

Article 7.Part 2. Judicial Proceedings	Article 7.Part 2.
<p>GENERAL COMMENT</p> <p>This article addresses selected issues involving judicial proceedings concerning trusts, particularly trusts with contacts in more than one State or country. This article is not intended to provide comprehensive coverage of court jurisdiction or procedure with respect to trusts. These issues are better addressed elsewhere, for example in the State’s rules of civil procedure or as provided by court rule.</p> <p>Section 201 makes clear that the jurisdiction of the court is available as invoked by interested persons or as otherwise provided by law. Proceedings involving the administration of a trust normally will be brought in the court at the trust’s principal place of administration. Section 202 provides that the trustee and beneficiaries are deemed to have consented to the jurisdiction of the court at the principal place of administration as to any matter relating to the trust. Sections 203 and 204 are optional, bracketed provisions relating to subject-matter jurisdiction and venue.</p> <p>SOUTH CAROLINA COMMENT</p> <p>There is significant overlap between Part 2 of the Uniform Trust Code covering judicial proceedings and former Part II under Article 7 of the South Carolina Probate Code. To promote consistency and familiarity with existing South Carolina law and practice, the relevant South Carolina Probate Code language has been maintained whenever possible under this part of the South Carolina Trust Code. Additionally, several separate statutes formerly under the South Carolina Probate Code regarding court jurisdiction of trusts have been consolidated into a single section herein.</p>	<p>GENERAL COMMENT</p> <p>This article addresses selected issues involving jurisdiction and venue. This article is not intended to provide comprehensive coverage of procedure with respect to trusts. These issues are better addressed elsewhere, for example in the State’s rules of civil procedure or as provided by court rule.</p> <p>Section 62-7-201 makes clear that the jurisdiction of the court is available as invoked by interested persons or as otherwise provided by law. Proceedings involving the administration of a trust normally will be brought in the court at the trust’s principal place of administration. Section 62-7-202 provides that the trustee and beneficiaries are deemed to have consented to the jurisdiction of the court at the principal place of administration as to any matter relating to the trust.</p> <p>There is significant overlap between Part 2 of the SCTC covering judicial proceedings and former Part II under Article 7 of the South Carolina Probate Code. To promote consistency and familiarity with existing South Carolina law and practice, the relevant South Carolina Probate Code language has been maintained whenever possible under this part of the South Carolina Trust Code. Additionally, several separate statutes formerly under the South Carolina Probate Code regarding court jurisdiction of trusts have been consolidated into a single section herein.</p>

SECTION 62-7-201. Role of court in administration of trust.

(a) Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(2) review and settle interim or final accounts;

(3) review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's services or if the trust directs otherwise; and

(4) appoint or remove a trustee.

(b) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to

SECTION 62-7-201.

(a) Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. These proceedings must be formal as defined by Section 62-1-201(17) but consent petitions are not subject to the requirements of formal proceedings.

Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(2) review and settle interim or final accounts;

(3) review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's

beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

(c) The probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings:

(1) determine the existence or nonexistence of trusts created other than by will;

(2) actions by or against creditors or debtors of trusts; and

(3) other actions and proceedings involving trustees and third parties;

(d) The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees. Attorney's fees may be set at a fixed or hourly rate or by contingency fee.

(e) The court will not, over the objection of a party, entertain proceedings under this section involving a trust registered or having its principal place of administration in another state, unless (1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to

services or if the trust directs otherwise; and

(4) appoint or remove a trustee.

(b) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

(c) The probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings:

(1) determine the existence or nonexistence of trusts created other than by will;

(2) actions by or against creditors or debtors of trusts; and

(3) other actions and proceedings involving trustees and third parties;

(d) The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees. Attorney's fees may be set at a fixed or hourly rate or by contingency fee.

(e) The court will not, over the objection of a party, entertain proceedings under this section involving a trust registered or having its principal place of administration in another state, unless: (1) when all appropriate

jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

REPORTER'S COMMENTS

Section 62-7-201(a) grants exclusive subject matter jurisdiction to the probate court of interested parties' proceedings concerning the internal affairs of trusts. The subsection provides two illustrative and nonexclusive lists of such proceedings. The lists have this in common: all items on both lists are matters of dispute primarily between and among the trustees and the beneficiaries of trusts, i.e., matters internal to trust administration, and are not matters immediately involving third parties, such as creditors and debtors of trusts. Compare the actions and proceedings concerning the external affairs of trusts, which are the subject matter of Section 62-7-204. See also the specific coverage of proceedings concerning a trustee's compensation, Section 62-7-205, and for this State's Uniform Declaratory Judgments Act, see Section 15-53-10 of the 1976 Code et seq., especially Section 15-53-50.

Section 62-7-201(b) makes it clear that no single proceeding in the probate court concerning the internal affairs of a trust will have the effect of subjecting the administration of the trust to later continuous supervision by the probate court.

COMMENT TO UNIFORM TRUST CODE Section 201

While the Uniform Trust Code encourages the resolution of disputes without resort to the

parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or

(2) when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

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Section 62-7-201(b) makes it clear that no single proceeding in the probate court concerning the internal affairs of a trust will have the effect of subjecting the administration

courts by providing such options as the nonjudicial settlement authorized by Section 111, the court is always available to the extent its jurisdiction is invoked by interested persons. The jurisdiction of the court with respect to trust matters is inherent and historical and also includes the ability to act on its own initiative, to appoint a special master to investigate the facts of a case, and to provide a trustee with instructions even in the absence of an actual dispute.

Contrary to the trust statutes in some States, the Uniform Trust Code does not create a system of routine or mandatory court supervision. While subsection (b) authorizes a court to direct that a particular trust be subject to continuing court supervision, the court's intervention will normally be confined to the particular matter brought before it.

Subsection (c) makes clear that the court's jurisdiction may be invoked even absent an actual dispute. Traditionally, courts in equity have heard petitions for instructions and have issued declaratory judgments if there is a reasonable doubt as to the extent of the trustee's powers or duties. The court will not ordinarily instruct trustees on how to exercise discretion, however. See Restatement (Second) of Trusts Section 187, 259 (1959). This section does not limit the court's equity jurisdiction. Beyond mentioning petitions for instructions and actions to declare rights, subsection (c) does not attempt to list the types of judicial proceedings involving trust administration that might be brought by a trustee or beneficiary. Such an effort is made in California Probate Code Section 17200. Excluding matters not germane to the Uniform Trust Code, the California statute lists the following as items

of the trust to later continuous supervision by the probate court.

SCTC subsections 62-7-201(a) and (b) incorporate former South Carolina Probate Code Section 62-7-201 regarding the Probate Court's exclusive jurisdiction over the internal affairs of trusts. Subsection (a)(3) has been taken from former South Carolina Probate Code Section 62-7-205. Such exclusive jurisdiction is subject to Section 62-1-302(d) of the South Carolina Probate Code regarding a party's right to remove a proceeding to the circuit court.

Subsections (c) and (d) are taken from former South Carolina Probate Code Section 62-7-204(A).

Subsection (e) is taken from former South Carolina Probate Code Section 62-7-203.

Subsection (e) refers to a trust's "principal place of administration" which is addressed under South Carolina Trust Code Section 62-7-108.

Whereas the Uniform Trust Code encourages resolution of disputes without resort to courts through options such as nonjudicial settlements authorized by Section 111, the South Carolina Trust Code limits nonjudicial settlements to specified matters set forth in Section 62-7-111, thereby generally maintaining the practice requiring court involvement for resolution of trust disputes.

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relating to the “internal affairs” of a trust: determining questions of construction; determining the existence or nonexistence of any immunity, power, privilege, duty, or right; determining the validity of a trust provision; ascertaining beneficiaries and determining to whom property will pass upon final or partial termination of the trust; settling accounts and passing upon the acts of a trustee, including the exercise of discretionary powers; instructing the trustee; compelling the trustee to report information about the trust or account to the beneficiary; granting powers to the trustee; fixing or allowing payment of the trustee’s compensation or reviewing the reasonableness of the compensation; appointing or removing a trustee; accepting the resignation of a trustee; compelling redress of a breach of trust by any available remedy; approving or directing the modification or termination of a trust; approving or directing the combination or division of trusts; and authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

COMMENT TO UNIFORM TRUST CODE
Section 203

This section provides a means for distinguishing the jurisdiction of the court having primary jurisdiction for trust matters, whether denominated the probate court, chancery court, or by some other name, from other courts in a State that may on occasion resolve disputes concerning trusts. The section has been placed in brackets because the enacting jurisdiction may already address subject-matter jurisdiction by other statute or court rule. The topic also need not be addressed in States having unified court systems. For an explanation of types of

discretion, however. *See* Restatement (Second) of Trusts Section 187, 259 (1959). This section does not limit the court’s equity jurisdiction.

proceedings which may be brought concerning the administration of a trust, see the Comment to Section 201.

SOUTH CAROLINA COMMENT

There is significant overlap between Part 2 of the Uniform Trust Code covering judicial proceedings and former Part II under Article 7 of the South Carolina Probate Code. To promote consistency and familiarity with existing South Carolina law and practice, the relevant South Carolina Probate Code language has been maintained whenever possible under this part of the South Carolina Trust Code. Additionally, several separate statutes formerly under the South Carolina Probate Code regarding court jurisdiction of trusts have been consolidated into a single section herein.

SCTC subsections 62-7-201(a) and (b) incorporate former South Carolina Probate Code Section 62-7-201 regarding the Probate Court's exclusive jurisdiction over the internal affairs of trusts. Subsection (3)(a) has been taken from former South Carolina Probate Code Section 62-7-205. Such exclusive jurisdiction is subject to Section 62-1-302(c) of the South Carolina Probate Code regarding a party's right to remove a proceeding to the circuit court.

Subsections (c) and (d) are taken from former South Carolina Probate Code Section 62-7-204(A).

Subsection (e) is taken from former South Carolina Probate Code Section 62-7-203.

Subsection (e) refers to a trust's "principal place of administration" which is addressed under South Carolina Trust Code Section 62-7-108.

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resolution of disputes without resort to courts through options such as nonjudicial settlements authorized by Section 111, the South Carolina Trust Code limits nonjudicial settlements to specified matters set forth in Section 62-7-111, thereby generally maintaining the practice requiring court involvement for resolution of trust disputes.

SCTC Section 62-7-201 covers matters dealt with in Uniform Trust Code Sections 201 and 203. Consequently, the UTC Comments from both sections are included hereinabove, but because SCTC Section 62-7-201 differs significantly from those UTC sections, the UTC Comments should be adjusted accordingly.

SECTION 62-7-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

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

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

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

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

from the trust.

COMMENT

This section clarifies that the courts of the principal place of administration have jurisdiction to enter orders relating to the trust that will be binding on both the trustee and beneficiaries. Consent to jurisdiction does not dispense with any required notice, however. With respect to jurisdiction over a beneficiary, the Comment to Uniform Probate Code Section 7-103, upon which portions of this section are based, is instructive:

It also seems reasonable to require beneficiaries to go to the seat of the trust when litigation has been instituted there concerning a trust in which they claim beneficial interests, much as the rights of shareholders of a corporation can be determined at a corporate seat. The settlor has indicated a principal place of administration by its selection of a trustee or otherwise, and it is reasonable to subject rights under the trust to the jurisdiction of the Court where the trust is properly administered.

The jurisdiction conferred over the trustee and beneficiaries by this section does not preclude jurisdiction by courts elsewhere on some other basis. Furthermore, the fact that the courts in a new State acquire jurisdiction under this section following a change in a trust's principal place of administration does not necessarily mean that the courts of the former principal place of administration lose jurisdiction, particularly as to matters involving events occurring prior to the transfer.

The jurisdiction conferred by this section is limited. Pursuant to subsection (b), until a distribution is made, jurisdiction over a beneficiary is limited to the beneficiary's

property from the trust.

REPORTER'S COMMENT

There was no corresponding statute under the South Carolina Probate Code prior to the enactment of the SCTC.

This section clarifies that the courts of the principal place of administration have jurisdiction to enter orders relating to the trust that will be binding on both the trustee and beneficiaries. A trust's "principal place of administration" is addressed in SCTC Section 62-7-108. Consent to jurisdiction does not dispense with any required notice, however. With respect to jurisdiction over a beneficiary, the Comment to Uniform Probate Code Section 7-103, upon which portions of this section are based, is instructive:

It also seems reasonable to require beneficiaries to go to the seat of the trust when litigation has been instituted there concerning a trust in which they claim beneficial interests, much as the rights of shareholders of a corporation can be determined at a corporate seat. The settlor has indicated a principal place of administration by its selection of a trustee or otherwise, and it is reasonable to subject rights under the trust to the jurisdiction of the Court where the trust is properly administered.

The jurisdiction conferred over the trustee and beneficiaries by this section does not preclude jurisdiction by courts elsewhere on some other basis. Furthermore, the fact that the courts in a new State acquire jurisdiction under this section following a change in a trust's principal place of administration does not necessarily mean that the courts of the former principal place of administration lose

interests in the trust. Personal jurisdiction over a beneficiary is conferred only upon the making of a distribution. Subsection (b) also gives the court jurisdiction over other recipients of distributions. This would include individuals who receive distributions in the mistaken belief they are beneficiaries.

For a discussion of jurisdictional issues concerning trusts, see 5A Austin W. Scott & William F. Fratcher, *The Law of Trusts* Sections 556-573 (4th ed. 1989).

SOUTH CAROLINA COMMENT

There was no corresponding statute under the South Carolina Probate Code.

A trust's "principal place of administration" is addressed in SCTC Section 62-7-108.

SECTION 62-7-204. Venue.

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

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which any trust property is located or the county where the last Trustee had its principal place of administration, and if the trust is created by will, in the county in which

jurisdiction, particularly as to matters involving events occurring prior to the transfer.

The jurisdiction conferred by this section is limited. Pursuant to subsection (b), until a distribution is made, jurisdiction over a beneficiary is limited to the beneficiary's interests in the trust. Personal jurisdiction over a beneficiary is conferred only upon the making of a distribution. Subsection (b) also gives the court jurisdiction over other recipients of distributions. This would include individuals who receive distributions in the mistaken belief they are beneficiaries.

For a discussion of jurisdictional issues concerning trusts, see 5A Austin W. Scott & William F. Fratcher, *The Law of Trusts* Sections 556-573 (4th ed. 1989).

SECTION 62-7-203. RESERVED.

SECTION 62-7-204.

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(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which any trust property is located or the county where the last trustee had its principal place of administration, and if the trust is created by

the decedent's estate was or is being administered.

(c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(e) If a court finds that, in the interest of justice, a proceeding or file concerning a trust should be in another court in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

COMMENT

This optional, bracketed section is made available for jurisdictions that conclude that venue for a judicial proceeding involving a trust is not adequately addressed in local rules of civil procedure. For jurisdictions enacting this section, general rules governing venue continue to apply in cases not covered by this section. This includes most proceedings where jurisdiction over a trust, trust property, or parties to a trust is based on a factor other than the trust's principal place of administration. The general rules governing venue also apply when the principal place of administration of a trust is in another locale, but jurisdiction is proper in the enacting State.

will, in the county in which the decedent's estate was or is being administered.

(c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(e) If a court finds that, in the interest of justice, a proceeding or file concerning a trust should be in another court in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

REPORTER'S COMMENT

South Carolina Trust Code subsections 62-7-204 (a) and (b) are taken from former South Carolina Probate Code Section 62-7-202 and incorporate provisions of UTC Section 204.

SCTC subsections (c), (d), and (e) are taken from former South Carolina Probate Code Section 62-1-303 and do not incorporate UTC provisions.

A trust's "principal place of administration" is addressed in SCTC Section 62-7-108.

SCTC Section 62-7-204 differs significantly from UTC Section 204.

SOUTH CAROLINA COMMENT

South Carolina Trust Code subsections 62-7-204 (a) and (b) are taken from former South Carolina Probate Code Section 62-7-202. SCTC subsections (c), (d), and (e) are taken from former South Carolina Probate Code Section 62-1-303. A trust's "principal place of administration" is addressed in SCTC Section 62-7-108.

Because SCTC Section 62-7-204 differs significantly from UTC Section 204, the UTC Comment should be adjusted accordingly.

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