p> <p>(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.</p> <p>(h) A person making a demand for the trust instrument in addition to a certification 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.</p> <p>(i) This section does not limit the right of a</p>	<p>Carolina Trust Code;</p> <p>(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;</p> <p>(6) 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; and</p> <p>(7) the manner of taking title to trust property.</p> <p>(b) A certification of trust may be signed or otherwise authenticated by any trustee.</p> <p>(c) A certification of trust must 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.</p> <p>(d) A certification of trust need not contain the dispositive terms of a trust.</p> <p>(e) A recipient of a certification 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.</p> <p>(f) A person who acts in reliance upon a certification 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. 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.</p> <p>(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.</p> <p>(h) A person making a demand for the trust instrument in addition to a certification 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.</p> <p>(i) This section does not limit the right of a</p>
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<p>person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.</p>	<p>person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.</p>
<p>(j) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located.</p>	<p>(j) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located.</p>
<p>(k) The Certificate of Trust may be either in the form set forth below or in any other form that satisfies the above requirements.</p>	<p>(k) The Certificate of Trust may be either in the form set forth below or in any other form that satisfies the above requirements.</p>
<p>Settlor:</p>	<p>Settlor:</p>
<p>_____ Name of Trust:</p>	<p>_____ Name of Trust:</p>
<p>_____ Date of Trust:</p>	<p>_____ Date of Trust:</p>
<p>_____ Current Trustee(s):</p>	<p>_____ Current Trustee(s):</p>
<p>_____ Address of Trust:</p>	<p>_____ Address of Trust:</p>
<p>The undersigned trustee(s) does hereby confirm the existence of the within described Trust and certify the following:</p>	<p>The undersigned trustee(s) does hereby confirm the existence of the within described Trust and certify the following:</p>
<p>1. The undersigned is/are all of the currently serving trustee(s).</p>	<p>1. The undersigned is/are all of the currently serving trustee(s).</p>
<p>2. The Trust is in full force and effect and has not been revoked, terminated or otherwise amended in any manner which would cause the representations in this Certification of Trust to be incorrect.</p>	<p>2. The Trust is in full force and effect and has not been revoked, terminated or otherwise amended in any manner which would cause the representations in this Certification of Trust to be incorrect.</p>
<p>3. The Trust is revocable/irrevocable. (If revocable, define who can revoke the document).</p>	<p>3. The Trust is revocable/irrevocable. (If revocable, define who can revoke the document).</p>
<p>4. The above designated trustee(s) is/are fully empowered to act for said Trust and is/are properly exercising the trustee's authority under this Trust. No other trustee or other individual or entity is required to execute any document for the Trust.</p>	<p>4. The above designated trustee(s) is/are fully empowered to act for said Trust and is/are properly exercising the trustee's authority under this Trust. No other trustee or other individual or entity is required to execute any document for the Trust.</p>
<p>5. The signature(s) of _____ of the trustees is/are required for any action taken on behalf of the Trust. (Define signature requirements)</p>	<p>5. The signature(s) of _____ of the trustees is/are required for any action taken on behalf of the Trust. (Define signature requirements)</p>
<p>6. The proper manner for taking title to Trust property is:</p>	<p>6. The proper manner for taking title to Trust property is:</p>
<p>[Name(s) of all current trustees], Trustee</p>	<p>[Name(s) of all current trustees], Trustee</p>

<p>[Name of trust], dated [Date of trust] 7. To the undersigned's knowledge, there are no claims, challenges of any kind, or cause of action alleged, which contest or question the validity of the Trust or the trustee's authority to act for the Trust. 8. The trustee is authorized by the Trust Agreement _____ to _____ (State, synopsise, or describe relevant powers.) IN WITNESS THEREOF: the undersigned, being all of the trustees, do hereby execute this Certificate of Trust this ____ day of _____, 20__. Witnesses: Trustee(s): _____ _____ _____ _____</p>	<p>[Name of trust], dated [Date of trust] 7. To the undersigned's knowledge, there are no claims, challenges of any kind, or cause of action alleged, which contest or question the validity of the Trust or the trustee's authority to act for the Trust. 8. The trustee is authorized by the Trust Agreement to _____ (State, synopsise, or describe relevant powers.) IN WITNESS THEREOF: the undersigned, being all of the trustees, do hereby execute this Certificate of Trust this ____ day of _____, 20__. Witnesses: Trustee(s): _____ _____ _____ _____</p>
<p>STATE OF SOUTH CAROLINA)) ACKNOWLEDGMENT COUNTY OF _____) I, _____, do hereby certify that trustee(s) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the day of, 20... (SEAL) Notary Public for South Carolina My Commission Expires: COMMENT This section, derived from California Probate Code Section 18100.5, is designed to protect the privacy of a trust instrument by</p>	<p>STATE OF SOUTH CAROLINA)) ACKNOWLEDGMENT COUNTY OF _____) I, _____, do hereby certify that trustee(s) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the day of _____, 20__ (SEAL) Notary Public for South Carolina My Commission Expires: REPORTER'S COMMENT South Carolina Trust Code Section 62-7-1013, which has no prior South Carolina statutory counterpart, permits a third party to request a</p>

discouraging requests from persons other than beneficiaries for complete copies of the instrument in order to verify a trustee's authority. Even absent this section, such requests are usually unnecessary. Pursuant to Section 1012(b), a third person proceeding in good faith is not required to inquire into the extent of the trustee's powers or the propriety of their exercise. This section adds another layer of protection.

Third persons frequently insist on receiving a copy of the complete trust instrument solely to verify a specific and narrow authority of the trustee to engage in a particular transaction. While a testamentary trust, because it is created under a will, is a matter of public record, an inter vivos trust instrument is private. Such privacy is compromised, however, if the trust instrument must be distributed to third persons. A certification of trust is a document signed by a currently acting trustee that may include excerpts from the trust instrument necessary to facilitate the particular transaction. A certification provides the third party with an assurance of authority without having to disclose the trust's dispositive provisions. Nor is there a need for third persons who may already have a copy of the instrument to pry into its provisions. Persons acting in reliance on a certification may assume the truth of the certification even if they have a complete copy of the trust instrument in their possession.

Subsections (a) through (c) specify the required contents of a certification. Subsection (d) clarifies that the certification need not include the trust's dispositive terms. A certification, however, normally will contain the administrative terms of the trust relevant to the transaction. Subsection (e) provides that the third party may make this a condition of acceptance. Subsections (f) and (g) protect a third party who relies on the certification. The third party may assume that the certification is true, and is not charged with constructive knowledge of the terms of the trust instrument even if the third party has a copy.

certification of trust from the trustee. The elements of a certification are set forth in this section, and a third party may assume, without inquiry, the existence of facts contained in the certification. A third party who in good faith enters into a transaction in reliance upon the certification may enforce the transaction as if the representations contained in the certification were correct. This section is also designed to protect the privacy of the trust agreement and its beneficiaries, and under certain circumstances, a third party may be liable for damages if he demands a copy of the trust agreement in addition to the certification. The SCTC adds subsection (k) to the UTC version, providing a sample form certificate for use in South Carolina.

To encourage compliance with this section, a person demanding a trust instrument after already being offered a certification may be liable under subsection (h) for damages if the refusal to accept the certification is determined not to have been in good faith. A person acting in good faith would include a person required to examine a complete copy of the trust instrument pursuant to due diligence standards or as required by other law. Examples of such due diligence and legal requirements include (1) in connection with transactions to be executed in the capital markets where documentary standards have been established in connection with underwriting concerns; (2) to satisfy documentary requirements established by state or local government or regulatory agency; (3) to satisfy documentary requirements established by a state or local government or regulatory agency; and (4) where the insurance rates or premiums or other expenses of the party would be higher absent the availability of the documentation.

The Uniform Trust Code leaves to other law the issue of how damages for a bad faith refusal are to be computed and whether attorney's fees might be recoverable. For a discussion of the meaning of "good faith," see Section 1012 Comment.

SOUTH CAROLINA COMMENT

South Carolina Trust Code Section 62-7-1013, which has no prior South Carolina statutory counterpart, permits a third party to request a certification of trust from the trustee. The elements of a certification are set forth in this section, and a third party may assume, without inquiry, the existence of facts contained in the certification. A third party who in good faith enters into a transaction in reliance upon the certification may enforce the transaction as if the representations contained in the certification were correct. This section is also designed to protect the privacy of the trust agreement and its beneficiaries, and under certain circumstances, a third party may be

liable for damages if he demands a copy of the trust agreement in addition to the certification. The SCTC adds subsection (j) to the UTC version, providing a sample form certificate for use in South Carolina.	
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