

DRAFT

FOR DISCUSSION ONLY

**HARMONIZED UNIFORM STATUTORY TRUST
ENTITY ACT**
(Amendments to Uniform Statutory Trust Entity Act)

Provisions on Series Trusts

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Final Review by Drafting Committee on
Harmonization of Business Entity Acts

Without Comments, but with Reporters' Notes

Strike and Score Version

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 16, 2011

1 [ARTICLE 4]

2 SERIES TRUSTS

3 SECTION 401. STATUTORY TRUST HAVING SERIES.

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

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

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

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

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

16 (D) SUBJECT TO SECTION 404, THE GOVERNING INSTRUMENT MAY PROVIDE FOR THE
17 CREATION OF ONE OR MORE CLASSES OF TRUSTEES, BENEFICIAL OWNERS, OR BENEFICIAL
18 INTERESTS HAVING SEPARATE RIGHTS, POWERS, OR DUTIES WITH RESPECT TO THE STATUTORY
19 TRUST OR ANY SERIES THEREOF.

20 SECTION 402. LIABILITY OF SERIES TRUST.

21 (a) In a series trust:

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

25 (2) a debt, obligation, or other liability incurred or otherwise existing with respect
26 to the trust generally or the property of any other series thereof is not enforceable against the
27 property of the series.

28 (b) THE RULES PERTAINING TO DISTRIBUTIONS UNDER SECTIONS 615 AND 616 APPLY TO A
29 DISTRIBUTION FROM A SERIES TRUST AND FROM THE PROPERTY OF ANY SERIES THEREOF, EXCEPT
30 FOR A DISTRIBUTION UNDER SECTION 405.

31 (c) The association, disassociation, or reassociation of property of a statutory trust or a
32 series thereof to or with the trust or a series thereof, including by ~~conversion or merger~~ a
33 transaction under [Article] 7, is deemed to be a transfer between separate persons under
34 [Uniform Fraudulent Transfers Act or other state fraudulent transfer statute] AND A DISTRIBUTION
35 UNDER SECTION 615.

36 Reporters' Notes

37
38 *Subsection (b)*- Although a series is not a separate entity, distributions can be made from
39 the property of a series. It is necessary, therefore, to apply the act's rules on permissible
40 distributions to distributions from a series. Section 405 pertains to liquidating distributions.
41 Section 615 contains a comparable exclusion for liquidating distributions from the trust entity.
42

43 *Subsection (c)* – This subsection seeks to protect creditors and pertains principally to
44 shifts of property from one series to another, or between the trust and a series. The added
45 language adds another protection and parallels the double protection that applies to distributions
46 – i.e., both section 615 and the UFTA.
47

48 SECTION 403. CLAIMS PERTAINING TO A SERIES.

49 (a) A series of a statutory trust may not sue or be sued in its own name.

50 (b) If a series trust has a claim against a person which pertains to the property of a series
51 thereof, the trust may assert the claim under Section 308 and shall allocate the proceeds of the
52 claim under Sections 401 and 402.

53 (c) If a person has a claim against a series trust which pertains to the property of a series
54 thereof, to assert the claim the person must bring the claim against the trust, stating that the claim

55 pertains to the property of a series thereof and specifying the series if known. To the extent the
56 claim succeeds and is reduced to judgment:

57 (1) the judgment must state that it is collectable only against the property of the
58 specified series; and

59 (2) the judgment creditor may levy on the judgment only by serving the series
60 trust, which shall satisfy the judgment using only the property of the specified series.

61 **SECTION 403 ~~404~~. DUTIES OF TRUSTEE IN SERIES TRUST.** If there is at least
62 one trustee of a series trust that, in discharging its duties, is obligated to consider the interests of
63 the trust and all series thereof, the governing instrument may provide that one or more other
64 trustees, in discharging their duties, may consider only the interests of the trust or one or more
65 series thereof.

66 **SECTION 404 ~~405~~. DISSOLUTION OF SERIES.**

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

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

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

76 (d) A person, including a trustee, that under the governing instrument is responsible for
77 winding up the affairs of a series of a series trust is not liable to the creditors of the dissolved
78 series SOLELY by reason of the ~~PERSON'S ACTIONS IN WINDING UP THE SERIES~~ PERSON ACTING IN

