

THE COLORADO UNIFORM TRUST CODE
(CUTC)

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Uniform Law Commission - Proposal

- Uniform Trust Code - Initial Draft 2000
 - Revised: 2001, 2003, 2004, 2005, 2010, 2016
- Influenced by: California, Georgia, Indiana, Texas, Washington
- Adopted in 35 jurisdictions in some form
 - Under consideration in Hawaii
- Contrast: The Uniform “Probate” Code has only been enacted in about 20 states.

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Understanding the Code

- UTC
 - Refers to Uniform Law Commission Draft
 - Available at www.uniformlaws.org
- CUTC
 - Refers to amended UTC adopted in Colorado C.R.S. §15-5-101 et seq.
 - Despite changes-still uniform
 - **Comments**
 - **Numbering UTC-§105(b)(1)**
 - **CUTC -§15-5-105(2)(a)**

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History- CUTC 2013 Legislative Proposal

- Intro 2006- HB 06-1258-passage failed
- ULC – Commissioners Draft – 2013
- T&E – Elder Law Sections of CBA
- Review and Revised for 5 years
- 2018 - The new CUTC - Senate Bill 18-180
 - Reserve Part 5 - *Creditor Rights*
- **Effective January 1, 2019**

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Contents of Act

- PART 1: GENERAL PROVISIONS AND DEFINITIONS
- PART 2: JUDICIAL PROCEEDINGS
- PART 3: REPRESENTATION
- PART 4: CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

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Contents of Act

- PART 5: CREDITOR’S CLAIMS, SPENDTHRIFT AND DISCRETIONARY TRUSTS
 - Not yet enacted in Colorado
 - Caselaw continues
 - Legislation may be submitted 2021
 - CBA and ULC have an agreed version

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Contents of Act

- PART 6: REVOCABLE TRUSTS
- PART 7: OFFICE OF TRUSTEE
- PART 8: DUTIES AND POWERS OF TRUSTEE
- PART 9: RESERVED FOR UNIFORM PRUDENT INVESTOR ACT

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Contents of Act

- PART 10: LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE
- PART 11: RESERVED
- PART 12: RESERVED
- PART 13: LIFE INSURANCE OWNED BY TRUST
- PART 14: MISCELLANEOUS

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UTC Default Rule Statute

- Drafter may override default provisions
- 14 binding provisions
 - §15-5-105(2)(a)-(n)
 - (e) reserved pending adoption of Part 5 – Creditors
 - The effect of a spendthrift clause and rights of certain creditors and assignees to reach a trust as provided in Article 5

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Scope

- CUTC applies to express trusts,
 - charitable and non-charitable,
 - oral and written
 - trusts created before, on or after enactment
 - Court may not apply if prejudicial to parties...

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CUTC does not apply to:

- Business trusts
- Land trusts
- Voting trusts
- Common trust funds
- Security arrangements
- Liquidation trusts
- Deposit arrangement in a financial institution
- Trusts for paying debts or employee benefits
- Nominee or escrowee arrangements for another.

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Definitions

- Many similar to UPC definitions
 - UPC, C.R.S. §15-10-201
- Other definitions - new or unique to trusts

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New - Alternative Dispute Resolution
C.R.S. §15-5-103(2)

- Not in original UTC
- CUTC –May define dispute resolution in trust
- May use Uniform Arbitration Act
 - (C.R.S. §13-22-201).” C.R.S. §15-5-103(2)
- Some states deny trusts ADR
 - Beneficiaries typically never sign the trust

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Beneficiary

- Old probate code definition very broad
- CUTC includes:
 - a person who has a present or future interest in a trust,
 - a person (other than a trustee) who has a power of appointment over the property.
 - A “beneficiary” does not include an appointee under a power of appointment unless or until the power is exercised and the trustee has knowledge of the exercise and identity of the appointee. C.R.S. §15-5-103(4)

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Interested Person

- More limited meaning in CUTC than in the UPC.
- Deals with judicial settlements, trust registration, and court trust administration.

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CUTC - Interested Persons §15-5-103(10)

- “qualified beneficiaries and other persons having a property right in or claim against a trust estate which may reasonably and materially be affected by a judicial proceeding under this Code.
- Includes fiduciaries and persons having authority to act under trust.” e.g. trust protectors
- Individuals with a material interest in the trust issue
- Dispenses with a remote or tangential interest.
- Defined in CUTC not UTC

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Compare: Probate Code Interested Person

- “Interested Person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and others having a property right in or claims against a trust estate or the estate of decedent, ward or protected person, which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding. CRS §15-10-201

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Qualified Beneficiary- C.R.S. §15-5-103(15)

“A beneficiary who, on the date of the beneficiary’s qualification is “a distributee or permissible distributee of trust income or principal” or “would be a distributee or permissible distributee of trust income or principal” if the interests of the current beneficiaries terminated on that date.”

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Qualified Beneficiary

- Important for disclosure, notice, and consent.
- Examples of other uses in Colorado
 - Uniform Principal and Income Act (2001)
 - Uniform Power of Appointment Act (2016)
- Others treated as “qualified beneficiaries.”
C.R.S. §15-5-110
 - Charities and “beneficiaries” who request notice as qualified beneficiaries.

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Qualified Beneficiary - Explained

- Now eligible for distribution
- Plus: first-line remaindermen
 - Eligible for distributions on:
 - Death of prior QB
 - Trust Termination

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Default Statute – Unmodifiable Provisions.

- 14 provisions of CUTC
 - cannot be modified
 - C.R.S. §15-5-105(2)(a)-(n)

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Default Statute – Unmodifiable Provisions
 C.R.S. §15-5-105(2)(a)

- **Minimum requirements for creating a trust.** (1) a settlor with capacity indicates intention to create a trust, or a statute, or a statute, judgement or decree authorizes the creation of a trust,
 - (2) the trust has a definite beneficiary,
 - (3) the trustee has duties to perform, and
 - (4) the same person is not sole trustee and beneficiary.
 - *a person is not the “sole” beneficiary, even if that person is the sole current distributee, so long as there are beneficiaries with future interests in the trust.*
- C.R.S. §15-5-402.

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Default Statute – Unmodifiable Provisions
 C.R.S. §15-5-105(2)(b)

- **Trustee Duties**
 - To act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. The trustee’s duties are substantially set forth in Part 8 of the CUTC.

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Default Statute – Unmodifiable Provisions
 C.R.S. §15-5-105(2)(c)

- **Requirement that trust:**
 - Benefit Beneficiaries
 - Have Lawful Purpose and possible to achieve
 - Not Contrary to Public Policy
 - See C.R.S. §15-5-404 (Trust Purposes).

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(d)(f)(g)

- Modification or termination by a Court
 - CRS §§ 15-5-410 to 15-5-416.
- Bond
 - The power of the court under § 15-5-702 to require, dispense with, modify, or terminate a bond.
- Compensation
 - The power of the court under § 15-5-708(2) to adjust a trustee’s compensation specified in the terms of the trust that is unreasonably low or high.

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(e)

- Not adopted as of drafting of this outline
 - (e) reserved pending adoption of Part 5 – Creditors
 - The effect of a spendthrift clause and rights of certain creditors and assignees to reach a trust as provided in Article 5

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(h)

- Notice
 - The duty under § 15-5-813(2)(b) and (2)(c) to provide notice of the existence of an irrevocable trust, of the identity of the trustee, and of the right to request trustee’s reports to current distributees or permissible distributees of such trust at any age, **or to other qualified beneficiaries of such trust who have attained twenty-five years of age.**
 - The duty under § 15-5-813(1) to respond to the request of a qualified beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.
 - A Chart of Notice Requirements CUTC
 - Colorado Lawyer, “*The Colorado Uniform Trust Code, 48 Colo. Law 36 (March 2019)*”

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(i)

- Duty to Respond to beneficiary requests for reports and information related to administration of trust
 - C.R.S. §15-5-813(1)

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(j)

- Exculpatory Terms
 - *Cannot relieve the trustee of liability for breach of trust in bad faith or with reckless indifference*
 - *or was inserted as a result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.*
 - *Trustee must prove exculpatory term is fair and contents were adequately communicated to the settlor.*
- C.R.S. §15-5-1008

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Default Statute – Unmodifiable Provisions
C.R.S. §15-5-105(2)(k)

- Rights of Third Parties
 - The class of potential claimants can include
 - parties to a contract;
 - persons injured by an act of the trustee;
 - persons impacted by trustee when serving as a general partner of a partnership;
 - and banks, institutions, or other persons relying on the trustee's authority to act on behalf of the trust.
- C.R.S. §§15-5-1010-1013

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Default Statute – Unmodifiable Provisions
 §15-5-105(2)(l)

- Statute of Limitations
 - Periods of limitation for commencing a judicial proceeding. A settlor cannot alter statutes of limitations applicable to trusts such as those found in C.R.S. §15-5-603 (period of limitation for contesting the validity of a revocable trust – formerly C.R.S. §15-16-704) and C.R.S. §15-5-1005 (limitation of action against a trustee).

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Default Statute – Unmodifiable Provisions
 §15-5-105(2)(m-n)

- The power of the court to take such action and exercise such jurisdiction not inconsistent with settlor’s intent, as may be necessary in the interests of justice.
- The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in §§ 15-5-203 and 15-5-204, unless the trust instrument requires alternative dispute resolution.

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Significant Other Provisions

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Governing Law

- § 107 of the CUTC:
 - Settlor may designate the law that applies
 - Unless law of a jurisdiction is contrary to public policy.
 - No designation
 - Significant relationship test

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Principal Place of Administration.

- C.R.S. §15-5-108, settlor can choose place of administration if
 - trustee’s place of business is located in
 - or the trustee is a resident of that jurisdiction
 - or the administration occurs in the jurisdiction.
- Changing the place of administration.
 - The trustee must provide 60-day notice of the transfer of the place of administration to qualified beneficiaries.
 - If a qualified beneficiary objects, then the transfer is suspended, until the matter is resolved
 - a nonjudicial settlement agreement
 - obtaining court approval.

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Notice.

- §§ 109 and 110 of the CUTC address a trustee’s obligations regarding notice of matters set forth in the CUTC.
- Notice of a judicial proceeding (other than a judicial settlement agreement under the CUTC), must be given as required by applicable rules of civil procedure, the CPC, and the Colorado Rules of Probate Procedure. C.R.S. §15-5-109(4)
- Notice sometimes must be sent more broadly than the Code might initially suggest.
- § 110 of the CUTC, a beneficiary who requests notice must be treated as a qualified beneficiary
- Other persons treated as qualified beneficiaries include a person appointed to enforce a pet trust, or the attorney general with respect to a charitable trust with its principal place of administration in this State.

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Nonjudicial Settlement Agreements.

- CUTC allows certain persons impacted by an issue involving trusts to reach an enforceable agreement without court approval. C.R.S. §15-5-111.
- Nonjudicial settlement agreements invalid
 - violate a material purpose of the trust
 - includes terms and conditions that could not be approved by a court
- Persons whose interest may be affected by a nonjudicial settlement agreement can request that the court approve or disprove the settlement agreement.

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Judicially Approved Settlement Agreements.

- The UTC did not include a provision addressing the process for judicially approving a settlement agreement.
- CUTC added §210 for that purpose.
- “Interested Persons” must receive notice of any request for a judicially approved settlement agreement and the settlement must be set forth in writing.

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Coordination with Other Statutes.

- The CUTC expressly incorporates the rules of construction applicable to trusts that may exist in other Colorado statutes, including but not limited to the statutes governing the interpretation and disposition of property under Articles 10 – 17 of the Colorado Probate Code

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Trust Registration.

- CUTC §§205-209
 - Registration of a trust is optional
 - unless requested by a beneficiary.
- A trustee may release a trust registration statement
 - process specified in C.R.S. §15-5-209.

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PART 3: REPRESENTATION

- Consistent with current Colorado law, under the CUTC, a person represented by another person, is bound by notice given to that other person.
- e.g. A parent can:
 - bind a minor child,
 - Unique to the CUTC, can appoint another person to represent the child
- May be modified by terms of the trust
- Compare: Probate formal proceedings under §15-10-403
 - Probate representation available only in formal proceedings
 - Court approval?

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Pet Trusts and Other Noncharitable Trusts.

- CUTC §§15-5-408, -409, and 409.5 move existing statute C.R.S. §15-11-901, governing pet trusts and other noncharitable trusts without a definite beneficiary (such as cemetery trusts) into the CUTC.
- No changes made to those statutes

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Termination

- Without the consent of the settlor, a trust may be terminated upon the consent of all of the beneficiaries if the court concludes either (a) that continuing the trust is not necessary to achieve any material purpose of the trust, C.R.S. §15-5-411(2)(a), or (b) that modification is not inconsistent with a material purpose of the trust. C.R.S. §15-5-411(2)(b).

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Material Purpose § 411(3)

- A spendthrift provision is NOT presumed to constitute a material purpose of the trust.
- Relates to modification not directly asset protection issue
- Best Practice:
 - a settlor should expressly state intent in the trust

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Modification without unanimous consent

- Even if not all of the beneficiaries consent to a proposed modification or termination, the court may nonetheless approve the modification or termination, if the court believes that the trust could have been terminated or modified if all the beneficiaries had agreed, and the interests of a beneficiary who did not consent will be adequately protected. C.R.S. §15-5-411(5).

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Uneconomic Trusts.

- A trust worth less than \$100,000 may be terminated by the trustee, after notice to the qualified beneficiaries, if the trustee concludes that the value of the trust property is not sufficient to justify the cost of administration. In addition, a court may modify or terminate a trust, or remove a trustee, if the court determines that the trust is uneconomical. C.R.S. §15-5-414

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Correction of Mistakes and Modification to Achieve Tax Objectives.

- §§ 415 and 416 of the CUTC previously codified as C.R.S. §§15-11-806 and 807.
- CUTC puts those provisions back into Part 4.

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PART 5: CREDITOR’S CLAIMS, SPENDTHRIFT AND DISCRETIONARY TRUSTS

- **Not yet enacted in Colorado**
- **Reserved for further study in 2018 bill**
- **Now CBA approved with changes accepted by Uniform Law Commission**
- **Legislative introduction likely 2021**

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PART 5: Highlight

- Preserves: spendthrift – discretionary trusts
 - Exception to spendthrift:
 - child support claims
 - creditor providing essential services
 - To protect beneficiary's interest
- Protects special needs trusts
- Court may further limit creditor relief to protect beneficiary

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Contesting Validity of Revocable Trust

- §15-5-604 – Must commence earlier of
 - 3 years after settlor's death, or
 - 120 days after trustee sends
 - copy of trust;
 - notice of existence;
 - trustee's name and address;
 - time allowed to commence proceeding
 - No liability for failure to give 120 day notice
- Limits are absolute bar

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Duty to Keep Records and Identify Trust Property.

- The trustee must keep the trust property separate from the trustee's own property, and must keep adequate records of the administration of the trust. C.R.S. § 15-5-810.

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Duty to Inform and Report.

- The trustee has duties to keep beneficiaries informed
- A trustee shall also promptly respond to requests for information related to the administration of the trust, unless unreasonable under the circumstances. §15-5-813(1).
- These are mandatory duties that cannot be changed by the terms of the trust. C.R.S. §15-5-105(2)(i).

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Duty to Inform and Report

- Upon request of a qualified beneficiary, a trustee must furnish the beneficiary with a copy of the portions of the trust agreement that describe or affect the beneficiary’s interest. C.R.S. §15-5-813(2)(a).

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Duty to Inform and Report.

- Within 60 days after accepting a trusteeship, the trustee shall notify the qualified beneficiaries of the acceptance and of the trustee’s contact information. C.R.S. §15-5-813(2)(b).
 - a mandatory term
 - except with regard to certain qualified beneficiaries who have not attained the age of 25. C.R.S. §15-5-105(2)(h).
- Does not apply to:
 - a trustee who accepts a trusteeship before the effective date of the CUTC
 - to an irrevocable trust created before that effective date
 - or to a revocable trust that became irrevocable before the effective date.
 - C.R.S. §15-5-813(5).

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Duty to Inform and Report

- Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, the trustee shall notify the qualified beneficiaries of the trust's existence, the identity of the settlor, of the right to request portions of the trust agreement that describes the beneficiary's interest, and the right to a trustee's report. C.R.S. §15-5-813(2)(c).
 - a mandatory term
 - except with regard to certain qualified beneficiaries who have not attained the age of 25. C.R.S. §15-5-105(2)(h).
- Does not apply to:
 - a trustee who accepts a trusteeship before the effective date of the CUTC
 - to an irrevocable trust created before that effective date
 - or to a revocable trust that became irrevocable before the effective date.
 - C.R.S. §15-5-813(5).

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Duty to Inform and Report

- Annually - A report of the trust property, liabilities, receipts, and disbursements (including trustee compensation), a list of the trust assets and their values (if feasible) must be sent to distributees and permissible distributees of trust income and principal whether or not those persons request the report. C.R.S. §15-5-813(3).
 - Other qualified beneficiaries are also entitled to such information upon request.
 - A qualified beneficiary may waive the right to receive
 - A qualified beneficiary may later withdraw that waiver.

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Statutes of Limitation for Breaches of Trust

- Differences
 - Old statute, created a 6-month statute of limitations
 - actions against a trustee
 - measured from the date a beneficiary "receives" a "final account or other statement ..." (C.R.S. §15-16-307).
- The period will now be a one-year statute of limitations
 - Begins to run on the date a "report" is sent. C.R.S. §15-5-1005
 - Sufficient information
 - Informs beneficiary of the potential claim
 - Put beneficiary on notice to inquire into existence of claim

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Three-Year Rule Statute of Limitation.

- If the one-year rule does not apply:
 - C.R.S. §15-5-1005(3)
 - A breach of trust action within three years after:
 - First to occur of the following:
 - The removal or resignation of the trustee.
 - The termination of the beneficiary’s interest in the trust.
 - The termination of the trust.

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Certification of Trust

- May provide a safe harbor to persons relying on the trustee’s authority to act.
- The contents of a certification of trust are set forth in C.R.S. §15-5-1013(1)-(3).
- Cannot use to satisfy trustee’s obligations to furnish information to a beneficiary
- Colorado Banking Code – Certificate of Trust
 - C. R. S. § 11-105-111
 - May require additional information-indemnity

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THANKS FOR YOUR ATTENTION.....

Questions
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