The Dangers of Relying on Trust Language

by Rebecca Klock Schroer

This article provides guidance and caution to trustees and estate planners regarding trust language that purports to alter fiduciary duties and liability. Specifically, this article covers language regarding the Prudent Investor Rule, the Uniform Principal and Income Act, duties of loyalty and impartiality, the duty to inform and report, and exculpatory provisions.

Trustees are often surprised to learn that they can have exposure to liability even if their actions comply with the terms of the trust. While the language of the trust is certainly important, trustees must be cautious and make sure they do not rely on it to the exclusion of their fiduciary duties.

This article examines the effect of trust language on several fiduciary duties, but is not intended to be a comprehensive overview of all fiduciary duties. It identifies several duties that can be affected by the specific language of a trust and a few that cannot be eliminated no matter how strong the trust language.

Duties That Can Be Altered by the Terms of the Trust

Some of the fiduciary duties that can be altered by the terms of the trust include the duty to prudently invest, the duty to allocate between income and principal, the duty of loyalty, the duty of impartiality, and the duty of prudence. Each of these duties is discussed below.

Duty to Prudently Invest

The duty to prudently invest can be impacted by the terms of the trust.[1] As a general rule, a trustee must use reasonable care, skill, and caution to prudently invest and manage trust assets, while considering the purposes, terms, distribution requirements, and other circumstances of the trust.[2] When adhering to the Prudent Investor Rule, trustees often invest the trust assets in a diversified portfolio.[3] For example, a diversified portfolio might contain cash equivalents, bonds, asset-backed securities, real estate, and corporate stocks, diversified further by the more specific characteristics of each investment.[4]

Pursuant to the Colorado Uniform Prudent Investor Act, the language of the trust can expand, restrict, eliminate, or otherwise alter the duty to prudently invest.[5] The Act further provides that a trustee is not liable if she relies on the terms of the trust.[6]

While language abrogating the duty is helpful, it will not automatically dispose of a breach of fiduciary duty claim. A beneficiary may argue that the language of the trust is ambiguous and that the trustee's interpretation was not accurate. Furthermore, the beneficiary might argue that the trustee's reliance on the trust language was not reasonable, perhaps because of changed circumstances or otherwise.

The Colorado Uniform Prudent Investor Act was modeled after the *Restatement (Third) of Trusts* (*Restatement (Third)*).[7] The *Restatement (Third)* provides some insight into the effect of certain types of trust language that impact this duty.

First, the trustee may be given discretion as to the investments of the trust. A simple grant of discretion without more elaboration does not alter the duty to prudently invest.[8] However, the grant of extended discretion, including "sole and absolute" or "uncontrolled" discretion, does allow the trustee greater latitude in taking risks.[9] There is no way to determine how much additional latitude this language grants to the trustee, but such language would be helpful to a trustee defending a breach of fiduciary duty claim.

Second, the trust could include language stating explicitly that the trustee is not subject to the duty of diversification. This language is somewhat effective, but the trustee is still subject to the duty of prudence, which would include consideration of the role diversification may play in the overall investment of the trust.[10] The trustee should consider the settlor's objectives and have a justification for

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deciding not to implement a diversified portfolio other than relying only on language in the trust permitting it.[11]

Next, the trustee may be directed to retain or make a certain investment. The trustee has a duty to follow the settlor's directions, which may allow the trustee to vary from the normal duty to prudently invest.[12] Even when following a specific direction, however, the trustee can be exposed to liability for breach of fiduciary duty. There are at least three circumstances in which this could happen: (1) when compliance with the terms of the trust is unlawful, (2) when compliance is impossible, or (3) if circumstances have changed such that it is not prudent to follow the direction in the trust.

First, a trustee has a duty not to comply with the terms of the trust if the trustee knows or should know (through reasonable diligence) that the provision is unlawful or contrary to public policy.[13] In the context of investments, this can arise in situations in which the investment is in violation of securities laws, zoning laws, or any other applicable law.

Second, a trustee has a duty not to comply with the terms of the trust if it is impossible to comply or if the expense to comply is unreasonable.[14] To make the determination that compliance is impossible or the expense is unreasonable, the trustee must perform some level of investigation.[15] For example, the trustee could not reasonably comply with a trust term that instructed the trustee to invest in certain specific properties if the trust funds were not adequate to make such an investment.

Third, the trustee must be cognizant of changed circumstances. For example, if the terms of the trust direct the trustee to retain a farm, it would be prudent for the trustee to follow this direction. However, if the farm fell into an irreversible pattern of losses and low yields even in relatively good years, the trustee may want to seek court approval to deviate from the terms of the trust.[16]

The trustee has a duty to seek court approval of a modification or deviation if the trustee knows (or should know) that following the terms of the trust could result in substantial harm to the trust or its beneficiaries under particular circumstances, or if the settlor's purpose would be jeopardized.[17]

Even though there are circumstances in which a trustee must be careful to rely on the trust language and may even have a duty to deviate from the trust terms, it is certainly worth including as much language in the trust as possible to reflect the settlor's intent and try to limit the trustee's exposure to liability. Recent Colorado case law has recognized and respected the inclusion of language in a trust abrogating the trustee's duty to prudently invest. In *Van Gundy v. Van Gundy*, the Colorado Court of Appeals emphasized that the trust can contain language that alters the duty to prudently invest.[18] The trustee in *Van Gundy* had the following power:

> [t]o invest and reinvest in common stocks, preferred stocks, investment trusts, bonds, securities and other property, real or personal, foreign or domestic, including any undivided interest in any one or more common trust funds maintained by an corporate trustee, *whether or not such investments be of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such investment or reinvestment may have upon the diversity of the investments.*[19]

The court noted that provisions such as these are strictly construed, but also found that this provision relaxed the degree of diversification required.[20] The trustee had maintained investments in seven common stocks and a mutual fund, so the investments were not drastic or particularly risky. In *Van Gundy*, the court ultimately reversed the trial court's ruling that the trustee had breached his fiduciary duties by failing to diversify the trust's investments.[21] While *Van Gundy* is helpful precedent, the outcome of a case like *Van Gundy* is fact-specific and dependent not only on the law, but also on the interpretation of the specific trust language at issue.

As with other fiduciary duties, while the drafting attorney can try to abrogate the duty to prudently invest, the trustee still has a duty to act prudently and in consideration of all the trustee's other fiduciary duties.[22]

Duty to Allocate Between Income and Principal

The Colorado Uniform Principal and Income Act provides default rules for the allocation of income and principal.[23] The specific provisions of the Act guide trustees on the characterization of receipts between income and principal. This is especially important when the income and principal beneficiaries are different, as it defines the assets available for distribution to each.

Like the Prudent Investor Rule, the Uniform Principal and Income Act allows the trust language to alter the rule.[24] The terms of the trust can grant the trustee discretion to allocate between income and principal or may direct the trustee to allocate receipts in a certain way.

If the trust contains language *directing* the trustee to allocate receipts a certain way, the trustee should comply unless one of the exceptions mentioned above applies (compliance is unlawful, impossible, or circumstances have changed such that compliance is not in the best interests of the beneficiaries). The Uniform Principal and Income Act provides an exception to fair and reasonable treatment of all beneficiaries if there is a clear manifestation of the settlor's intention that the fiduciary favor one or more beneficiaries.[25]

If the trustee is granted *discretion*, the trustee should proceed with caution. It may be safest for the trustee to simply follow the Colorado Uniform Principal and Income Act because the allocation under the Act is presumed to be fair and reasonable to all beneficiaries.[26] If the trustee uses discretion and the allocation is perceived to be unfair to either the income or principal beneficiaries, a beneficiary might bring a claim for breach of the duty of impartiality.

Duty of Loyalty

Next, and probably the most vital and strict fiduciary duty, is the duty of loyalty.[27] A trustee has the duty to act solely in the best interests of the beneficiaries and cannot engage in transactions that involve a conflict of interest.[28] A conflict arises when the trustee takes an action that is in the trustee's personal interest and to the detriment of the beneficiaries. For example, the trustee cannot profit from a transaction at the expense of a beneficiary.[29] Although conflicts of interest can arise in any situation, these conflicts are present most often when a family member is acting as trustee.

The duty of loyalty cannot be completely abrogated by the terms of a trust because it is critical to the very existence of a fiduciary relationship.[30] Regardless of the trust language, the trustee still has a duty to act in the interest of the beneficiaries and to act prudently. A trustee will violate the duty of loyalty if the trustee acts in bad faith or unfairly.[31]

Whether the trust language is effective is a matter of interpretation, and the language will be strictly construed. Accordingly, the more specific the language, the more helpful it is likely to be to the trustee. For example, if the trust authorized the trustee to purchase certain trust property for himself at a stated price, the trustee could argue that the settlor intended to convey that specific benefit upon the trustee.[32]

The Colorado Probate Code specifically addresses the options for handling a self-dealing transaction in the context of a will (the statute does not state whether it applies to trusts).[33] The statute permits self-dealing if (1) the beneficiaries consent, (2) the will specifically authorizes the transaction, or (3) the transaction is approved by the court after notice to interested persons. While it helps if the trust language permits self-dealing, it is safest for the trustee to obtain consent from the beneficiaries, court approval, or both regarding any self-dealing transaction. If a trustee does anything that can be perceived as self-dealing, she becomes an easy target for a lawsuit.

Duty of Impartiality

Generally, a trustee is under a duty to treat the beneficiaries impartially.[34] However, a trust might include language allowing the trustee to favor certain beneficiaries over others. The most common place this appears is in dispositive provisions. For example, a trust may contain language allowing the trustee to make unequal distributions, even to the exclusion of certain beneficiaries.

Even if the language of the trust permits unequal treatment of beneficiaries, a trustee must be cautious in relying on this language. A trustee must always act in furtherance of the settlor's intention, including the treatment of the beneficiaries.[35] The trustee cannot favor one beneficiary over another due to personal bias.

In 1989, the Ohio Court of Appeals held that even though the settlor intended to have a primary beneficiary, the needs of all beneficiaries should have been considered before the trustee made a discretionary distribution to the primary beneficiary.[36] The trust language in that case specifically provided that the trustee had the discretion to make distributions in equal or unequal amounts and to exclude beneficiaries entirely.

In another case from the Second Circuit, the trustee was granted discretion to make unequal distributions and "shall pay . . . whatever part or all of the net income or principal . . . to the individual members of the said family group."[37] The court found that the trustee had discretion to determine how much to give each member of the family group, but it was not within the trustee's discretion to give a beneficiary nothing.[38]

The terms of the trust may inform the duty of the trustee, but those terms are often vague, leaving the trustee with some risk. The *Restatement (Third)* provides:

> It is not only appropriate but required by the duty of impartiality that a trustee's treatment of beneficiaries, and the balancing of their competing interests, reasonably reflect any preferences and priorities that are discernible from the terms (§ 4), purposes, and circumstances of the trust and from the nature and terms of the beneficial interests. Thus, unfortunately, it is often the case that the implications of the duty of impartiality are complicated by the difficulties of determining, and the vagueness of, some relevant aspects of the settlor's intentions and objectives—much of which is left to interpretation and inference.[39]

While the cases discussed above address the duty of impartiality in the context of discretionary distributions, this duty applies to every decision by a trustee when there are multiple beneficiaries, including but not limited to investment decisions, allocation of income and principal, controversies among beneficiaries, and communications and disclosure of information.[40]

Duty of Prudence

The Colorado statute regarding a trustee's standard of care and performance provides that a trustee should deal with trust assets as a prudent person would deal with the property of another.[41] The statute also specifically states that it applies "except as otherwise provided by the terms of the trust."[42] The statute does not elaborate on how the terms of a trust can alter this duty of prudence.

Provisions altering the general standard of care are strictly construed.[43] Regardless of the trust language, a trustee must act in good faith with some degree of care. The trustee must also act in a manner consistent with the purposes of the trust and interests of the beneficiaries.[44] From a practical standpoint, a trustee does not want to have to admit that he did not act prudently, but that the imprudent acts were permitted by the trust.

Duties That Cannot Be Altered by the Terms of the Trust

There are several duties that cannot be eliminated by the terms of the trust, including the duty to keep records and the duty to provide information to beneficiaries.

Duty to Keep Records

A trustee has the duty to keep accurate records of the administration of the trust.[45] As discussed below, Colorado law imposes several mandatory duties on trustees to produce information to beneficiaries, including an accounting. Accordingly, a trustee should keep accurate and detailed records even if the trust language provides otherwise. Failure to keep detailed records is risky because all doubts will be resolved against a trustee who fails to account.[46]

From a practical standpoint, detailed records about any decision a trustee makes, including a discretionary distribution or investment decision, will be helpful if the trustee's actions come into question, regardless of whether the terms of the trust try to limit the trustee's duty to keep records. Because the trustee's duty of prudence is a rule of conduct, not necessarily performance, the rationale for a trustee's decisions is critical and detailed records will help support a trustee's administration decisions.[47]

Duty to Inform and Report to Beneficiaries

If the trust states that the trustee does not have to provide information, including an accounting, to beneficiaries, the trustee should proceed with caution. When a trustee withholds information, suspicion among the beneficiaries may cause unnecessary litigation. If the trustee faces a breach of fiduciary duty claim, transparency will be helpful in the trustee's defense. Moreover, fully disclosing a transaction will start the running of the statute of limitations for a breach of fiduciary duty claim.[48]

The trust document cannot eliminate a trustee's duty to provide certain information to beneficiaries under Colorado law. Colorado law imposes mandatory duties on trustees to register a trust, to keep beneficiaries reasonably informed of the administration of the trust, and to respond to a beneficiary's request for information.[49]

Subject to a few exceptions, a trustee must register an irrevocable trust with its principal place of administration in Colorado within 30 days of becoming trustee.[50] Any provision in a trust purporting to waive this requirement is ineffective.[51] The trust registration statement generally must include the name and date of the trust, the name and address of the trustee, the settlor (or testator if a testamentary trust), and the date and place of domiciliary probate.[52] The trust registration statement also advises the beneficiaries that they need to protect their own rights because a court is not regularly reviewing or monitoring the administration of the trust.[53]

Colorado law also imposes an affirmative duty on the trustee to keep the beneficiaries reasonably informed of the trust administration regardless of whether there has been a request for information.[54] The scope of what is required to keep a beneficiary "reasonably informed" is not clear under Colorado law, but a trustee can assume that it requires some affirmative disclosure. Following a beneficiary's request, the trustee is specifically required to provide a copy of the terms of the trust that affect the beneficiary's interest, relevant information about the assets of the trust, the particulars of the trust administration, and a statement of the accounts.[55] There is no indication in the statute that this duty can be altered by the terms of the trust.

It is not clear under Colorado law whether the trust language can alter the contents of an accounting. CRPP 31, which includes the requirements for the contents of an accounting, contains the word "shall" throughout and mentions no exception for the terms of the trust.[56] Generally, "[a]ll required accountings shall show with reasonable detail the receipts and disbursements for the period covered by the accounting, shall list the assets remaining at the end of the period, and shall describe all other significant transactions affecting administration during the accounting period."[57] The balance sheet included with an accounting should accurately reflect the assets on hand and should tie together from year to year.[58] A trustee should be cautious about relying on the language of the trust and straying too far from the requirements of CRPP 31.

In sum, trustees must keep accurate and detailed records regarding the assets of a trust and must keep the beneficiaries informed regardless of what the trust language provides. A trustee's failure to disclose or account raises suspicion, oftentimes unnecessarily, and could create liability for the trustee for activities that are unexplained.

The Limits of Exculpatory Clauses

The purpose of an exculpatory clause is different from language that tries to alter a fiduciary duty, as discussed above. Trust language altering a duty may affect whether certain conduct constitutes a breach of fiduciary duty, while an exculpatory clause attempts to limit a trustee's liability.[59]

Exculpatory clauses are strictly construed.[60] These provisions are not enforceable to relieve the trustee of liability for a breach of trust committed in bad faith or with reckless indifference to the interests of the beneficiaries or fiduciary duties.[61] Similarly, a trustee cannot be relieved of liability for profit received as a result of a breach of trust.[62]

Courts may consider the following factors when determining whether an exculpatory clause is effective: (1) the circumstances of the preparation and execution of the trust; (2) the settlor's expectations about the circumstances under which the clause might apply, including particular risks or concerns; and (3) the settlor's expectations about performance of the trustee, including the trustee's skills.[63] As with any other trust language, the language is subject to interpretation, so it cannot be predicted with certainty whether a provision will be enforceable.

An exculpatory clause cannot be completely effective to exonerate a trustee from liability or it would defeat the purpose of a trust. The *Restatement (Third)* explains that

> [T]otal exoneration of [a trustee] . . . must be contrary to public policy. Not only is a trustee a fiduciary, a person whose essential character cannot be taken away, even by the creator of the trust, but the essence of a trust is a beneficiary's right of recourse against the trustee for improper administration, and if the beneficiary is altogether denied that recourse it is highly questionable whether the settlor has created a trust at all.[64]

In addition, there is a presumption that an exculpatory clause is not effective if the trust was drafted by the trustee or if the trustee caused the provision to be included in the trust.[65] This is a safeguard against undue influence and abuse of a confidential relationship. The factors the court may consider in this circumstance are (1) whether the trust was drafted by the trustee or someone acting wholly on behalf of the trustee, (2) whether the trustee was in a fiduciary relationship with the settlor, (3) whether the settlor received competent, independent advice, (4) whether the settlor was aware of and able to understand the provision, and (5) whether the provision is reasonable.[66]

As described above, exculpatory clauses have limitations, and the court will always have the ability to evaluate a trustee's actions. In Colorado, the court has broad powers under the Fiduciary Oversight Act to regulate the conduct of trustees through suspension, removal, and surcharge.[67]

Attorney Fee Provisions

In a breach of fiduciary duty action, an exception exists to the default rule that each party pays her own attorney fees.[68] The reason for the exception is that an award of attorney fees is often necessary to make the injured party whole.[69]

Probate courts in Colorado have broad discretion to allocate fees under case law, the Fiduciary Oversight Act, the Compensation and Cost Recovery Act, and the civil statutes. Pursuant to *Heller v. First National Bank of Denver* and the Fiduciary Oversight Act, the court can surcharge a trustee for attorney fees in a breach of fiduciary duty action.[70] Under the Compensation and Cost Recovery Act, the court can allocate fees to any party if the proceeding or anything filed in the proceeding was filed in bad faith.[71] Finally, the court can allocate fees against a certain party or that party's attorney if the court finds that a claim or motion was frivolous and groundless.[72]

The effect of a fee-shifting provision in a trust is unclear. For example, a fee-shifting provision might state that a beneficiary must bear all costs of a proceeding against a trustee for breach of fiduciary duty unless the beneficiary prevails in the lawsuit. While a litigation attorney would argue that these provisions are effective, it remains to be seen whether such provisions will be enforced under Colorado law or will have any effect on the law as it currently exists.

Options for a Trustee

Under one of the circumstances highlighted in this article or any other circumstance in which the trustee may have exposure to liability, the trustee has some options for protection. The trustee can (1) obtain beneficiary consent, (2) seek instructions from the court, (3) seek court approval of a certain action, or (4) seek court approval of modification of the trust.

Beneficiary consent to the trustee's actions will preclude a breach of fiduciary duty claim in the future.[73] However, there are limitations to beneficiary consent, such as unknown, unascertainable, or minor beneficiaries. In addition, the court may consider the following factors when determining whether a consent is valid under Colorado law, at least in the context of an investment:

1) the beneficiary's education and business experience;
2) the beneficiary's input in negotiating the terms of the allegedly improper investment;
3) the clarity of the consent language;
4) the amount of time the beneficiary had for deliberation before signing the consent;
5) whether the beneficiary read the consent and considered its terms before signing it;
6) whether the beneficiary knew his or her rights under the trust and the relevant facts when the consent was signed;
7) whether the beneficiary was given an opportunity to consult with advisors or an attorney before signing the consent; and
8) whether the beneficiary's consent was induced by improper conduct on the trustee's part.[74]

Because of these limitations, an additional layer of protection would be to seek court approval of a certain action or request instructions from the court.[75]

A trustee could petition the court for a reformation or modification of the trust if there is an issue with the trust language. For example, the trustee can seek an "equitable deviation" from the terms of the trust if circumstances have changed. An equitable deviation is appropriate when there are circumstances either that the settlor was not aware of or that have changed since the creation of the trust.[76] The point of equitable deviation is to give effect to what the settlor's intent would have been had the settlor known of the circumstances.[77] In addition, Colorado has several statutes and case law permitting modification of trusts in certain circumstances, such as to achieve the settlor's tax objectives, to correct a mistake, or for other reasons if the beneficiaries consent.[78]

Conclusion

Trustees have many fiduciary duties and, as a result, have significant exposure to liability for their actions. There is no way to completely insulate a trustee from liability by including certain language in the trust document, but the language is worth including and will help the trustee defend a lawsuit. It is important, however, for trustees to understand that they cannot always rely on a literal interpretation of the language. They must consider all of their fiduciary duties and understand that some duties cannot be abrogated under any circumstances.

Notes

1. CRS § 15-1.1-101(b).
2. CRS § 15-1.1-102(a).
3. CRS § 15-1.1-103.
4. *Restatement (Third) of Trusts* § 90 cmt. g (2007).
5. CRS § 15-1.1-101(b).
6. *Id.*
7. CRS § 15-1.1-101 (prefatory note) (The Colorado Uniform Prudent Investor Act draws from the *Restatement (Third) of Trusts*; the Prudent Investor Rule (1992), which is now out of print, has been republished as *Restatement (Third) of Trusts* §§ 90-92 (2007)).
8. *Restatement (Third) of Trusts* § 91 cmt. g(1) (2007).
9. *Id.*
10. *Id.* at § 91 cmt. g(2).
11. *Id.*
12. *Id.* at § 91 cmt. e.
13. *Id.* at § 72; *Restatement (Second) of Trusts* § 166 (1959).
14. *Restatement (Third) of Trusts* § 73 (2007); *Restatement (Second) of Trusts* § 165 (1959).
15. *Restatement (Third) of Trusts* § 73 (2007); *Restatement (Second) of Trusts* § 165 (1959).
16. *Restatement (Third) of Trusts* § 91 cmt. e, illus. 5 and 6 (2007).
17. *Restatement (Third) of Trusts* § 66 cmt. e (2003); *Restatement (Second) of Trusts* § 167 (1959).
18. *Van Gundy v. Van Gundy*, 292 P.3d 1201 (Colo.App. 2012) (the court in *Van Gundy* cites heavily to §§ 90 and 91 of the *Restatement (Third) of Trusts* (2007)).
19. *Id.* at 1203 (emphasis in original).
20. *Id.* at 1201.
21. *Id.* at 1207.
22. *Id.* at 1205. *See also Restatement (Third) of Trusts* § 91 cmts. f & g (2007).
23. CRS §§ 15-1-401 et seq.
24. CRS § 15-1-403.
25. CRS § 15-1-403(2).
26. *Id.*
27. *Restatement (Third) of Trusts* § 78 cmt. a (2007) (the prior section, 170, of the *Restatement (Third) of Trusts* (1992) cited by *In re Estate of Heyn*, 47 P.3d 724, 726 (Colo.App. 2002), was superseded by § 78).
28. *Restatement (Second) of Trusts* § 170 (1959) (cited by *Destefano v. Grabrian*, 763 P.2d 275, 284 (Colo. 1988)); *Restatement (Third) of Trusts* § 78 (2007).
29. *Restatement (Second) of Trusts* § 170 cmt. a (1959).
30. *Restatement (Third) of Trusts* § 78 cmt. c(2) (2007).
31. *Id.*
32. *Id.*
33. CRS § 15-12-713.
34. *Restatement (Second) of Trusts* § 183 (1959) (cited by *Destefano*, 763 P.2d at 284).
35. Loring and Rounds, *A Trustee's Handbook* § 6.2.5 (Wolters Kluwer Law & Business, 2015).
36. *In re Estate of Winograd*, 582 N.E.2d 1047 (Ohio App. 1989).
37. *Magavern v. United States*, 550 F.2d 797, 801 (2d Cir. 1977).
38. *Id.* at 802.
39. *Restatement (Third) of Trusts* § 79 cmt. b (2007).
40. *Id.* at § 79.
41. CRS § 15-16-302.
42. *Id.*
43. *Restatement (Third) of Trusts* § 77 cmt. d (2007).
44. *Id.*
45. *Restatement (Second) of Trusts* § 172 (1959).
46. *Restatement (Third) of Trusts* § 83 cmt. a(1) (2007).
47. Loring, *supra* note 35 at § 6.2.9; *Restatement (Third) of Trusts* § 77 cmt. a (2007).
48. CRS § 15-16-307.
49. CRS §§ 15-16-101 et seq.; CRS § 15-16-303.
50. CRS § 15-16-101.
51. CRS § 15-16-104.
52. CRS § 15-16-102.
53. *Id.*
54. CRS § 15-16-303(1).
55. CRS § 15-16-303.
56. CRPP 31.
57. *Id.*
58. *Id.*
59. *Restatement (Third) of Trusts* § 96 cmt. a (2012).
60. *Restatement (Second) of Trusts* § 222 cmt. a (1959); *Restatement (Third) of Trusts* § 96 cmt. b (2012).
61. *Restatement (Second) of Trusts* § 222(2) (1959); *Restatement (Third) of Trusts* § 96(1)(a) (2012).
62. *Restatement (Second) of Trusts* § 222(2) (1959); *Restatement (Third) of Trusts* § 96(1)(b) (2012).
63. *Restatement (Third) of Trusts* § 96 cmt. b (2012).
64. *Id.* at § 96, Reporter's Notes on cmts. b and c (quoting Waters et al., *Waters' Law of Trusts in Canada* 927 (3d ed., Carswell, 2005)).
65. *Restatement (Second) of Trusts* § 222 (1959); *Restatement (Third) of Trusts* § 96 (2012).
66. *Restatement (Second) of Trusts* § 222 cmt. d (1959); *Restatement (Third) of Trusts* § 96 cmt. d (2012).
67. CRS §§ 15-10-501 et seq.
68. *Heller v. First Nat'l Bank of Denver, N.A.*, 657 P.2d 992, 999 (Colo. App. 1982).
69. *Id.*; CRS § 15-10-504.
70. *Heller*, 657 P.2d at 999; CRS § 15-10-504.
71. CRS § 15-10-605.
72. CRS §§ 13-17-101 et seq.
73. *See* CRS § 15-16-307; *Restatement (Second) of Trusts* § 216 (1959).
74. *Beyer v. First Nat'l Bank*, 843 P.2d 53, 59 (Colo.App. 1992); *see also Restatement (Second) of Trusts* § 216 (1959).
75. CRS § 15-16-201 (governing proceedings to "determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right").
76. *Restatement (Third) of Trusts* § 66 (2003) cmt. a (2003).
77. *Id.*; *Saunders v. Muratori*, 251 P.3d 550 (Colo.App. 2010).
78. CRS §§ 15-11-806 (reformation to correct mistakes) and -807 (modification to achieve the settlor's tax objectives); *In re Green Valley Fin. Holdings*, 32 P.3d 643 (Colo.App. 2001) (citing *Restatement (Second) of Trusts* § 338 (1959) regarding consent to terminate or modify a trust). ■