



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-5206/1  
KMS&JPC:cde

## 2023 SENATE BILL 759

December 8, 2023 - Introduced by Senators WIMBERGER and KNODL, cosponsored by Representatives TUSLER and O'CONNOR. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT to repeal** 701.0110 (1) (a), (b) and (c), 701.0405 (1) and 701.0418; **to**  
2     **renumber** 701.0304, 701.0305 (1), 701.0305 (2), 701.0305 (3), 701.0602 (3) (b)  
3     1., 701.0602 (3) (b) 2. and 701.0802 (5); **to renumber and amend** 701.0103  
4     (24), 701.0110 (1) (intro.), 701.0302, 711.04 (1) and 766.58 (13) (b); **to**  
5     **consolidate, renumber and amend** 701.0602 (3) (intro.), (a) and (b) (intro.);  
6     **to amend** 30.541 (3) (d) 1. a., 101.9211 (4) (a) 1., 342.17 (4) (a) 1., 700.16 (1) (c),  
7     700.27 (1) (d), 701.0103 (4), 701.0103 (9), 701.0103 (18), 701.0103 (21) (intro.),  
8     701.0103 (23), 701.0103 (27), 701.0103 (30), 701.0109 (title), 701.0109 (3),  
9     701.0110 (2), 701.0110 (3), 701.0111 (4), 701.0111 (5) (d), 701.0111 (6), 701.0203  
10     (1), 701.0302 (title), 701.0303 (4), 701.0303 (5), 701.0303 (6) (intro.), 701.0303  
11     (6) (a), 701.0303 (6) (b), 701.0303 (6) (c), 701.0303 (6) (d), 701.0402 (1) (e),  
12     701.0408, 701.0410 (2), 701.0410 (3), 701.0411 (1), 701.0411 (2) (a), 701.0411 (2)  
13     (b), 701.0411 (7), 701.0414 (4), 701.0415, 701.0416, 701.0505 (1) (a) 2., 701.0505  
14     (2) (e) 3., 701.0602 (1), 701.0602 (4), 701.0702 (3), 701.0706 (2) (c), 701.0706 (2)

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1 (d), 701.0707 (2), 701.0813 (1), (2) (d) and (3) (a) (intro.), 701.0813 (2) (a),  
2 701.0813 (3) (b), 701.0813 (5), 701.0817 (3) (b), 701.1005 (1), 701.1005 (2),  
3 701.1009 (2), 701.1105 (1) (b), 701.1136 (1), 711.04 (2), 711.05 (2) (b), 711.06 (2)  
4 (intro.), 711.06 (2) (b), 711.07 (3) (b), 711.13, 766.01 (9) (a), 766.31 (7) (b), 766.58  
5 (13) (c), 766.59 (1), 766.63 (1), 851.21 (2) (e), 854.13 (1) (c), 856.29, 859.02 (3) and  
6 865.08 (6); **to repeal and recreate** 701.0103 (21) (a) and (b), 701.0508,  
7 701.0818 (2) (b) 2. h. and chapter 702; and **to create** 701.0102 (12m), 701.0103  
8 (1m), 701.0103 (1n), 701.0103 (3) (c), 701.0103 (3m), 701.0103 (3r), 701.0103  
9 (3u), 701.0103 (3x), 701.0103 (5g), 701.0103 (5w), 701.0103 (11p), 701.0103  
10 (15m), 701.0103 (19m), 701.0103 (19r), 701.0103 (19v), 701.0103 (21m),  
11 701.0103 (23m), 701.0109 (5), 701.0111 (5) (m), 701.0111 (7), 701.0113, 701.0201  
12 (3) (km), 701.0201 (4), 701.0302 (1), 701.0303 (6) (e), 701.0304 (2), 701.0306,  
13 701.0307 (title), 701.0308, 701.0401 (5m), 701.0411 (1m), 701.0411 (2) (intro.),  
14 701.0509, 701.0605, 701.0704 (1) (g), 701.0802 (5) (b), 701.0802 (9), 701.0813 (3)  
15 (c), 701.0813 (6) and (7), 701.0815 (3), 701.0816 (29), 701.0816 (30), subchapter  
16 XIII of chapter 701 [precedes 701.1301], 711.03 (4m), 711.04 (1) (b), 711.04 (1)  
17 (c), 711.04 (1) (d), 766.01 (9) (e), 766.01 (9) (f), 766.31 (7) (g), 766.58 (7) (c), 766.58  
18 (13) (b) 2. and 3., 766.625, 766.70 (3) (dm), 814.66 (1) (o) and 905.03 (2m) of the  
19 statutes; **relating to:** trust administration, the Uniform Powers of  
20 Appointment Act, the Uniform Trust Decanting Act, disclosure of certain  
21 digital property, and the classification of certain digital property as individual  
22 property for purposes of determining marital property.

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***Analysis by the Legislative Reference Bureau***

This bill makes several changes to the administration of trusts, the power to decant trusts, the creation and exercise of powers of appointment, the disclosure of

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certain digital property, and the classification of digital property as individual property for purposes of determining marital property. Important provisions of the bill are summarized as follows:

***Administration of trusts***

The bill makes several technical changes to the administration and regulation of trusts in the state, including the following:

1. The bill provides that notice given to any trustee when more than one person is serving as trustee is considered to be given to all persons serving as trustee, except that notice must be given to all corporations and attorneys that are serving as trustee.

2. The bill expands the concept of representation in a trust proceeding. Under the bill, a person holding a general power of appointment or a broad limited power of appointment may represent and bind the interests of all persons whose interests may be eliminated, regardless of whether there is a conflict of interest. A person holding a nongeneral power of appointment may represent and bind the interests of any person whose interest may be limited by the exercise of the power, provided there is no conflict of interest. A presumptive remainder beneficiary may represent and bind the interests of a contingent successor remainder beneficiary or a more remote contingent successor beneficiary, regardless of whether the beneficiary lacks capacity and provided there is no conflict of interest. If a presumptive remainder beneficiary does not represent a more remote contingent successor remainder beneficiary, a contingent successor remainder beneficiary may represent and bind a more remote contingent successor remainder beneficiary. The bill also confirms that a settlor can nominate in the trust instrument a designated representative to represent and bind any beneficiary.

3. The bill allows for the creation of a trust without initially funding the trust. To create such a trust, the bill requires a person to declare the intention to create a trust with the intention that the trust will be funded by assets of the person who created the trust or by another person with legal authority to fund the trust. Under the bill, the person making the declaration is considered to have created the trust regardless of whether the person funds the trust with the person's own assets.

4. The bill provides for the resolution of debts against a deceased settlor of a trust that was revocable until the settlor's death. First, the bill provides that a claimant must assert a claim for payment of a debt of a deceased settlor within any applicable deadline established by law. A trustee of a trust that was revocable at the settlor's death may shorten the time period and set a deadline for filing claims with the trustee by publishing a legal notice or giving notice to a potential claimant. A claim that was barred by a statute of limitations at the time of the deceased settlor's death is barred and the claimant may not pursue a claim against the trustee, the trust property, or recipients with respect to trust property. However, a claim not barred by a statute of limitations at the time of the settlor's death is not barred thereafter by a statute of limitations if the claim is filed by the deadline for filing a claim after the death of the settlor. The deadlines established for filing a claim after the death of the settlor do not extend the time for commencement of a claim beyond the time provided by any statute of limitations applicable to that claim. Failure of

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a claimant to file a claim within applicable deadlines does not bar the claimant from satisfying the claim, if not otherwise barred, from property other than trust property.

5. The bill further provides for the form and verification of claims against a deceased settlor, the trustee response to claims against a deceased settlor, contest and enforcement of claims against a deceased settlor, compromise of claims against a deceased settlor, payment of claims against a deceased settlor, and the priority of claims against a deceased settlor.

6. The bill provides that a trustee of a trust has an insurable interest in the life of an insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued, the insured is a settlor of the trust or is an individual in whom a settlor of the trust has, or would have if living at the time the life insurance policy was issued, an insurable interest in the life of the insured and the life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who either have an insurable interest in the life of the insured or have a substantial interest engendered by love or affection in the continuation of the life of the insured and, if the beneficiary does not have an insurable interest in the life of the insured, are related to the insured as provided in the bill.

***Uniform Trust Decanting Act***

Current law allows a trustee to transfer the assets of a trust to a second trust subject to certain requirements. The bill adopts the Uniform Trust Decanting Act (UTDA). The UTDA, as adopted, replaces the current language governing the transfer of assets to a second trust and makes several substantive changes to current law.

The bill defines “decanting power” as the power to 1) modify the terms of a trust or 2) distribute the property of a trust to a second trust. Under the bill, an authorized fiduciary may exercise the decanting power. An “authorized fiduciary” is defined as 1) a trustee or another fiduciary, other than the settlor, that has discretion to distribute or direct a trustee to distribute principal from a trust to a beneficiary; 2) a special fiduciary appointed by a court to exercise the decanting power; 3) a trustee or fiduciary that has the discretion or obligation to distribute property to beneficiaries of a trust that has a beneficiary with a disability; or 4) a trust protector who has been granted the decanting power.

The decanting power under this bill applies only to a trust that 1) is irrevocable or revocable by the settlor only with the consent of the trustee or a person that has an adverse interest in the revocation of the trust and 2) is not held solely for charitable purposes. The bill specifies that a first-trust instrument is deemed to include the decanting power unless the first-trust instrument explicitly prohibits or restricts exercise of the decanting power. The UTDA provisions of the bill apply to any trust created before, on, or after the effective date of the bill if the trust is governed or administered under the law of this state.

Under current law, a trustee may only transfer assets to a second trust with court approval or through a notice procedure. The current notice procedure requires giving notice to the settlor, beneficiaries, and certain powerholders of a trust 30 days prior to transferring assets from that first trust to a second trust. The bill requires

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a similar 30-day notice for exercise of the decanting power, but requires notice to be provided to additional powerholders and fiduciaries of the first trust as well as powerholders and fiduciaries of the second trust and, for certain trusts with a charitable interest, the attorney general. Under the bill, an exercise of the decanting power is effective if the authorized fiduciary acted with reasonable care to comply with the notice requirement, even if the fiduciary failed to provide notice to every person entitled to notice.

In addition, under current law, a trustee may not appoint assets to a second trust if a contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes and the second trust would prevent the asset from qualifying for the deduction or reduce the amount of the deduction. The bill retains this prohibition and expands it to other tax benefits, including deductions for state income, gift, estate, and inheritance taxes and any tax benefit for which a first trust is clearly designed to qualify. The bill also prohibits the use of the decanting power to 1) increase an authorized fiduciary's compensation, 2) relieve an authorized fiduciary from liability for breach of trust in a second-trust instrument to a greater extent than in the first-trust instrument, or 3) reduce the aggregate fiduciary liability of all fiduciaries of a second trust without court approval or the consent of all of the qualified beneficiaries of a second trust.

The bill includes additional provisions about the decanting power for certain types of trusts. Specifically, in a trust that has a beneficiary with a disability, an authorized fiduciary may exercise the decanting power if the second trust is a special needs trust that benefits the beneficiary with a disability and the authorized fiduciary determines that exercise of the decanting power will further the purposes of the first trust. Under the bill, a "special needs trust" means a trust that the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits based on disability. Also, if a first trust contains a charitable interest, a second trust may not diminish the charitable interest, diminish the interest of an identified charitable organization that holds the charitable interest, alter any charitable purpose stated in the first-trust instrument, or alter any condition or restriction related to the charitable interest. In addition, the bill specifies that the decanting power may be exercised over an animal trust. An "animal trust" is defined under the bill as a trust created to provide for the care of an animal that has a person appointed to enforce the trust on behalf of the animal. If a first trust is an animal trust, a second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

If the trust instrument for a second trust does not comply with all of the requirements of the UTDA but the exercise of the decanting power would otherwise be effective, then 1) any provision that is included in the second-trust instrument in violation of the UTDA is void and 2) any provision omitted from the second-trust instrument in violation of the UTDA is deemed to be included in the second-trust instrument.

**SENATE BILL 759*****Uniform Powers of Appointment Act***

The bill adopts the Uniform Powers of Appointment Act. Under the bill, a “power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. A power of appointment is created only if the instrument creating the power governs the disposition of the appointive property and the terms of the instrument manifest the donor’s intention to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee. Under the bill, unless the terms of the instrument creating the power of appointment state otherwise, a power of appointment is presumed to be a presently exercisable power of appointment, an exclusionary power of appointment, and a general power of appointment. An “exclusionary power of appointment” means a power of appointment exercisable in favor of one or more permissible appointees to the exclusion of the other permissible appointees. A “general power of appointment” means a power of appointment exercisable in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate. The bill provides, however, that a power of appointment is presumed to be a nongeneral power of appointment if the power is exercisable only at the powerholder’s death and the permissible appointees of the power are a defined and limited class that does not include the powerholder’s estate, the powerholder’s creditors, or the creditors of the powerholder’s estate.

Under the bill, a power of appointment is exercised only if the instrument exercising the power is valid under law, the terms of the instrument manifest the powerholder’s intent to exercise the power, and the instrument satisfies any requirements of exercise imposed by the donor, if any. If a power of appointment is vested in two or more persons, then the powerholders may only exercise the power of appointment unanimously. Under the bill, a powerholder may exercise their power of appointment by including a residuary clause in the powerholder’s will, or a comparable clause in the powerholder’s revocable trust, if the will or trust instrument manifests intent to do so, the power of appointment is a general power of appointment, there is no gift-in-default clause in the instrument creating the power of appointment, and the powerholder did not previously release the power of appointment.

If the powerholder releases or fails to exercise a general power of appointment, the bill provides that the gift-in-default clause controls the unappointed property or, if there is no gift-in-default clause, the bill provides default rules for how the unappointed property is disposed. A personal representative, trustee, or other fiduciary who holds property subject to a power of appointment may administer the appointive property as if the power of appointment was not exercised if the personal representative, trustee, or other fiduciary has no notice of the existence of any documentation of the powerholder purporting to exercise the power of appointment by will or otherwise within six months after the death of the powerholder.

**SENATE BILL 759*****Classification of digital property as individual property***

The bill establishes an exception to Wisconsin's general marital property law, allowing digital property to be classified as individual property if the property meets certain criteria. Under the bill, an account and the digital property held in an account, including the content of electronic communications such as personal email, that is created and maintained for personal use is classified as individual property, unless either the account or the digital property in the account was not originally created, purchased, or otherwise acquired exclusively for the personal, noneconomic purposes of the account holder, or the account or the digital property in the account has at any time been used for purposes other than the personal, noneconomic purposes of the spouse holding the account. Under the bill, in the event of a sale, exchange, or other disposition, all property received in exchange for that account, or the digital property in the account, is classified as marital property; and, further, income during marriage and after the determination date attributable to the account, or the digital property in the account, is classified as marital property.

***Disclosure of digital property***

Under current law, a user may use an online tool to direct a custodian of digital property to disclose or not to disclose to a designated recipient some or all of the user's digital property in certain circumstances. If an online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or any other governing instrument. If a user has not used an online tool or if the custodian has not provided an online tool, the user may allow or prohibit disclosure to a fiduciary of some or all of the user's digital property, including the content of electronic communications sent or received by the user, in a will, trust, power of attorney, or any other governing instrument.

The bill provides that a user may allow or prohibit the disclosure to a fiduciary of some or all of the user's digital property in a consent instrument. A consent instrument is defined as a written notarized document in physical or electronic form evidencing the user's consent to the disclosure of the contents of electronic communications to a then acting fiduciary. However, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a consent instrument in the same way that an online tool overrides a will, trust, power of attorney, or other governing instrument under current law.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 30.541 (3) (d) 1. a. of the statutes is amended to read:

**SENATE BILL 759****SECTION 1**

1           30.541 (3) (d) 1. a. Evidence satisfactory to the department of the appointment  
2 of a trustee in bankruptcy, of a certification of trust under s. 701.1013 or the  
3 appointment of a trustee, or of the issuance of domiciliary letters testamentary or  
4 other letters authorizing the administration of a decedent's estate, letters of  
5 guardianship, conservatorship, special administration, or letters of trust.

6           **SECTION 2.** 101.9211 (4) (a) 1. of the statutes is amended to read:

7           101.9211 (4) (a) 1. Evidence satisfactory to the department of the appointment  
8 of a trustee in bankruptcy, of a certification of trust under s. 701.1013 or the  
9 appointment of a trustee, or of the issuance of domiciliary letters testamentary or  
10 other letters authorizing the administration of a decedent's estate, letters of  
11 guardianship, conservatorship, special administration, or letters of trust.

12           **SECTION 3.** 342.17 (4) (a) 1. of the statutes is amended to read:

13           342.17 (4) (a) 1. Evidence satisfactory to the department of the ~~issuance of the~~  
14 ~~letters testamentary or other letters authorizing the administration of an estate,~~  
15 ~~letters of guardianship, or letters of trust,~~ appointment of a trustee in bankruptcy,  
16 of a certification of trust under s. 701.1013 or the appointment of a testamentary  
17 trustee, or of the ~~appointment of the trustee in bankruptcy~~ issuance of domiciliary  
18 letters or other letters authorizing the administration of a decedent's estate,  
19 guardianship, conservatorship, special administration, or trust;

20           **SECTION 4.** 700.16 (1) (c) of the statutes is amended to read:

21           700.16 (1) (c) If a future interest or trust is created by exercise of a power of  
22 appointment, the permissible period is computed from the time the power of  
23 appointment is exercised if the power of appointment is a general power of  
24 appointment, as defined in s. ~~702.02 (5)~~ 702.102 (7), even if the general power of  
25 appointment is exercisable only by will. In the case of other powers of appointment



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1 the permissible period is computed from the time the power of appointment is created  
2 but facts at the time the power of appointment is exercised are considered in  
3 determining whether the power of alienation is suspended beyond a life or lives in  
4 being at the time of creation of the power of appointment plus 30 years.

5 **SECTION 5.** 700.27 (1) (d) of the statutes is amended to read:

6 700.27 (1) (d) "Power of appointment" has the meaning given in s. ~~702.02 (6)~~  
7 702.102 (14).

8 **SECTION 6.** 701.0102 (12m) of the statutes is created to read:

9 701.0102 (12m) An account that is part of a qualified ABLE program under  
10 section 529A (b) of the Internal Revenue Code.

11 **SECTION 7.** 701.0103 (1m) of the statutes is created to read:

12 701.0103 (1m) "Animal protector" means a person appointed in an animal trust  
13 to enforce the trust on behalf of the animal or, if no such person is appointed in the  
14 trust, a person appointed by the court for that purpose.

15 **SECTION 8.** 701.0103 (1n) of the statutes is created to read:

16 701.0103 (1n) "Animal trust" means a trust or an interest in a trust created to  
17 provide for the care of one or more animals.

18 **SECTION 9.** 701.0103 (3) (c) of the statutes is created to read:

19 701.0103 (3) (c) Is an identified charitable organization that will or may receive  
20 distributions under the terms of the trust.

21 **SECTION 10.** 701.0103 (3m) of the statutes is created to read:

22 701.0103 (3m) "Broad limited power of appointment" has the meaning given  
23 in s. 702.102 (4).

24 **SECTION 11.** 701.0103 (3r) of the statutes is created to read:

**SENATE BILL 759****SECTION 11**

1           701.0103 **(3r)** “Charitable interest” means an interest in a trust that satisfies  
2 any of the following:

3           (a) It is held by an identified charitable organization and makes the  
4 organization a qualified beneficiary.

5           (b) It benefits only charitable organizations and, if the interest were held by an  
6 identified charitable organization, would make the organization a qualified  
7 beneficiary.

8           (c) It is held solely for charitable purposes and, if the interest were held by an  
9 identified charitable organization, would make the organization a qualified  
10 beneficiary.

11           **SECTION 12.** 701.0103 (3u) of the statutes is created to read:

12           701.0103 **(3u)** “Charitable organization” means any of the following:

13           (a) A person, other than an individual, organized and operated exclusively for  
14 charitable purposes.

15           (b) A government or governmental subdivision, agency, or instrumentality, to  
16 the extent it holds funds exclusively for a charitable purpose.

17           **SECTION 13.** 701.0103 (3x) of the statutes is created to read:

18           701.0103 **(3x)** “Charitable purpose” means the relief of poverty, the  
19 advancement of education or religion, the promotion of health, a municipal or other  
20 governmental purpose, or another purpose the achievement of which is beneficial to  
21 the community.

22           **SECTION 14.** 701.0103 (4) of the statutes is amended to read:

23           701.0103 **(4)** “Charitable trust” means a trust, or portion of a trust, created for  
24 a charitable purpose ~~described in s. 701.0405 (1).~~ This subsection does not apply in  
25 s. 701.1201.

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1           **SECTION 15.** 701.0103 (5g) of the statutes is created to read:

2           701.0103 (**5g**) “Court” means the court that is identified in s. 701.0203 (1).

3           **SECTION 16.** 701.0103 (5w) of the statutes is created to read:

4           701.0103 (**5w**) “Current beneficiary” means a beneficiary that on the date the  
5 beneficiary’s qualification is determined is a distributee or permissible distributee  
6 of trust income or principal or is the holder of a presently exercisable general power  
7 of appointment.

8           **SECTION 17.** 701.0103 (9) of the statutes is amended to read:

9           701.0103 (**9**) “General power of appointment” has the meaning given in s.  
10 ~~702.02 (5)~~ 702.102 (7).

11           **SECTION 18.** 701.0103 (11p) of the statutes is created to read:

12           701.0103 (**11p**) “Identified charitable organization” means a charitable  
13 organization that is expressly designated to receive distributions under the terms of  
14 a charitable trust and that is not subject to a right of substitution by the settlor or  
15 by any other party prior to the charitable organization becoming a current  
16 beneficiary.

17           **SECTION 19.** 701.0103 (15m) of the statutes is created to read:

18           701.0103 (**15m**) “Issue” has the meaning given in s. 851.13.

19           **SECTION 20.** 701.0103 (18) of the statutes is amended to read:

20           701.0103 (**18**) “Power of appointment” has the meaning given in s. ~~702.02 (6)~~  
21 702.102 (14).

22           **SECTION 21.** 701.0103 (19m) of the statutes is created to read:

23           701.0103 (**19m**) “Powerholder” has the meaning given in s. 702.102 (15).

24           **SECTION 22.** 701.0103 (19r) of the statutes is created to read:

**SENATE BILL 759****SECTION 22**

1           701.0103 **(19r)** “Presently exercisable power of appointment” has the meaning  
2 given in s. 702.102 (16).

3           **SECTION 23.** 701.0103 (19v) of the statutes is created to read:

4           701.0103 **(19v)** “Presumptive remainder beneficiary” means, without  
5 considering the existence or exercise of a power of appointment, other than a power  
6 of appointment that has been irrevocably exercised and notice of the exercise has  
7 been given to the trustee, a beneficiary that on the date the beneficiary’s qualification  
8 is determined, would be any of the following:

9           (a) A distributee or permissible distributee of trust income or principal if the  
10 interests of any current beneficiary terminated on that date without causing the  
11 trust to terminate.

12           (b) A distributee or permissible distributee of trust income or principal if the  
13 trust terminated on that date.

14           (c) If the terms of the trust do not provide for its termination, a distributee or  
15 permissible distributee of income or principal of the trust if all the current  
16 beneficiaries of the trust were deceased or no longer exist.

17           **SECTION 24.** 701.0103 (21) (intro.) of the statutes is amended to read:

18           701.0103 **(21)** (intro.) “Qualified beneficiary” means a beneficiary ~~who~~ that, on  
19 the date ~~on which~~ the beneficiary’s qualification is determined, ~~satisfies~~ is any of the  
20 following:

21           **SECTION 25.** 701.0103 (21) (a) and (b) of the statutes are repealed and recreated  
22 to read:

23           701.0103 **(21)** (a) A current beneficiary.

24           (b) A presumptive remainder beneficiary.

25           **SECTION 26.** 701.0103 (21m) of the statutes is created to read:

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1           701.0103 **(21m)** “Record” means information that is inscribed on a tangible  
2 medium or that is stored in an electronic or other medium and is retrievable in  
3 perceivable form.

4           **SECTION 27.** 701.0103 (23) of the statutes is amended to read:

5           701.0103 **(23)** “Settlor” Except as otherwise provided in ss. 701.0113 and  
6 701.1325, “settlor” means a person, including a testator, who creates or contributes  
7 property to a trust. If more than one person creates or contributes property to a trust,  
8 each person is a settlor of the portion of the trust property attributable to that  
9 person’s contribution except to the extent another person has the power to revoke the  
10 trust or withdraw that portion.

11           **SECTION 28.** 701.0103 (23m) of the statutes is created to read:

12           701.0103 **(23m)** “Sign” means, with present intent to authenticate or adopt a  
13 record, to do any of the following:

14           (a) Execute or adopt a tangible symbol.

15           (b) Attach to or logically associate with the record an electronic symbol, sound,  
16 or process.

17           **SECTION 29.** 701.0103 (24) of the statutes is renumbered 701.0103 (16m) and  
18 amended to read:

19           701.0103 **(16m)** “Special “Nongeneral power of appointment” has the meaning  
20 given in s. ~~702.02 (7)~~ 702.102 (11).

21           **SECTION 30.** 701.0103 (27) of the statutes is amended to read:

22           701.0103 **(27)** “Terms of a trust” means the manifestation of the settlor’s intent  
23 regarding a trust’s provisions as expressed in the trust instrument ~~or,~~ as may be  
24 established by other evidence that would be admissible in a judicial proceeding, or  
25 as may be established by court order or nonjudicial settlement agreement.

**SENATE BILL 759****SECTION 31**

1           **SECTION 31.** 701.0103 (30) of the statutes is amended to read:

2           701.0103 (30) “Trust instrument” means ~~an instrument, including any~~  
3 ~~amendments or modifications to the instrument under s. 701.0111 or subch. IV, that~~  
4 ~~is executed a record signed by the settlor that contains terms of to create a trust or~~  
5 ~~is created under a statute, judgment, or decree that orders property to be transferred~~  
6 ~~to a trustee to be administered for the benefit of a beneficiary, or by any person to~~  
7 ~~create a 2nd trust as provided under subch. XIII, that contains some or all of the~~  
8 ~~terms of the trust, and includes any amendments or modifications.~~

9           **SECTION 32.** 701.0109 (title) of the statutes is amended to read:

10          **701.0109 (title) Methods and waiver of notice; waiver.**

11          **SECTION 33.** 701.0109 (3) of the statutes is amended to read:

12          701.0109 (3) Notice ~~under this chapter or,~~ the sending of a document, ~~or the~~  
13 ~~right to object granted~~ under this chapter may be waived by the person to be notified  
14 ~~or,~~ sent the document, ~~or who has the right to object.~~

15          **SECTION 34.** 701.0109 (5) of the statutes is created to read:

16          701.0109 (5) If notice is given to a trustee and more than one person is serving  
17 as trustee, notice given to any trustee is considered to be given to all persons serving  
18 as trustee, except that if a corporate trustee or an attorney licensed to practice in this  
19 state is serving as a trustee, notice must be given to all such corporate trustees and  
20 attorney trustees.

21          **SECTION 35.** 701.0110 (1) (intro.) of the statutes is renumbered 701.0110 (1) and  
22 amended to read:

23          701.0110 (1) ~~—A—~~ An identified charitable organization that is expressly  
24 designated to receive distributions under the terms of a charitable trust and that is  
25 not subject to a right of substitution by the settlor or by any other party prior to the

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1 ~~charitable organization becoming a distributee or permissible distributee of trust~~  
2 ~~income or principal~~ has the rights of a qualified beneficiary under this chapter if the  
3 identified charitable organization, on the date on which the identified charitable  
4 organization's qualification is being determined, ~~satisfies one of the following:~~ is a  
5 current beneficiary or a presumptive remainder beneficiary.

6 **SECTION 36.** 701.0110 (1) (a), (b) and (c) of the statutes are repealed.

7 **SECTION 37.** 701.0110 (2) of the statutes is amended to read:

8 701.0110 (2) ~~A~~ An animal protector or a person appointed to enforce a trust  
9 ~~created for the care of an animal or another~~ a noncharitable purpose without an  
10 ascertainable beneficiary as provided in either s. 701.0408 or 701.0409 has the rights  
11 of a qualified beneficiary under this chapter.

12 **SECTION 38.** 701.0110 (3) of the statutes is amended to read:

13 701.0110 (3) The attorney general of this state has the rights of a qualified  
14 beneficiary under this chapter with respect to a charitable trust having its principal  
15 place of administration in this state only when ~~the charitable interest to be~~  
16 ~~represented would qualify under sub. (1) but~~ there is no identified charitable  
17 organization ~~has been expressly designated to receive distribution under the terms~~  
18 ~~of a charitable trust~~ that would qualify under sub. (1).

19 **SECTION 39.** 701.0111 (4) of the statutes is amended to read:

20 701.0111 (4) A nonjudicial settlement agreement is valid only to the extent it  
21 includes terms and conditions that could be properly approved, ordered, directed, or  
22 otherwise determined by a court under this chapter or other applicable law.

23 **SECTION 40.** 701.0111 (5) (d) of the statutes is amended to read:

24 701.0111 (5) (d) The resignation or appointment of a trustee or the removal of  
25 a trustee and replacement with a suitable successor trustee.

**SENATE BILL 759****SECTION 41**

1           **SECTION 41.** 701.0111 (5) (m) of the statutes is created to read:

2           701.0111 (5) (m) The modification or termination of a trust.

3           **SECTION 42.** 701.0111 (6) of the statutes is amended to read:

4           701.0111 (6) Any interested person or other person affected may request a court  
5 to approve a nonjudicial settlement agreement, to determine whether the  
6 representation as provided in subch. III was adequate, or to determine whether the  
7 agreement contains terms and conditions the court could have properly approved,  
8 ordered, directed, or otherwise determined.

9           **SECTION 43.** 701.0111 (7) of the statutes is created to read:

10          701.0111 (7) Notice of any nonjudicial settlement agreement shall be given to  
11 the settlor, if living, the trustee, each trust protector, and each directing party at least  
12 30 days before the proposed effective date of the nonjudicial settlement agreement.  
13 Notice is considered to be waived by any person who is a party to the agreement.

14          **SECTION 44.** 701.0113 of the statutes is created to read:

15          **701.0113 Insurable interest of trustee. (1)** In this section:

16          (a) “Relative” means a spouse or individual related within the 1st, 2nd, or 3rd  
17 degree of kinship under s. 990.001 (16).

18          (b) “Settlor” means a person that executes a trust instrument and includes a  
19 person for whom a fiduciary or agent is acting.

20          **(2)** A trustee of a trust has an insurable interest in the life of an individual  
21 insured under a life insurance policy that is owned by the trustee of the trust acting  
22 in a fiduciary capacity or that designates the trust itself as the owner if, on the date  
23 the policy is issued, all of the following apply:

24          (a) The insured is any of the following:

25           1. A settlor of the trust.



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1           2. An individual in whom a settlor of the trust has, or would have had if living  
2           at the time the policy was issued, an insurable interest.

3           (b) The life insurance proceeds are primarily for the benefit of one or more trust  
4           beneficiaries who have any of the following:

5           1. An insurable interest in the life of the insured.

6           2. A substantial interest engendered by love or affection in the continuation of  
7           the life of the insured and, if not included under subd. 1., the beneficiary is a relative  
8           or stepchild of the insured.

9           **SECTION 45.** 701.0201 (3) (km) of the statutes is created to read:

10          701.0201 (3) (km) Releasing a trustee, directing party, trust protector, or other  
11          person acting in a fiduciary capacity from liability for an action relating to the trust.

12          **SECTION 46.** 701.0201 (4) of the statutes is created to read:

13          701.0201 (4) Except as otherwise provided in this chapter, and as applicable,  
14          the probate procedure described in ch. 879 applies to a proceeding brought by a  
15          trustee, trust protector, directing party, or beneficiary concerning the administration  
16          of a trust.

17          **SECTION 47.** 701.0203 (1) of the statutes is amended to read:

18          701.0203 (1) The circuit court assigned to exercise probate jurisdiction has  
19          exclusive jurisdiction of proceedings in this state brought by a trustee, trust  
20          protector, directing party, or beneficiary concerning the administration of a trust.

21          ~~Except as otherwise provided in this chapter, and as applicable, the probate~~  
22          ~~procedure described in ch. 879 applies to a proceeding brought by a trustee, trust~~  
23          ~~protector, directing party, or beneficiary concerning the administration of a trust.~~

24          **SECTION 48.** 701.0302 (title) of the statutes is amended to read:

**SENATE BILL 759****SECTION 48**

1           **701.0302** (title) ~~Representation by holder of general power of~~  
2 ~~appointment powerholder of certain powers of appointment.~~

3           **SECTION 49.** 701.0302 of the statutes is renumbered 701.0302 (2) and amended  
4 to read:

5           701.0302 (2) To the extent there is no conflict of interest between a holder of  
6 a general power of appointment powerholder and ~~a person~~ the persons represented  
7 with respect to the particular question or dispute, the ~~holder~~ powerholder of a  
8 nongeneral power of appointment other than a broad limited power of appointment  
9 may represent and bind ~~the person~~ all persons or all members of a class of persons,  
10 including permissible appointees and takers in default, whose interests, ~~as a~~  
11 ~~permissible appointee, a taker in default, or otherwise,~~ are subject to may be limited  
12 by the exercise or nonexercise of the power.

13           **SECTION 50.** 701.0302 (1) of the statutes is created to read:

14           701.0302 (1) The powerholder of a general power of appointment exercisable  
15 in favor of the powerholder or the powerholder's estate or the powerholder of a broad  
16 limited power of appointment may represent and bind all persons, including  
17 permissible appointees and takers in default, whose interests may be eliminated by  
18 the exercise or nonexercise of the power. For purposes of this subsection, a general  
19 power of appointment does not include powers of appointment exercisable only in  
20 favor of the creditors of the powerholder, the creditors of the powerholder's estate,  
21 or both.

22           **SECTION 51.** 701.0303 (4) of the statutes is amended to read:

23           701.0303 (4) A trustee may represent and bind the beneficiaries of the trust,  
24 ~~except as to matters relating to the administration or distribution of the trust.~~

25           **SECTION 52.** 701.0303 (5) of the statutes is amended to read:

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1           701.0303 (5) A personal representative of a decedent's estate may represent  
2           and bind a person interested in the estate, ~~except as to matters relating to the~~  
3           ~~administration or distribution of the estate.~~

4           **SECTION 53.** 701.0303 (6) (intro.) of the statutes is amended to read:

5           701.0303 (6) (intro.) A parent may represent and bind the parent's minor or  
6           unborn child, such child's minor and unborn issue, and the minor and unborn issue  
7           of a then deceased child. If a disagreement arises between parents seeking to  
8           represent the same ~~minor child or unborn child~~ individual, representation is  
9           determined as follows:

10          **SECTION 54.** 701.0303 (6) (a) of the statutes is amended to read:

11          701.0303 (6) (a) If only one parent is a beneficiary of the trust that is the subject  
12          of the representation, that parent may represent and bind the minor ~~child~~ or unborn  
13          child, such child's minor and unborn issue, and the minor and unborn issue of a then  
14          deceased child.

15          **SECTION 55.** 701.0303 (6) (b) of the statutes is amended to read:

16          701.0303 (6) (b) If both parents are beneficiaries of the trust that is the subject  
17          of the representation, the parent who is related to the settlor, other than by reason  
18          of being married to the other parent, may represent and bind the minor ~~child~~ or  
19          unborn child, such child's minor and unborn issue, and the minor and unborn issue  
20          of a then deceased child.

21          **SECTION 56.** 701.0303 (6) (c) of the statutes is amended to read:

22          701.0303 (6) (c) Subject to s. 701.0301 (4), if neither parent is a beneficiary of  
23          the trust that is the subject of the representation, the parent who is the settlor of the  
24          trust that is the subject of the representation may represent and bind the minor ~~child~~

**SENATE BILL 759****SECTION 56**

1 or unborn child, such child's minor and unborn issue, and the minor and unborn issue  
2 of a then deceased child.

3 **SECTION 57.** 701.0303 (6) (d) of the statutes is amended to read:

4 701.0303 (6) (d) If neither parent is a beneficiary or settlor of the trust that is  
5 the subject of the representation, the parent who is related to the settlor, other than  
6 by reason of being married to the other parent, may represent and bind the minor  
7 child or unborn child, such child's minor and unborn issue, and the minor and unborn  
8 issue of a then deceased child.

9 **SECTION 58.** 701.0303 (6) (e) of the statutes is created to read:

10 701.0303 (6) (e) If an individual that is the subject of the representation is  
11 eligible to be represented by more than one ancestor under this subsection, the  
12 individual's nearest ancestor may represent and bind such individual.

13 **SECTION 59.** 701.0304 of the statutes is renumbered 701.0304 (1).

14 **SECTION 60.** 701.0304 (2) of the statutes is created to read:

15 701.0304 (2) (a) In this subsection:

16 1. "Contingent successor remainder beneficiary" means a beneficiary who  
17 would succeed to the interest of a presumptive remainder beneficiary if the  
18 presumptive remainder beneficiary and all of the current beneficiaries failed to take  
19 such interest.

20 2. "More remote contingent successor remainder beneficiary" means any  
21 contingent successor remainder beneficiary whose interest arises only upon the  
22 failure of the interest of another contingent successor remainder beneficiary.

23 (b) A presumptive remainder beneficiary or a person authorized to represent  
24 the presumptive remainder beneficiary under sub. (1) may represent and bind a  
25 contingent successor remainder beneficiary or a more remote contingent successor

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1 remainder beneficiary for the same purposes, in the same circumstances, and to the  
2 same extent as an ascertainable beneficiary may represent and bind a minor or  
3 person who is incapacitated, unborn, or not reasonably ascertainable.

4 (c) If a presumptive remainder beneficiary does not represent a more remote  
5 contingent successor remainder beneficiary, a contingent successor remainder  
6 beneficiary may represent and bind a more remote contingent successor remainder  
7 beneficiary for the same purposes, in the same circumstances, and to the same extent  
8 as an ascertainable beneficiary may represent and bind a minor or person who is  
9 incapacitated, unborn, or not reasonably ascertainable.

10 (d) A contingent successor remainder beneficiary or a more remote contingent  
11 successor remainder beneficiary may be represented under pars. (b) and (c) whether  
12 or not the contingent successor remainder beneficiary or more remote contingent  
13 successor remainder beneficiary lacks capacity.

14 (e) Under pars. (b) and (c), the difference between a beneficiary's interest as a  
15 presumptive remainder beneficiary or contingent successor remainder beneficiary  
16 does not constitute a conflict of interest as to any more remote contingent successor  
17 remainder beneficiary.

18 **SECTION 61.** 701.0305 (1) of the statutes is renumbered 701.0305.

19 **SECTION 62.** 701.0305 (2) of the statutes is renumbered 701.0307 (1).

20 **SECTION 63.** 701.0305 (3) of the statutes is renumbered 701.0307 (2).

21 **SECTION 64.** 701.0306 of the statutes is created to read:

22 **701.0306 Designated representative. (1)** If specifically nominated in the  
23 trust instrument, one or more persons may be designated to represent and bind a  
24 beneficiary and receive any notice, information, accounting, or report. The trust  
25 instrument may also authorize any one or more persons to designate one or more

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1 persons to represent and bind a beneficiary and receive any notice, information,  
2 accounting, or report.

3       **(2)** Except as otherwise provided in this chapter, a person designated in sub.  
4 (1) may not represent and bind a beneficiary while that person is serving as trustee.

5       **(3)** Except as otherwise provided in this chapter, a person designated in sub.  
6 (1) may not represent and bind another beneficiary if the person designated also is  
7 a beneficiary, unless one of the following applies:

8       (a) That person was named by the settlor.

9       (b) That person is one of the following:

10       1. The beneficiary's spouse.

11       2. A grandparent or descendant of a grandparent of the beneficiary.

12       3. A grandparent or descendant of a grandparent of the beneficiary's spouse.

13       **SECTION 65.** 701.0307 (title) of the statutes is created to read:

14       **701.0307 (title) Role of a representative or guardian ad litem.**

15       **SECTION 66.** 701.0308 of the statutes is created to read:

16       **701.0308 Liability of representative.** No representative or guardian ad  
17 litem is liable to the beneficiary whose interests are represented, or to anyone  
18 claiming through that beneficiary, for any actions or omissions to act made in good  
19 faith.

20       **SECTION 67.** 701.0401 (5m) of the statutes is created to read:

21       701.0401 (**5m**) A declaration of an intent to create a trust with the intention  
22 that the trust will later be funded by assets of the person who created the trust or  
23 by another person with legal authority to fund the trust. The person making the  
24 declaration is considered to have created the trust, regardless of whether the person  
25 funds the trust with the person's own assets.

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1           **SECTION 68.** 701.0402 (1) (e) of the statutes is amended to read:

2           701.0402 (1) (e) The same person is not the sole trustee and sole beneficiary,  
3           and there are no remainder beneficiaries other than the person's estate.

4           **SECTION 69.** 701.0405 (1) of the statutes is repealed.

5           **SECTION 70.** 701.0408 of the statutes is amended to read:

6           **701.0408 Trust for care of animal. (1)** ~~A~~ An animal trust may be created  
7           to provide for the care of an animal alive during the settlor's lifetime. The animal  
8           trust terminates upon the death of the animal or, if the animal trust was created to  
9           provide for the care of more than one animal alive during the settlor's lifetime, upon  
10          the death of the last surviving animal.

11          **(2)** ~~A~~ An animal trust authorized by this section may be enforced by a person  
12          appointed in the terms of the trust or, if no person is so appointed, by a person  
13          appointed by the court an animal protector. A person having an interest in the  
14          welfare of the animal may request the court to appoint a person to enforce the trust  
15          or to remove a person appointed under this subsection an animal protector.

16          **(3)** Property of ~~a~~ an animal trust authorized by this section may be applied  
17          only to its intended use, except to the extent the court determines that the value of  
18          the animal trust property exceeds the amount required for the intended use.  
19          Property not required for the intended use must be distributed to the settlor, if then  
20          living, otherwise to the settlor's successors in interest.

21          **SECTION 71.** 701.0410 (2) of the statutes is amended to read:

22          701.0410 **(2)** A proceeding to approve or disapprove a proposed modification or  
23          termination under ss. 701.0411 to 701.0416, or a proposed trust combination or  
24          division under s. 701.0417, may be commenced by a trustee or beneficiary, and a  
25          proceeding to approve or disapprove a proposed modification or termination under

**SENATE BILL 759****SECTION 71**

1 s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may  
2 maintain a proceeding to modify the trust under s. 701.0413. ~~A- Except as provided~~  
3 ~~in s. 701.0411 (1m),~~ a trustee does not have standing to oppose a proposed  
4 modification or termination commenced under s. 701.0411 (1).

5 **SECTION 72.** 701.0410 (3) of the statutes is amended to read:

6 701.0410 (3) A trustee may not be compelled by a modification or termination  
7 under this section or under ss. 701.0411 to 701.0416 to make distributions to or for  
8 any beneficiary of a trust for an individual with a disability or to terminate the trust,  
9 during the lifetime of the individual with a disability. A court may modify the terms  
10 of a trust for that has an individual with a disability as a beneficiary with retroactive  
11 effect or reform the terms of such trust to achieve the settlor's objective or, if because  
12 of circumstances not anticipated by the settlor, to otherwise further the purposes of  
13 the trust so that it does not result in trust property being countable as resources or  
14 income of the individual with a disability for purposes of public assistance.

15 **SECTION 73.** 701.0411 (1) of the statutes is amended to read:

16 701.0411 (1) ~~A- Except as provided in sub. (1m),~~ a noncharitable irrevocable  
17 trust may be modified or terminated, with or without court approval, upon consent  
18 of the settlor and all beneficiaries, even if the modification or termination is  
19 inconsistent with a material purpose of the trust. A settlor's power to consent to a  
20 trust's modification or termination may be exercised by a representative under s.  
21 701.0303 only if the representative is specifically authorized to consent to a trust's  
22 modification or termination under a power of attorney, the terms of the trust, or by  
23 a court under a guardianship or conservatorship.

24 **SECTION 74.** 701.0411 (1m) of the statutes is created to read:



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1           701.0411 **(1m)** A trust described in 42 USC 1396p (d) (4) may be terminated  
2 or modified under sub. (1) only with consent of the trustee, and is not considered  
3 revocable because it lacks ascertainable remainder beneficiaries.

4           **SECTION 75.** 701.0411 (2) (intro.) of the statutes is created to read:

5           701.0411 **(2)** (intro.) With the approval of the court, any of the following may  
6 occur:

7           **SECTION 76.** 701.0411 (2) (a) of the statutes is amended to read:

8           701.0411 **(2)** (a) A noncharitable irrevocable trust may be terminated upon  
9 consent of all of the beneficiaries if ~~the court concludes that~~ continuance of the trust  
10 is not necessary to achieve any material purpose of the trust.

11           **SECTION 77.** 701.0411 (2) (b) of the statutes is amended to read:

12           701.0411 **(2)** (b) A noncharitable irrevocable trust may be modified upon  
13 consent of all of the beneficiaries if ~~the court concludes that~~ modification is not  
14 inconsistent with a material purpose of the trust.

15           **SECTION 78.** 701.0411 (7) of the statutes is amended to read:

16           701.0411 **(7)** A party proposing to modify or terminate a trust under sub. (1)  
17 ~~or~~, (2), or (6) shall give notice of the proposed modification or termination to the  
18 settlor, if living, the trustee, each trust protector, each directing party, and each  
19 beneficiary at least 30 days before the proposed effective date of the modification or  
20 termination.

21           **SECTION 79.** 701.0414 (4) of the statutes is amended to read:

22           701.0414 **(4)** The court may modify or terminate a trust or remove the trustee  
23 and appoint a different trustee if ~~it determines that~~ the value of the trust property  
24 is insufficient to justify the cost of administration even if the trust property has a  
25 total value in excess of the amount described in sub. (2).

**SENATE BILL 759****SECTION 80**

1           **SECTION 80.** 701.0415 of the statutes is amended to read:

2           **701.0415 Reformation to correct mistakes.** The court may reform the  
3 terms of a trust, even if unambiguous, to conform the terms to the settlor's ~~intent~~  
4 intention if it is proved by clear and convincing evidence ~~that both what~~ the settlor's  
5 ~~intent~~ intention was and that the terms of the trust were affected by a mistake of fact  
6 or law, whether in expression or inducement. A party petitioning the court for action  
7 under this section shall give notice of the proceeding to the settlor, if living, the  
8 trustee, each trust protector, each directing party, and the qualified beneficiaries.

9           **SECTION 81.** 701.0416 of the statutes is amended to read:

10           **701.0416 Modification or termination to achieve settlor's tax**  
11 **objectives.** To achieve the settlor's tax objectives, the court may modify the terms  
12 of a trust or terminate a trust in a manner that is not contrary to the settlor's  
13 probable intent. The court may provide that the modification or termination has  
14 retroactive effect. A party petitioning the court for action under this section shall  
15 give notice of the proceeding to the settlor, if living, the trustee, each trust protector,  
16 each directing party, and the qualified beneficiaries.

17           **SECTION 82.** 701.0418 of the statutes is repealed.

18           **SECTION 83.** 701.0505 (1) (a) 2. of the statutes is amended to read:

19           701.0505 (1) (a) 2. With respect to an irrevocable trust that is not a trust for  
20 an individual with a disability, upon application of a judgment creditor of the settlor,  
21 the court may, if the trust instrument requires or authorizes the trustee to make  
22 payments of income or principal to or for the settlor, order the trustee to satisfy part  
23 or all of the judgment out of part or all of the payments of income or principal as they  
24 are due, presently or in the future, or which are payable in the trustee's discretion.  
25 A settlor's right to receive reimbursement for income taxation arising from grantor

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1 trust treatment of the trust pursuant to sections 671 to 679 of the Internal Revenue  
2 Code is not considered a right to income or principal for purposes of this section. If  
3 a trust has more than one settlor, the amount the judgment creditor of a particular  
4 settlor may reach may not exceed the settlor's interest in the trust.

5 **SECTION 84.** 701.0505 (2) (e) 3. of the statutes is amended to read:

6 701.0505 (2) (e) 3. For purposes of this paragraph, notwithstanding s. 701.0103  
7 (3), "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is  
8 designated in a trust instrument or through the exercise of a special nongeneral or  
9 general power of appointment.

10 **SECTION 85.** 701.0508 of the statutes is repealed and recreated to read:

11 **701.0508 Debts of deceased settlor. (1) DEADLINE ON CLAIMS.** A claimant  
12 must assert a claim for payment of a debt of a deceased settlor within the time for  
13 such claims under applicable law. For purposes of this section, a debt incurred by  
14 a trustee of a revocable trust before the death of a settlor of the revocable trust shall  
15 be treated in the same manner as a debt of the settlor. A trustee of a trust that was  
16 revocable at the settlor's death may shorten the time period and set a deadline for  
17 filing claims with the trustee by doing any of the following:

18 (a) Publishing a legal notice as a class 3 notice under ch. 985 in the county in  
19 which the deceased settlor resided. The legal notice shall identify the name, address,  
20 and any other contact information of the trustee or other person with whom claims  
21 must be filed. The deadline for a claim by any claimant who is not known by the  
22 trustee shall be the earlier of the date that is 4 months after the date of the first  
23 insertion of the legal notice or, if sub. (6) is applicable, the deadline prescribed under  
24 s. 859.01.

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1 (b) Giving notice to a potential claimant. The notice shall include a copy of the  
2 legal notice, if published, and shall identify the name, address, and any other contact  
3 information of the trustee or other person with whom claims must be filed and shall  
4 state that any claim by the potential claimant must be filed not later than the date  
5 that is 30 days from the date notice is given to the potential claimant or the deadline  
6 specified in the legal notice. If a legal notice has not been published, the deadline  
7 shall be 4 months from the date the trustee provides notice to the potential claimant.

8 (c) Publishing a legal notice and not giving a separate notice to a potential  
9 claimant who is known to the trustee. The deadline for a claim when a legal notice  
10 has been published but notice is not given to a known potential claimant is the later  
11 of the date that is one year from the date of the settlor's death or the deadline  
12 specified in the legal notice.

13 **(2) EXCEPTIONS TO DEADLINES ON CLAIMS.** A claim that is not filed on or before  
14 an applicable deadline specified under sub. (1) is not barred if the claim is a claim  
15 based on tort, a marital property agreement that is subject to the time limitations  
16 under s. 766.58 (13) (b) or (c), Wisconsin income, franchise, sales, withholding, gift,  
17 or death taxes, unemployment compensation contributions due or benefits overpaid,  
18 funeral or administrative expenses, a claim of this state under s. 46.27 (7g), 2017  
19 stats., or s. 49.496, 49.682, or 49.849, or a claim of the United States.

20 **(3) FILING OF CLAIMS.** (a) A claim is considered filed if the claimant provides  
21 notice of the claim to the trustee or other person with whom claims must be filed as  
22 prescribed under s. 701.0508 (1) (a) or (b).

23 (b) A claim is considered filed if the deceased settlor is subject to a probate  
24 proceeding in this state and a claim is filed with the court under ch. 859.

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1 (c) If an action is pending against a deceased settlor at the time of the settlor's  
2 death and the action survives, the plaintiff in that action may serve a notice of  
3 substitution of party defendant on the trustee and file proof of service of notice in the  
4 court. Filing of proof of service on or before the deadline for filing a claim under sub.  
5 (1) gives the plaintiff the same rights against the trust as the filing of a claim.

6 **(4) EFFECT OF STATUTE OF LIMITATIONS.** (a) A claim that was barred by a statute  
7 of limitations at the time of the deceased settlor's death is barred and the claimant  
8 may not pursue a claim against the trustee, the trust property, or recipients with  
9 respect to trust property.

10 (b) A claim not barred by a statute of limitations at the time of the settlor's  
11 death shall not be barred thereafter by a statute of limitations if the claim is filed on  
12 or before the deadline for filing a claim under sub. (1).

13 (c) A claim that is not filed or is filed after the deadline for filing a claim under  
14 sub. (1) is barred and the claimant may not pursue a claim against the trustee, the  
15 trust property, or recipients with respect to trust property.

16 (d) The deadlines established under sub. (1) do not extend the time for  
17 commencement of a claim beyond the time provided by any statute of limitations  
18 applicable to that claim.

19 **(5) SATISFACTION OF CLAIM FROM OTHER PROPERTY.** Failure of a claimant timely  
20 to file a claim as provided in this section does not bar the claimant from satisfying  
21 the claim, if not otherwise barred, from property other than trust property.

22 **(6) COORDINATION WITH PROBATE.** If a legal notice has been published with  
23 respect to the estate of a deceased settlor who died domiciled in this state, property  
24 of a trust that was revocable at the settlor's death shall be treated as property of the  
25 estate solely for purposes of administering claims under ch. 859. The trustee shall

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1 be subject to the jurisdiction of the court in which the estate administration is  
2 pending. A personal representative, as defined in s. 851.23, shall provide notice to  
3 the trustee regarding claims filed against the estate. A claim barred under ch. 859  
4 may not be satisfied from property of a trust that was revocable at the settlor's death.  
5 The trustee and qualified beneficiaries shall have standing to file an objection, offset,  
6 or counterclaim with respect to claims filed against the estate. Nothing in this  
7 subsection causes property of the trust that otherwise would be exempt from claims  
8 to be subject to claims filed against the settlor's estate. If the trust is not referenced  
9 in a deceased settlor's will, the trustee of a trust that was revocable at the settlor's  
10 death shall provide notice to a personal representative of the settlor's estate, if any,  
11 of the existence of such trust.

12 **SECTION 86.** 701.0509 of the statutes is created to read:

13 **701.0509 Procedures for claims for debts of a deceased settlor;**  
14 **revocable trusts. (1) SCOPE OF APPLICABILITY.** The procedures under this section  
15 apply only to claims against a trust that was revocable by the settlor until the  
16 settlor's death.

17 **(2) FORM AND VERIFICATION OF CLAIMS; TRUSTEE RESPONSE TO CLAIMS.** (a) *General*  
18 *requirements.* A claim shall be in writing, shall describe the nature and amount of  
19 the claim, if ascertainable, shall identify the name, address, and any other contact  
20 information of the claimant, and shall be sworn to by the claimant or a person on the  
21 claimant's behalf that the amount is justly due, or if not yet due, when it will or may  
22 become due, that no payments have been made on the claim that are not credited,  
23 and that there are no offsets to the knowledge of the affiant, except as stated in the  
24 claim.

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1           (b) *Requirements when claim founded on written instrument.* If a claim is  
2 founded on a written instrument that is available, the original instrument or a copy  
3 of the original instrument shall be attached to the claim.

4           (c) *Trustee response to a claim.* A trustee does not need to respond to a claim  
5 until after the expiration of the deadline for filing a claim against the trust under s.  
6 701.0508. Within 30 days after the later of the receipt of the claim or 30 days after  
7 the expiration of the deadline, the trustee shall make a good faith determination of  
8 whether the claim is valid, absolute, contingent, or invalid, or whether the trustee  
9 will object to the claim, and the trustee shall inform the claimant of the  
10 determination. If the trustee decides to object to the claim, the claim may be  
11 compromised as provided in sub. (10) or contested as provided under sub. (11). If the  
12 trustee determines the claim is invalid, the claimant may object to that  
13 determination under sub. (11). If the trustee fails to respond within the applicable  
14 period, the claim shall be presumed valid and the claimant may seek enforcement  
15 under sub. (11).

16           **(3) CLAIMS NOT DUE.** If a claim will become due at some future time, the trustee  
17 may, or the court with respect to a contested claim may order the trustee to, do any  
18 of the following:

19           (a) Pay the claim in full.

20           (b) Pay the claim at the present value and in the same manner as in the case  
21 of an absolute claim that has been allowed.

22           (c) Retain sufficient funds to satisfy the claim upon maturity.

23           (d) Obtain a bond to be given by the distributees for payment in satisfaction of  
24 the claim and order the trust to be administered as if the claim had not been filed.

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1           (4) SECURED CLAIMS. (a) When a claimant holds any security for a claim, the  
2 security shall be described in the written claim given to the trustee. The security is  
3 sufficiently described if the security document is described by date and by the  
4 recording or filing data.

5           (b) Payment of the claim shall be made on the basis of one of the following:

6           1. If the creditor surrenders the security, the full amount of the claim.

7           2. If the creditor realizes on the security before receiving payment, upon the  
8 full amount of the claim allowed less the fair value of the security.

9           (5) CONTINGENT CLAIMS. If the amount or validity of a claim cannot be  
10 determined until some time in the future, the claim is a contingent claim regardless  
11 of whether the claim is based on an event that occurred in the past or on an event that  
12 may occur in the future. Except for claims of the type not required to be filed under  
13 s. 701.0508 (2), contingent claims must be filed with the trustee as provided under  
14 sub. (2). If the trustee determines the claim to be valid subject to the contingency,  
15 the determination shall state the nature of the contingency. If the trustee determines  
16 the claim to be valid and absolute before distribution of the trust, the claim shall be  
17 paid in the same manner as absolute claims of the same class. In all other cases the  
18 trustee, or the court in the case of a contested claim, may provide for the payment  
19 of contingent claims in any of the following methods:

20           (a) The claimant and trustee may determine, by agreement, arbitration, or  
21 compromise, the value of the claim, according to its probable present worth, and it  
22 shall be paid in the same manner as a valid and absolute claim.

23           (b) The trustee may, or the court may order the trustee to, in the case of a  
24 contested claim, make distribution of the trust but retain sufficient funds to pay the  
25 claim if and when the same becomes absolute. For this purpose, the trust may not



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1 be required to remain intact longer than 2 years after distribution of the remainder  
2 of the trust has been made, and if the claim has not become absolute within that time,  
3 distribution shall be made to the distributees of the retained funds, after paying any  
4 costs and expenses accruing during such period, but the distributees shall be liable  
5 to the claimant to the extent provided in sub. (6), if the contingent claim thereafter  
6 becomes absolute. When distribution is so made to distributees, the trustee or the  
7 court may require the distributees to give bond for the satisfaction of their liability  
8 to the contingent claimant.

9 (c) The trustee may require, or the court, in the case of a contested claim, may  
10 order, distribution of the trust as though the contingent claim did not exist, but the  
11 distributees shall be liable to the claimant as limited by sub. (7), if the contingent  
12 claim thereafter becomes absolute. The trustee or the court may require the  
13 distributees to give bond for the satisfaction of their liability to the contingent  
14 claimant.

15 (d) Any other method the trustee determines or the court, in the case of a  
16 contested claim, orders.

17 **(6) PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES.** If a contingent claim is filed  
18 and the trustee determines the claim to be valid subject to the contingency and all  
19 of the assets of the trust, including the fund set apart for the payment of the claim,  
20 have been distributed, the claimant may recover on the claim against those  
21 distributees, or the persons who furnish bond for the distributees, whose distributive  
22 shares have been increased by reason of the fact that the amount of the claim as  
23 finally determined was not paid prior to final distribution, if a proceeding for the  
24 claim is commenced in court within 6 months after the claim becomes absolute. A  
25 distributee or the person who furnishes bond for the distributee shall not be liable

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1 for an amount exceeding that person's proportionate share of the trust subject to the  
2 claim, nor for an amount greater than the value of the property that that person  
3 received from the trust, the value to be determined as of the time of distribution to  
4 the distributee.

5 (7) PRIORITY OF PAYMENT OF CLAIMS AND ALLOWANCES. (a) *Classes and priority.*  
6 At the time a claim is determined to be valid, the claim shall be classified in one of  
7 the categories under subds. 1. to 8. The trustee shall pay an absolute claim if the  
8 trustee reasonably believes the assets of the trust are sufficient to pay the claim. If  
9 the applicable assets of the trust are insufficient to pay the claim in full, the trustee  
10 shall make payment in the following order:

- 11 1. Costs and expenses of administration.
- 12 2. Reasonable funeral and burial expenses.
- 13 3. Provisions for the family of the deceased settlor under ss. 861.31, 861.33, and  
14 861.35, which sections are incorporated by reference and applied as if the trust is an  
15 estate.
- 16 4. Reasonable and necessary expenses of the last illness of the deceased settlor,  
17 including compensation of persons attending the deceased settlor.
- 18 5. All debts, charges, or taxes owing to the United States, this state, or a  
19 governmental subdivision or municipality of this state.
- 20 6. Wages, including pension, welfare, and vacation benefits, due to employees  
21 that have been earned within 3 months before the date of the death of the deceased  
22 settlor, not to exceed \$300 in value to each employee.
- 23 7. Property assigned to the surviving spouse or surviving domestic partner  
24 under s. 861.41, which section is incorporated by reference and applied as if the trust  
25 is an estate.

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1           8. All other claims allowed.

2           (b) *No preference within classes.* Preference shall not be given in the payment  
3 of any claim over any other claim of the same class, nor shall a claim due and payable  
4 be entitled to a preference over a claim not due.

5           **(8) EXECUTION AND LEVIES PROHIBITED.** Garnishment, attachment, or execution  
6 shall not issue against, nor shall any levy be made against, any property of the trust  
7 under any judgment or cause of action against a deceased settlor or the trustee, but  
8 this subsection shall not be construed to prevent the enforcement of mortgages,  
9 pledges, liens, or other security agreements upon real or personal property in an  
10 appropriate proceeding.

11           **(9) QUALIFIED BENEFICIARIES AND CLAIMANTS MAY BE INFORMED OF CLAIMS.** After  
12 the deadline for filing a claim against the trust under s. 701.0508, any qualified  
13 beneficiary or claimant may make a written request to the trustee for a statement  
14 listing all claims that have been filed against the trust. The statement provided by  
15 the trustee shall show each claim, the name of the claimant, a brief description of the  
16 basis of the claim, the amount claimed, and the trustee's determination of whether  
17 the claim is valid, absolute, contingent, or invalid, or whether the trustee will object  
18 to the claim in whole or in part. The trustee shall provide notice of the statement to  
19 the requester, including any representative under subch. III within 5 business days  
20 of the receipt of the request. The requester shall, within 5 business days of receiving  
21 notice of the statement from the trustee, inform the trustee whether the requester  
22 agrees or objects to the trustee's determination on whether to allow the claim in  
23 whole or in part or whether to object to the claim. Failure on the part of any party  
24 to comply with this subsection does not affect the jurisdiction of the court to intervene  
25 in the administration of the claim.

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1           **(10) COMPROMISE OF CLAIMS.** When a claim against a trust has been filed and  
2 payment of the claim is pending, the claimant and trustee may, if it appears to be in  
3 the best interest of the trust, compromise the claim, whether due or not due, absolute  
4 or contingent, or liquidated or unliquidated. If an objection to the claim has been  
5 filed by a qualified beneficiary or another claimant, no compromise of the claim may  
6 be made without the consent of the objector.

7           **(11) CONTEST AND ENFORCEMENT OF CLAIMS; COURT PROCEDURE.** (a) *Initiation.*  
8 Any person may initiate a court proceeding to contest or enforce a claim, object to  
9 denial of a claim, or assert an offset or counterclaim, including the trustee, a qualified  
10 beneficiary or representative under subch. III on behalf of a qualified beneficiary, or  
11 a claimant. Such persons may initiate the court proceeding by petitioning the court  
12 to exercise jurisdiction over the claim and any objection, offset, or counterclaim. The  
13 petition shall be served upon or mailed to each person who has standing to object to  
14 the claim and filed with the court within 60 days after the trustee's response or  
15 failure to respond to the claim under sub. (2) (c), or, in the case of an objection by a  
16 qualified beneficiary or representative of the qualified beneficiary or another  
17 potential claimant, within 30 days after the copy of the claim was mailed to or served  
18 upon the objector. The trustee shall not be obligated to assert any offset or  
19 counterclaim in court and may, if the trustee deems it to be in the best interest of the  
20 trust, assert the offset or counterclaim in any separate action otherwise authorized  
21 by law outside the court proceedings. Any offset or counterclaim so asserted shall  
22 be deemed denied by the original claimant.

23           (b) *Procedure.* If any claim, offset, or counterclaim is contested, the court may  
24 require the issues to be made definite, fix a date for pretrial conference, and direct

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1 the manner in which pleadings, if any, shall be exchanged. The court shall set a time  
2 for trial upon its own motion or upon the motion of any party.

3 **(12) PROMPT JUDGMENT.** The hearing on any contested claim, offset, or  
4 counterclaim may be adjourned from time to time, but the hearing shall be concluded  
5 as soon as practicable.

6 **(13) JUDGMENT ON CLAIMS.** The court shall enter a judgment on contested claims  
7 and any offsets and counterclaims asserted, stating how much was allowed for or  
8 against the trust in each case. The judgment shall set a date by which payment shall  
9 be made. If the balance as to any claimant is in favor of the trust, the payment of the  
10 claim may be enforced as with any other judgment.

11 **(14) DELAY OF PAYMENT OF CLAIMS WHEN FUNDS ARE INSUFFICIENT.** If it appears at  
12 any time that the trust is or may be insolvent, that there are insufficient funds on  
13 hand for payment of claims in full, or that there is other good cause for delaying  
14 payment, the trustee shall provide notice of the delay to the claimants and any other  
15 person with standing to object and may petition the court for any order that the  
16 trustee deems necessary.

17 **(15) CLAIMANT'S ACTION FOR PROPERTY FRAUDULENTLY TRANSFERRED BY DECEASED**  
18 **SETTLOR.** Whenever there is reason to believe that the assets of the trust may be  
19 insufficient to pay the deceased settlor's debts, and the deceased settlor transferred  
20 any property with intent to defraud the deceased settlor's creditors or to avoid any  
21 duty, or executed conveyances void as against creditors, any claimant whose claim  
22 has been allowed may, on behalf of all, bring an action to reach any property and  
23 subject it to sale. The claimant's action shall not be brought to trial until the  
24 insufficiency of the assets of the trust is ascertained. If it is found likely that the  
25 assets may be insufficient, the action shall be brought to trial. If the action is tried,

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1 any property that ought to be subjected to the payment of the debts of the deceased  
2 settlor shall be sold in the action and the net proceeds used to pay such debts and to  
3 reimburse the claimant for the reasonable expenses and attorney fees incurred by  
4 the claimant in such action, as approved by the court.

5 **(16) ENCUMBERED ASSETS; PAYMENT OF DEBT.** (a) *Rights of secured claimants not*  
6 *affected.* Nothing in this subchapter shall affect or prevent any action or proceeding  
7 to enforce any mortgage, pledge, lien, or other security agreement against property  
8 of the trust.

9 (b) *Payment.* When any property in the trust is encumbered by mortgage,  
10 pledge, lien, or other security agreement, the trustee may pay the encumbrance or  
11 any part of the encumbrance, renew or extend any obligation secured by the  
12 encumbrance, or may convey or transfer the encumbered assets to the creditor in  
13 satisfaction of the claimant's lien, in whole or in part, whether or not the holder of  
14 the encumbrance has filed a claim.

15 **(17) TORT CLAIMS.** (a) *Filed within time limited.* If a claim based on a cause  
16 of action in tort or for contribution resulting from a cause of action in tort is filed on  
17 or before the deadline for filing a claim under s. 701.0508, the claimant will receive  
18 the same protection in regard to payment as a claimant who has filed a required  
19 claim.

20 (b) *Not filed within time limited.* A cause of action against a deceased settlor  
21 in tort or for contribution resulting from a cause of action in tort is not defeated by  
22 failure to file the claim or commence or continue an action against the trustee on or  
23 before the deadline for filing a claim under s. 701.0508 against a trust, but the failure  
24 to file the claim with the trustee relieves the trustee of all responsibility to protect  
25 the rights of the claimant, and the claimant shall not be granted any of the

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1 protections under sub. (5). If the claim is determined to be valid and absolute  
2 through court-approved settlement or adjudication and a certified copy of the  
3 settlement or judgment is filed with the trustee and there are sufficient funds in the  
4 trust to pay the claim, the claim shall be paid prior to the distribution of the trust.  
5 After the trust has been distributed or if there are not sufficient funds in the trust,  
6 a claimant whose claim has been determined to be valid and absolute through  
7 court-approved settlement or through adjudication may proceed against the  
8 distributees, but no distributee may be liable for an amount greater than that  
9 allowed under sub. (6).

10 **(18) PAYMENT OF UNFILED CLAIMS.** A trustee may pay a debt of a deceased settlor  
11 prior to the expiration of the deadline for filing claims under s. 701.0508 whether or  
12 not a claim is filed if the trustee reasonably believes that the debt is owed and that  
13 the assets of the trust are sufficient to satisfy all of the deceased settlor's debts.

14 **(19) LAST ILLNESS AND FUNERAL EXPENSE OF DECEASED SPOUSE.** The reasonable  
15 expense of the last illness and funeral may, if properly presented, be paid by the  
16 trustee of a deceased settlor's trust and, if so paid, shall be recognized as valid  
17 expenditures even though the surviving spouse of the deceased settlor could have  
18 been held liable for the expense.

19 **SECTION 87.** 701.0602 (1) of the statutes is amended to read:

20 701.0602 (1) Unless the terms of a trust expressly provide that the trust is  
21 irrevocable, there is a rebuttable presumption that the settlor may revoke or amend  
22 the trust. This subsection does not apply to a trust created under an instrument  
23 executed before July 1, 2014.

24 **SECTION 88.** 701.0602 (3) (intro.), (a) and (b) (intro.) of the statutes are  
25 consolidated, renumbered 701.0602 (3) (intro.) and amended to read:

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1           701.0602 (3) (intro.) A settlor may revoke or amend a revocable trust by any  
2 of the following means: (a) By substantial compliance with a method provided in the  
3 terms of the trust. ~~(b) (intro.) If, or, if~~ the terms of the trust do not provide a method,  
4 by any of the following means:

5           **SECTION 89.** 701.0602 (3) (b) 1. of the statutes is renumbered 701.0602 (3) (am).

6           **SECTION 90.** 701.0602 (3) (b) 2. of the statutes is renumbered 701.0602 (3) (bm).

7           **SECTION 91.** 701.0602 (4) of the statutes is amended to read:

8           701.0602 (4) Upon revocation of a revocable trust, the trustee shall transfer the  
9 trust property to the settlor or as the settlor directs. However, with respect to marital  
10 or community property, the trustee shall transfer the property to both spouses as  
11 marital or community property or as both spouses direct.

12           **SECTION 92.** 701.0605 of the statutes is created to read:

13           **701.0605 Future interests in trust.** Subject to s. 701.1204, unless a contrary  
14 intention is found, if a person has a future interest in property under a revocable  
15 trust and, under the terms of the trust, the person has the right to possession and  
16 enjoyment of the property at the settlor's death, the right to possession and  
17 enjoyment is contingent on the person surviving the settlor. Extrinsic evidence may  
18 be used to show contrary intent.

19           **SECTION 93.** 701.0702 (3) of the statutes is amended to read:

20           701.0702 (3) A court may not require a bond from a trust company bank, state  
21 bank, or national bank that is authorized to exercise trust powers and that has  
22 complied with s. 220.09 or 223.02 ~~nor shall a bond be required of a religious,~~  
23 ~~charitable, or educational corporation or society.~~

24           **SECTION 94.** 701.0704 (1) (g) of the statutes is created to read:

25           701.0704 (1) (g) Any other event occurs resulting in no person acting as trustee.



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1           **SECTION 95.** 701.0706 (2) (c) of the statutes is amended to read:

2           701.0706 (2) (c) ~~The court determines that removal~~ Removal of the trustee best  
3           ~~serves the interests of the beneficiaries~~ is appropriate because of unfitness,  
4           unwillingness, or persistent failure of the trustee to administer the trust effectively.

5           **SECTION 96.** 701.0706 (2) (d) of the statutes is amended to read:

6           701.0706 (2) (d) There has been a substantial change of circumstances or  
7           removal is requested by all of the qualified beneficiaries, ~~the court finds that the~~  
8           ~~removal of the trustee best serves the interests of all of the beneficiaries and is not~~  
9           inconsistent with a material purpose of the trust, and a suitable cotrustee or  
10          successor trustee is available.

11          **SECTION 97.** 701.0707 (2) of the statutes is amended to read:

12          701.0707 (2) A trustee who has resigned or been removed shall proceed  
13          ~~expeditiously~~ within a reasonable time to deliver the trust property within the  
14          trustee's possession to the cotrustee, successor trustee, or other person entitled to it,  
15          subject to the right of the trustee to retain a reasonable reserve for the payment of  
16          debts, expenses, and taxes.

17          **SECTION 98.** 701.0802 (5) of the statutes is renumbered 701.0802 (5) (a).

18          **SECTION 99.** 701.0802 (5) (b) of the statutes is created to read:

19          701.0802 (5) (b) A trust company acting in any fiduciary capacity with respect  
20          to a trust may purchase any service or product, including insurance or securities  
21          underwritten or otherwise distributed by the trust company or by an affiliate,  
22          through or directly from the trust company or an affiliate of a syndicate or selling  
23          group that includes the trust company of an affiliate, provided the purchase  
24          otherwise complies with the prudent investor rule in s. 881.01 and with s. 881.015.  
25          Compensation for the service or product must be reasonable and not prohibited by

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1 the instrument governing the fiduciary relationship. The compensation for the  
2 service or product may be in addition to the compensation that the trust company is  
3 otherwise entitled to receive.

4 **SECTION 100.** 701.0802 (9) of the statutes is created to read:

5 701.0802 (9) A trustee is not liable for releasing information, including a copy  
6 of all or any portion of the trust instrument, to any deceased settlor's heir-at-law or  
7 other person indicating that the person is not a beneficiary of the trust if the trustee  
8 reasonably believes that doing so will not harm the beneficiaries of the trust and that  
9 doing so will reduce the likelihood of litigation involving the trust.

10 **SECTION 101.** 701.0813 (1), (2) (d) and (3) (a) (intro.) of the statutes are amended  
11 to read:

12 701.0813 (1) A trustee shall keep the ~~distributees or permissible distributees~~  
13 ~~of trust income or principal,~~ current beneficiaries and ~~other qualified presumptive~~  
14 remainder beneficiaries who so request, reasonably informed about the  
15 administration of the trust. Unless unreasonable under the circumstances, a trustee  
16 shall promptly respond to a qualified beneficiary's request for information related to  
17 the administration of the trust.

18 (2) (d) Notify the ~~distributees or permissible distributees of trust income or~~  
19 ~~principal,~~ current beneficiaries and ~~other qualified presumptive remainder~~  
20 beneficiaries who so request, of any change in the method or rate of the trustee's  
21 compensation.

22 (3) (a) (intro.) At Subject to par. (c), at least annually and upon the termination  
23 of a trust, a trustee shall send to the ~~distributees or permissible distributees of trust~~  
24 ~~income or principal,~~ current beneficiaries and to ~~other qualified presumptive~~  
25 remainder beneficiaries who request it, all of the following:

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1           **SECTION 102.** 701.0813 (2) (a) of the statutes is amended to read:

2           701.0813 (2) (a) Upon the request of a qualified beneficiary for a copy of the  
3 trust instrument, promptly furnish to the qualified beneficiary either a copy of the  
4 portions of the trust instrument relating to the interest of the qualified beneficiary  
5 or a copy of the trust instrument or, upon the request of a settlor for a copy of the trust  
6 instrument, promptly furnish to the settlor a copy of the trust instrument.

7           **SECTION 103.** 701.0813 (3) (b) of the statutes is amended to read:

8           701.0813 (3) (b) ~~Upon~~ Subject to par. (c), upon a vacancy in a trusteeship, unless  
9 a cotrustee remains in office, the former trustee shall send a report containing the  
10 information described under par. (a) 1. to the qualified beneficiaries. A personal  
11 representative or guardian may send the qualified beneficiaries a report containing  
12 the information described in par. (a) 1. on behalf of a deceased or incapacitated  
13 trustee.

14           **SECTION 104.** 701.0813 (3) (c) of the statutes is created to read:

15           701.0813 (3) (c) A trustee may limit the report to a qualified beneficiary of a  
16 specific dollar amount or specific property to information that relates to the specific  
17 dollar amount or specific property.

18           **SECTION 105.** 701.0813 (5) of the statutes is amended to read:

19           701.0813 (5) Subsections (2) (b) ~~and, (c), and (d)~~ and (3) do not apply to a trustee  
20 who accepts a trusteeship before July 1, 2014, to an irrevocable trust created before  
21 July 1, 2014, or to a revocable trust that becomes irrevocable before July 1, 2014.

22           **SECTION 106.** 701.0813 (6) and (7) of the statutes are created to read:

23           701.0813 (6) The trustee has no duty to provide information about the  
24 administration of the trust to the settlor, but the trustee may provide such  
25 information if the trustee chooses to do so.

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1           **(7)** The trust instrument may expand, restrict, eliminate, or otherwise vary the  
2 right of a beneficiary or class of beneficiaries to be informed of the beneficiary's  
3 interest in a trust or to receive any or all information concerning the trust, and may  
4 do so for any period of time, including for the lifetime of a beneficiary or a class of  
5 beneficiaries. If there is no current acting representative of such a beneficiary or  
6 class of beneficiaries in accordance with the trust instrument, and a provision to  
7 appoint such a representative is not provided for in the trust instrument, the trustee  
8 may appoint a representative for a beneficiary or class of beneficiaries whose rights  
9 to information have been restricted or eliminated by the trust instrument.

10           **SECTION 107.** 701.0815 (3) of the statutes is created to read:

11           701.0815 **(3)** A trustee has no power to give warranties in a sale, mortgage, or  
12 lease that are binding on the trustee personally.

13           **SECTION 108.** 701.0816 (29) of the statutes is created to read:

14           701.0816 **(29)** Fund a trust or account that meets the requirements under 42  
15 USC 1396p (d) (4) (A) or (C) for the benefit of an individual with a disability.

16           **SECTION 109.** 701.0816 (30) of the statutes is created to read:

17           701.0816 **(30)** Fund an account that is part of an ABLE program under section  
18 529A of the Internal Revenue Code for a beneficiary's benefit.

19           **SECTION 110.** 701.0817 (3) (b) of the statutes is amended to read:

20           701.0817 **(3)** (b) The beneficiary, at the time of the release, did not know of the  
21 beneficiary's rights or have a reasonable opportunity to know of the material facts  
22 relating to the breach.

23           **SECTION 111.** 701.0818 (2) (b) 2. h. of the statutes is repealed and recreated to  
24 read:

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1           701.0818 (2) (b) 2. h. Exercise a decanting power under subch. XIII or direct  
2           an authorized fiduciary, as defined in s. 701.1302 (1), to exercise a decanting power  
3           under subch. XIII.

4           **SECTION 112.** 701.1005 (1) of the statutes is amended to read:

5           701.1005 (1) A beneficiary may not commence a proceeding against a trustee  
6           for breach of trust more than one year after the earlier of either the date on which  
7           the beneficiary or a representative of the beneficiary waived the right to a report  
8           under s. 701.0813 (4) or the date on which the beneficiary or a representative of the  
9           beneficiary was sent a report or other record that adequately disclosed the existence  
10          of a potential claim for breach of trust.

11          **SECTION 113.** 701.1005 (2) of the statutes is amended to read:

12          701.1005 (2) A report or other record adequately discloses the existence of a  
13          potential claim for breach of trust if it provides sufficient information so that the  
14          beneficiary or representative knows of the potential claim or should have inquired  
15          into its existence.

16          **SECTION 114.** 701.1009 (2) of the statutes is amended to read:

17          701.1009 (2) At the time of the consent, release, or ratification, the beneficiary  
18          did not have knowledge or a reasonable opportunity to obtain knowledge of the  
19          beneficiary's rights or of the material facts relating to the breach.

20          **SECTION 115.** 701.1105 (1) (b) of the statutes is amended to read:

21          701.1105 (1) (b) Is given in the manner provided in ~~ch. 879, except that notice~~  
22          ~~by publication is not required~~ s. 701.0109.

23          **SECTION 116.** 701.1136 (1) of the statutes is amended to read:

24          701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the  
25          trustee or a court under s. 701.1106 with respect to unitrust distributions, if a

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1 beneficiary is entitled to receive income from a trust, but the trust instrument fails  
2 to specify how frequently it is to be paid a current beneficiary is to receive income  
3 from the trust, the trustee shall distribute ~~at least annually~~ the income to which such  
4 the current beneficiary is entitled at least annually.

5 **SECTION 117.** Subchapter XIII of chapter 701 [precedes 701.1301] of the  
6 statutes is created to read:

**CHAPTER 701****SUBCHAPTER XIII****UNIFORM TRUST DECANTING ACT**

10 **701.1301 Short title.** This subchapter may be cited as the Uniform Trust  
11 Decanting Act.

12 **701.1302 Definitions.** In this subchapter:

13 **(1)** “Authorized fiduciary” means any of the following:

14 (a) A trustee, a directing party, or another fiduciary, other than a settlor, that  
15 has discretion to distribute or direct a trustee to distribute part or all of the principal  
16 of the first trust to one or more current beneficiaries.

17 (b) A special fiduciary appointed under s. 701.1309.

18 (c) A special-needs fiduciary under s. 701.1313.

19 (d) A trust protector who has been granted a decanting power, which may be  
20 exercised in a fiduciary or nonfiduciary capacity, under s. 701.0818 (2) (b) 2. h.

21 **(2)** “Decanting power” means the power of an authorized fiduciary under this  
22 subchapter to distribute property of a first trust to one or more 2nd trusts or to modify  
23 the terms of the first trust.

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1           **(3)** “Expanded distributive discretion” means a discretionary power of  
2 distribution that is not limited to an ascertainable standard or a reasonably definite  
3 standard.

4           **(4)** “First trust” means a trust over which an authorized fiduciary may exercise  
5 the decanting power.

6           **(5)** “First-trust instrument” means the trust instrument for a first trust.

7           **(6)** “Reasonably definite standard” means a clearly measurable standard  
8 under which a holder of a power of distribution is legally accountable within the  
9 meaning of section 674 (b) (5) (A) of the Internal Revenue Code and any applicable  
10 regulations.

11           **(7)** “Second trust” means any of the following:

12           (a) A first trust after modification under this subchapter.

13           (b) A trust to which a distribution of property from a first trust is or may be  
14 made under this subchapter.

15           **(8)** “Second-trust instrument” means the trust instrument for a 2nd trust.

16           **701.1303 Scope.** **(1)** Except as otherwise provided in subs. (2) and (3), this  
17 subchapter applies to an express trust that is irrevocable or revocable by the settlor  
18 only with the consent of the trustee or a person holding an adverse interest.

19           **(2)** This subchapter does not apply to a trust held solely for charitable purposes.

20           **(3)** Subject to s. 701.1315, a trust instrument may restrict or prohibit exercise  
21 of the decanting power.

22           **(4)** This subchapter does not limit the power of an authorized fiduciary or other  
23 person to distribute or appoint property in further trust or to modify a trust under  
24 the trust instrument, law of this state other than this subchapter, common law, a  
25 court order, or a nonjudicial settlement agreement.

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1           (5) This subchapter does not affect the ability of a settlor to provide in a trust  
2 instrument for the distribution of the trust property or appointment in further trust  
3 of the trust property or for modification of the trust instrument.

4           **701.1304 Fiduciary duty.** (1) In exercising the decanting power, an  
5 authorized fiduciary shall act in accordance with its fiduciary duties, including the  
6 duty to act in accordance with the purposes of the first trust. If a trustee or other  
7 authorized fiduciary is directed by another authorized fiduciary to exercise the  
8 decanting power, the trustee or other directed authorized fiduciary shall act to  
9 comply with the exercise of the decanting power and the trustee or other directed  
10 authorized fiduciary shall not be liable for the action regardless of any fiduciary duty  
11 that the trustee or other directed authorized fiduciary might otherwise have.

12           (2) This subchapter does not create or imply a duty to exercise the decanting  
13 power or to inform beneficiaries about the applicability of this subchapter.

14           (3) Except as otherwise provided in a first-trust instrument, for purposes of  
15 this subchapter and ss. 701.0801 and 701.0802 (2), the terms of the first trust are  
16 deemed to include the decanting power.

17           **701.1305 Application; governing law.** This subchapter applies to a trust  
18 created before, on, or after the effective date of this section ... [LRB inserts date], if  
19 any of the following applies:

20           (1) The trust has its principal place of administration in this state, including  
21 a trust whose principal place of administration has been changed to this state.

22           (2) The trust provides by its trust instrument that it is governed by the law of  
23 this state or is governed by the law of this state for the purpose of any of the following:

24           (a) Administration, including administration of a trust whose governing law  
25 for purposes of administration has been changed to the law of this state.



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1 (b) Construction of terms of the trust.

2 (c) Determining the meaning or effect of terms of the trust.

3 **701.1306 Reasonable reliance.** A trustee or other person that reasonably  
4 relies on the validity of a distribution of part or all of the property of a trust to another  
5 trust, or a modification of a trust, under this subchapter, law of this state other than  
6 this subchapter, or the law of another jurisdiction is not liable to any person for any  
7 action or failure to act as a result of the reliance.

8 **701.1307 Notice; exercise of decanting power. (1)** In this section, a notice  
9 period begins on the day notice is given under sub. (3) and ends 30 days after the day  
10 notice is given.

11 **(2)** Except as otherwise provided in this subchapter, an authorized fiduciary  
12 may exercise the decanting power without the consent of any person and without  
13 court approval.

14 **(3)** Except as otherwise provided in sub. (6), an authorized fiduciary shall give  
15 notice of the intended exercise of the decanting power not later than 30 days before  
16 the exercise to all of the following:

17 (a) Each settlor of the first trust, if living or then in existence.

18 (b) Each qualified beneficiary of the first trust.

19 (c) Each holder of a presently exercisable power of appointment over any part  
20 or all of the first trust.

21 (d) Each person that currently has the right to remove or replace the authorized  
22 fiduciary.

23 (e) Each directing party, trust protector, or other fiduciary of the first trust.

24 (f) Each directing party, trust protector, or other fiduciary of the 2nd trust.

25 (g) If s. 701.1314 (2) applies, the attorney general.

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1           (4) An authorized fiduciary is not required to give notice under sub. (3) to a  
2 person that is not known to the fiduciary or is known to the fiduciary but cannot be  
3 located by the fiduciary after reasonable diligence.

4           (5) A notice under sub. (3) must do all of the following:

5           (a) Specify the manner in which the authorized fiduciary intends to exercise  
6 the decanting power.

7           (b) Specify the proposed effective date for exercise of the power.

8           (c) Include a copy of the first-trust instrument.

9           (d) Include a copy of all 2nd-trust instruments.

10          (6) The decanting power may be exercised before expiration of the notice period  
11 under sub. (1) if all persons entitled to receive notice waive the period in a signed  
12 record.

13          (7) The receipt of notice, waiver of the notice period, or expiration of the notice  
14 period does not affect the right of a person to file an application under s. 701.1309  
15 asserting any of the following:

16          (a) That an attempted exercise of the decanting power is ineffective because it  
17 did not comply with this subchapter or was an abuse of discretion or breach of  
18 fiduciary duty.

19          (b) That s. 701.1322 applies to the exercise of the decanting power.

20          (8) An exercise of the decanting power is not ineffective because of the failure  
21 to give notice to one or more persons under sub. (3) if the authorized fiduciary acted  
22 with reasonable care to comply with sub. (3).

23          **701.1309 Court involvement.** (1) On application of an authorized fiduciary,  
24 a person entitled to notice under s. 701.1307 (3), a beneficiary, or with respect to a

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1 charitable interest the attorney general or other person that has standing to enforce  
2 the charitable interest, the court may do any of the following:

3 (a) Provide instructions to the authorized fiduciary regarding whether a  
4 proposed exercise of the decanting power is permitted under this subchapter and  
5 consistent with the fiduciary duties of the authorized fiduciary.

6 (b) Appoint a special fiduciary and authorize the special fiduciary to determine  
7 whether the decanting power should be exercised under this subchapter and to  
8 exercise the decanting power.

9 (c) Approve an exercise of the decanting power.

10 (d) Determine that a proposed or attempted exercise of the decanting power is  
11 ineffective for any of the following reasons:

12 1. After applying s. 701.1322, the proposed or attempted exercise does not or  
13 did not comply with this subchapter.

14 2. The proposed or attempted exercise would be or was an abuse of the  
15 fiduciary's discretion or a breach of fiduciary duty.

16 3. The proposed or attempted exercise is expressly prohibited under the terms  
17 of the first trust.

18 (e) Determine the extent to which s. 701.1322 applies to a prior exercise of the  
19 decanting power.

20 (f) Provide instructions to the trustee regarding the application of s. 701.1322  
21 to a prior exercise of the decanting power.

22 (g) Order other relief to carry out the purposes of this subchapter.

23 **(2)** On application of an authorized fiduciary, the court may approve any of the  
24 following:

25 (a) An increase in the fiduciary's compensation under s. 701.1316.

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1 (b) A modification under s. 701.1318 of a provision granting a person the right  
2 to remove or replace the fiduciary.

3 **701.1310 Formalities.** An exercise of the decanting power must be made in  
4 a record signed by an authorized fiduciary. The signed record must, directly or by  
5 reference to the notice required by s. 701.1307, identify the first trust and the 2nd  
6 trust or trusts and state the property of the first trust being distributed to each 2nd  
7 trust and the property, if any, that remains in the first trust.

8 **701.1311 Decanting power under expanded distributive discretion. (1)**

9 In this section:

10 (a) “Noncontingent right” means a right that is not subject to the exercise of  
11 discretion or the occurrence of a specified event that is not certain to occur. The term  
12 does not include a right held by a beneficiary if any person has discretion to distribute  
13 property subject to the right to any person other than the beneficiary or the  
14 beneficiary’s estate.

15 (b) “Successor beneficiary” means a beneficiary that is not a qualified  
16 beneficiary on the date the beneficiary’s qualification is determined. The term does  
17 not include a person that is a beneficiary only because the person holds a nongeneral  
18 power of appointment.

19 (c) “Vested interest” means any of the following:

20 1. A right to a mandatory distribution that is a noncontingent right as of the  
21 date of the exercise of the decanting power.

22 2. A current and noncontingent right, annually or more frequently, to a  
23 mandatory distribution of income, a specified dollar amount, or a percentage of value  
24 of some or all of the trust property.

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1           3. A current and noncontingent right, annually or more frequently, to withdraw  
2 income, a specified dollar amount, or a percentage of value of some or all of the trust  
3 property.

4           4. A presently exercisable general power of appointment.

5           5. A right to receive an ascertainable part of the trust property on the trust's  
6 termination that is not subject to the exercise of discretion or to the occurrence of a  
7 specified event that is not certain to occur.

8           **(2)** Subject to sub. (3) and s. 701.1314, an authorized fiduciary that has  
9 expanded distributive discretion over the principal of a first trust for the benefit of  
10 one or more current beneficiaries may exercise the decanting power over the  
11 principal of the first trust.

12           **(3)** Subject to s. 701.1313, in an exercise of the decanting power under this  
13 section, a 2nd trust may not do any of the following:

14           (a) Include as a current beneficiary a person that is not a current beneficiary  
15 of the first trust, except as otherwise provided in sub. (4).

16           (b) Include as a presumptive remainder beneficiary or successor beneficiary a  
17 person that is not a current beneficiary, presumptive remainder beneficiary, or  
18 successor beneficiary of the first trust, except as otherwise provided in sub. (4).

19           (c) Reduce or eliminate a vested interest.

20           (d) Fail to be a trust described in 42 USC 1396p (d) (4) (A) or (C) if the first trust  
21 is a trust described in 42 USC 1396p (d) (4) (A) or (C).

22           **(4)** Subject to sub. (3) (c) and s. 701.1314, in an exercise of the decanting power  
23 under this section, a 2nd trust may be a trust created or administered under the law  
24 of any jurisdiction and may do any of the following:

25           (a) Retain a power of appointment granted in the first trust.

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1 (b) Omit a power of appointment granted in the first trust, other than a  
2 presently exercisable general power of appointment.

3 (c) Create or modify a power of appointment if the powerholder is a current  
4 beneficiary of the first trust and the authorized fiduciary has expanded distributive  
5 discretion to distribute principal to the beneficiary.

6 (d) Create or modify a power of appointment if the powerholder is a  
7 presumptive remainder beneficiary or successor beneficiary of the first trust, but the  
8 exercise of the power may take effect only after the powerholder becomes, or would  
9 have become if then living, a current beneficiary.

10 (5) A power of appointment described in sub. (4) (a) to (d) may be general or  
11 nongeneral. The class of permissible appointees in favor of which the power may be  
12 exercised may be broader than or different from the beneficiaries of the first trust.

13 (6) If an authorized fiduciary has expanded distributive discretion over part  
14 but not all of the principal of a first trust, the fiduciary may exercise the decanting  
15 power under this section over that part of the principal over which the authorized  
16 fiduciary has expanded distributive discretion.

17 **701.1312 Decanting power under limited distributive discretion. (1)**

18 In this section, "limited distributive discretion" means a discretionary power of  
19 distribution that is limited to an ascertainable standard or a reasonably definite  
20 standard.

21 (2) An authorized fiduciary that has limited distributive discretion over the  
22 principal of the first trust for the benefit of one or more current beneficiaries may  
23 exercise the decanting power over the principal of the first trust.

24 (3) Under this section and subject to s. 701.1314, a 2nd trust may be created  
25 or administered under the law of any jurisdiction. Under this section, the 2nd trusts,

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1 in the aggregate, must grant each beneficiary of the first trust beneficial interests  
2 that are substantially similar to the beneficial interests of the beneficiary in the first  
3 trust.

4 **(3m)** Notwithstanding sub. (3), an authorized fiduciary exercising the  
5 decanting power under this section may grant to a beneficiary of the 2nd trust a  
6 testamentary power of appointment exercisable in favor of the creditors of the  
7 beneficiary's estate, but only if the authorized fiduciary concludes the granting of  
8 such power will be unlikely to adversely affect the beneficial interest of the  
9 presumptive remainder beneficiaries of the first trust.

10 **(4)** A power to make a distribution under a 2nd trust for the benefit of a  
11 beneficiary who is an individual is substantially similar to a power under the first  
12 trust to make a distribution directly to the beneficiary. A distribution is for the  
13 benefit of a beneficiary if any of the following applies:

14 (a) The distribution is applied for the benefit of the beneficiary.

15 (b) The beneficiary is under a legal disability or the trustee reasonably believes  
16 the beneficiary is incapacitated, and the distribution is made as permitted under this  
17 chapter.

18 (c) The distribution is made as permitted under the terms of the first-trust  
19 instrument and the 2nd-trust instrument for the benefit of the beneficiary.

20 **(5)** If an authorized fiduciary has limited distributive discretion over part but  
21 not all of the principal of a first trust, the fiduciary may exercise the decanting power  
22 under this section over that part of the principal over which the authorized fiduciary  
23 has limited distributive discretion.

24 **701.1313 Trust for beneficiary with disability.** (1) In this section:

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1 (a) “Beneficiary with a disability” means a beneficiary of a first trust who the  
2 special-needs fiduciary believes in good faith is an individual with a disability.

3 (b) “Special-needs fiduciary” means, with respect to a trust that has a  
4 beneficiary with a disability, any of the following:

5 1. A trustee or other fiduciary, other than a settlor, that has discretion to  
6 distribute part or all of the principal of a first trust to one or more current  
7 beneficiaries.

8 2. If no trustee or fiduciary has discretion under subd. 1., a trustee or other  
9 fiduciary, other than a settlor, that has discretion to distribute part or all of the  
10 income of the first trust to one or more current beneficiaries.

11 3. If no trustee or fiduciary has discretion under subds. 1. and 2., a trustee or  
12 other fiduciary, other than a settlor, that is required to distribute part or all of the  
13 income or principal of the first trust to one or more current beneficiaries.

14 (c) “Special-needs trust” means a trust the trustee believes would not be  
15 considered a resource for purposes of determining whether an individual with a  
16 disability is eligible for the supplemental security income program or the medical  
17 assistance program.

18 **(2)** A special-needs fiduciary may exercise the decanting power under s.  
19 701.1311 over the principal of a first trust as if the fiduciary had authority to  
20 distribute principal to a beneficiary with a disability subject to expanded distributive  
21 discretion if all of the following apply:

22 (a) A 2nd trust is a special-needs trust that benefits the beneficiary with a  
23 disability.

24 (b) The special-needs fiduciary determines that exercise of the decanting  
25 power will further the purposes of the first trust.



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1           **(3)** In an exercise of the decanting power under this section, the following rules  
2 apply:

3           (a) Notwithstanding s. 701.1311 (3) (b), the interest in the 2nd trust of a  
4 beneficiary with a disability may do any of the following:

5           1. Be an account in a pooled trust for the benefit of the beneficiary with a  
6 disability described in 42 USC 1396p (d) (4) (C) that includes the trust retention  
7 provisions permitted by 42 USC 1396p (d) (4) (C) (iv).

8           2. Contain payback provisions complying with reimbursement requirements  
9 of Medicaid law under 42 USC 1396p (d) (4) (A) or (C).

10          (b) Section 701.1311 (3) (c) does not apply to the interests of the beneficiary with  
11 a disability.

12          (c) Except as affected by any change to the interests of the beneficiary with a  
13 disability or by the effects on remainder beneficiaries of a transfer to a 2nd trust  
14 under par. (a), if the special needs fiduciary has limited distributive discretion over  
15 the principal of the 2nd trust, or if there are 2 or more 2nd trusts, the 2nd trusts in  
16 the aggregate must grant each other beneficiary of the first trust beneficial interests  
17 in the 2nd trusts that are substantially similar to the beneficiary's beneficial  
18 interests in the first trust.

19           **701.1314 Protection of charitable interest. (1)** In this section:

20          (a) "Determinable charitable interest" means an interest that is all of the  
21 following:

22           1. A charitable interest.

23           2. Entitled to receive a mandatory distribution currently, periodically, on the  
24 occurrence of a specified event, or after the passage of a specified time.

25           3. Unconditional or held solely for charitable purposes.

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1 (b) “Unconditional” means not subject to the occurrence of a specified event that  
2 is not certain to occur, other than a requirement in a trust instrument that a  
3 charitable organization be in existence or qualify under a particular provision of the  
4 Internal Revenue Code, on the date of the distribution, if the charitable organization  
5 meets the requirement on the date of determination.

6 (2) The attorney general may represent and bind a charitable interest only  
7 when the attorney general has the rights of a qualified beneficiary as provided in s.  
8 701.0110 (3).

9 (3) If a first trust contains a charitable interest, the 2nd trust or trusts may not  
10 do any of the following:

11 (a) Diminish the charitable interest.

12 (b) Diminish the interest of an identified charitable organization that holds the  
13 charitable interest.

14 (c) Alter any charitable purpose stated in the first-trust instrument.

15 (d) Alter any condition or restriction related to the charitable interest.

16 (3m) Notwithstanding subs. (3) and (5), if the first trust is an account in a  
17 pooled trust described in 42 USC 1396p (d) (4) (C), the 2nd trust may be an account  
18 in another pooled trust described in 42 USC 1396p (d) (4) (C) or a trust described in  
19 42 USC 1396p (d) (4) (A) regardless of any of the following:

20 (a) Any effect on a charitable interest in property that is permitted to be  
21 retained in the first trust under 42 USC 1396p (d) (4) (C) (iv).

22 (b) Any effect the trust retention and Medicaid reimbursement provisions of  
23 the 2nd trust may have on a charitable interest in the first trust.

24 (c) Any change in the identified charitable organization.

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1 (d) Any change in the governing law or principal place of administration of the  
2 trust.

3 (4) If there are 2 or more 2nd trusts, the 2nd trusts shall be treated as one trust  
4 for purposes of determining whether the exercise of the decanting power diminishes  
5 the charitable interest or diminishes the interest of an identified charitable  
6 organization for purposes of sub. (3).

7 (5) If a first trust contains a determinable charitable interest, the 2nd trust or  
8 trusts that include a charitable interest pursuant to sub. (3) must be administered  
9 under the law of this state unless any of the following applies:

10 (a) The attorney general, after receiving notice under s. 701.1307, fails to object  
11 in a signed record delivered to the authorized fiduciary within the notice period.

12 (b) The attorney general consents in a signed record to the 2nd trust or trusts  
13 being administered under the law of another jurisdiction.

14 (c) The court approves the exercise of the decanting power.

15 (d) The identified charitable organization consents in a signed record delivered  
16 to the authorized fiduciary.

17 (6) This subchapter does not limit the powers and duties of the attorney general  
18 under the laws of this state other than this subchapter.

19 **701.1315 Trust limitation on decanting.** (1) An authorized fiduciary may  
20 not exercise the decanting power to the extent the first-trust instrument expressly  
21 prohibits exercise of any of the following:

22 (a) The decanting power.

23 (b) A power granted by state law to the fiduciary to distribute part or all of the  
24 principal of the trust to another trust or to modify the trust.

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1           (2) Exercise of the decanting power is subject to any restriction in the  
2 first-trust instrument that expressly applies to exercise of any of the following:

3           (a) The decanting power.

4           (b) A power granted by state law to a fiduciary to distribute part or all of the  
5 principal of the trust to another trust or to modify the trust.

6           (3) A general prohibition of the amendment or revocation of a first trust, a  
7 spendthrift clause, or a clause restraining the voluntary or involuntary transfer of  
8 a beneficiary's interest does not preclude exercise of the decanting power.

9           (4) Subject to subs. (1) and (2), an authorized fiduciary may exercise the  
10 decanting power under this subchapter even if the first-trust instrument permits  
11 the authorized fiduciary or another person to modify the first-trust instrument or  
12 to distribute part or all of the principal of the first trust to another trust.

13           (5) If a first-trust instrument contains an express restriction described in sub.  
14 (2), the provision must be included in the 2nd-trust instrument.

15           **701.1316 Change in compensation.** (1) If a first-trust instrument specifies  
16 an authorized fiduciary's compensation, the fiduciary may not exercise the decanting  
17 power to increase the fiduciary's compensation above the specified compensation  
18 unless any of the following applies:

19           (a) All qualified beneficiaries of the 2nd trust consent to the increase in a signed  
20 record.

21           (b) The increase is approved by the court.

22           (2) If a first-trust instrument does not specify an authorized fiduciary's  
23 compensation, the fiduciary may not exercise the decanting power to increase the  
24 fiduciary's compensation above the compensation permitted by this chapter unless  
25 any of the following applies:

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1 (a) All qualified beneficiaries of the 2nd trust consent to the increase in a signed  
2 record.

3 (b) The increase is approved by the court.

4 **(3)** A change in an authorized fiduciary's compensation that is incidental to  
5 other changes made by the exercise of the decanting power is not an increase in the  
6 fiduciary's compensation for purposes of subs. (1) and (2).

7 **(4)** This section does not apply to a decanting from a first trust that is a pooled  
8 trust described in 42 USC 1396p (d) (4) (C), or to a decanting to a 2nd trust that is  
9 a pooled trust described in 42 USC 1396p (d) (4) (C).

10 **701.1317 Relief from liability and indemnification.** **(1)** Except as  
11 otherwise provided in this section, a 2nd-trust instrument may not relieve an  
12 authorized fiduciary from liability for breach of trust to a greater extent than the  
13 first-trust instrument unless any of the following applies:

14 (a) All the qualified beneficiaries of the 2nd trust consent to the relief from  
15 liability in a signed record.

16 (b) The relief from liability is approved by the court.

17 **(2)** A 2nd-trust instrument may provide for indemnification of an authorized  
18 fiduciary of the first trust or another person acting in a fiduciary capacity under the  
19 first trust for any liability or claim that would have been payable from the first trust  
20 if the decanting power had not been exercised.

21 **(3)** Absent consent of all qualified beneficiaries or the approval of the court, the  
22 2nd-trust instrument may not reduce the aggregate fiduciary liability of all  
23 fiduciaries of the 2nd trust.

24 **(4)** Subject to sub. (3), a 2nd-trust instrument may divide and reallocate  
25 fiduciary powers among fiduciaries, including one or more trustees, directing

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1 parties, trust protectors, or other persons, and relieve a fiduciary from liability for  
2 an act or failure to act of another fiduciary as permitted by law of this state other than  
3 this subchapter.

4 **701.1318 Removal or replacement of authorized fiduciary.** (1) An  
5 authorized fiduciary may not exercise the decanting power to modify a provision in  
6 a first-trust instrument granting another person power to remove or replace the  
7 fiduciary unless any of the following applies:

8 (a) The person holding the power consents to the modification in a signed record  
9 and the modification applies only to the person.

10 (b) The person holding the power and the qualified beneficiaries of the 2nd trust  
11 consent to the modification in a signed record and the modification grants a  
12 substantially similar power to another person.

13 (c) The court approves the modification and the modification grants a  
14 substantially similar power to another person.

15 (2) This section does not apply to a decanting from a first trust that is a pooled  
16 trust described in 42 USC 1396p (d) (4) (C), or to a decanting to a 2nd trust that is  
17 a pooled trust described in 42 USC 1396p (d) (4) (C).

18 **701.1319 Tax-related limitations.** (1) In this section:

19 (a) “Grantor trust” means a trust as to which a settlor of a first trust is  
20 considered the owner under sections 671 to 677 of the Internal Revenue Code or  
21 section 679 of the Internal Revenue Code.

22 (b) “Nongrantor trust” means a trust that is not a grantor trust.

23 (c) “Qualified benefits property” means property subject to the minimum  
24 distribution requirements of section 401 (a) (9) of the Internal Revenue Code, and

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1 any applicable regulations, or to any similar requirements that refer to section 401  
2 (a) (9) of the Internal Revenue Code or the regulations.

3 **(2)** An exercise of the decanting power is subject to the following limitations:

4 (a) If a first trust contains property that qualified, or would have qualified but  
5 for provisions of this subchapter other than this section, for a marital deduction for  
6 purposes of the gift or estate tax under the Internal Revenue Code or a state gift,  
7 estate, or inheritance tax, the 2nd-trust instrument must not include or omit any  
8 term that, if included in or omitted from the trust instrument for the trust to which  
9 the property was transferred, would have prevented the transfer from qualifying for  
10 the deduction, or would have reduced the amount of the deduction, under the same  
11 provisions of the Internal Revenue Code or state law under which the transfer  
12 qualified.

13 (b) If the first trust contains property that qualified, or would have qualified  
14 but for provisions of this subchapter other than this section, for a charitable  
15 deduction for purposes of the income, gift, or estate tax under the Internal Revenue  
16 Code or a state income, gift, estate, or inheritance tax, the 2nd-trust instrument  
17 must not include or omit any term that, if included in or omitted from the trust  
18 instrument for the trust to which the property was transferred, would have  
19 prevented the transfer from qualifying for the deduction, or would have reduced the  
20 amount of the deduction, under the same provisions of the Internal Revenue Code  
21 or state law under which the transfer qualified.

22 (c) If the first trust contains property that qualified, or would have qualified  
23 but for provisions of this subchapter other than this section, for the exclusion from  
24 the gift tax described in section 2503 (b) of the Internal Revenue Code, the 2nd-trust  
25 instrument must not include or omit a term that, if included in or omitted from the

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1 trust instrument for the trust to which the property was transferred, would have  
2 prevented the transfer from qualifying under section 2503 (b) of the Internal  
3 Revenue Code. If the first trust contains property that qualified, or would have  
4 qualified but for provisions of this subchapter other than this section, for the  
5 exclusion from the gift tax described in the Internal Revenue Code section 2503 (b)  
6 by application of section 2503 (c) of the Internal Revenue Code, the 2nd-trust  
7 instrument must not include or omit a term that, if included or omitted from the trust  
8 instrument for the trust to which the property was transferred, would have  
9 prevented the transfer from qualifying under section 2503 (c) of the Internal  
10 Revenue Code.

11 (d) If the property of the first trust includes shares of stock in an S corporation,  
12 as defined in section 1361 of the Internal Revenue Code, and the first trust is, or but  
13 for provisions of this subchapter other than this section would be, a permitted  
14 shareholder under any provision of section 1361 of the Internal Revenue Code, an  
15 authorized fiduciary may exercise the power with respect to part or all of the  
16 S-corporation stock only if any 2nd trust receiving the stock is a permitted  
17 shareholder under section 1361 (c) (2) of the Internal Revenue Code. If the property  
18 of the first trust includes shares of stock in an S corporation and the first trust is, or  
19 but for provisions of this subchapter other than this section would be, a qualified  
20 subchapter S trust within the meaning of section 1361 (d) of the Internal Revenue  
21 Code, the 2nd-trust instrument must not include or omit a term that prevents the  
22 2nd trust from qualifying as a qualified subchapter S trust.

23 (e) If the first trust contains property that qualified, or would have qualified but  
24 for provisions of this subchapter other than this section, for a zero inclusion ratio for  
25 purposes of the generation-skipping transfer tax under section 2642 (c) of the



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1 Internal Revenue Code, the 2nd-trust instrument must not include or omit a term  
2 that, if included in or omitted from the first-trust instrument, would have prevented  
3 the transfer to the first trust from qualifying for a zero inclusion ratio under section  
4 2642 (c) of the Internal Revenue Code.

5 (f) If the first trust is directly or indirectly the beneficiary of qualified benefits  
6 property, the 2nd-trust instrument may not include or omit any term that, if  
7 included in or omitted from the first-trust instrument, would have increased the  
8 minimum distributions required with respect to the qualified benefits property  
9 under section 401 (a) (9) of the Internal Revenue Code and any applicable  
10 regulations, or any similar requirements that refer to section 401 (a) (9) of the  
11 Internal Revenue Code or the regulations. If an attempted exercise of the decanting  
12 power violates this paragraph, the trustee is deemed to have held the qualified  
13 benefits property and any reinvested distributions of the property as a separate  
14 share from the date of the exercise of the power and s. 701.1322 applies to the  
15 separate share.

16 (g) If the first trust qualifies as a grantor trust because of the application of  
17 section 672 (f) (2) (A) of the Internal Revenue Code, the 2nd trust may not include  
18 or omit a term that, if included in or omitted from the first-trust instrument, would  
19 have prevented the first trust from qualifying under section 672 (f) (2) (A) of the  
20 Internal Revenue Code.

21 (h) In this paragraph, “tax benefit” means a federal or state tax deduction,  
22 exemption, exclusion, or other benefit not otherwise listed in this section, except for  
23 a benefit arising from being a grantor trust. Subject to par. (i), a 2nd-trust  
24 instrument may not include or omit a term that, if included in or omitted from the

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1 first-trust instrument, would have prevented qualification for a tax benefit if all of  
2 the following apply:

3 1. The first-trust instrument expressly indicates an intent to qualify for the  
4 benefit or the first-trust instrument clearly is designed to enable the first trust to  
5 qualify for the benefit.

6 2. The transfer of property held by the first trust or the first trust qualified, or  
7 but for provisions of this subchapter other than this section, would have qualified for  
8 the tax benefit.

9 (i) Subject to par. (d), all of the following apply:

10 1. Except as otherwise provided in par. (g), the 2nd trust may be a nongrantor  
11 trust, even if the first trust is a grantor trust.

12 2. Except as otherwise provided in par. (j), the 2nd trust may be a grantor trust,  
13 even if the first trust is a nongrantor trust.

14 (j) An authorized fiduciary may not exercise the decanting power if a settlor  
15 objects in a signed record delivered to the fiduciary within the notice period and any  
16 of the following applies:

17 1. The first trust and a 2nd trust are both grantor trusts, in whole or in part,  
18 the first trust grants the settlor or another person the power to cause the first trust  
19 to cease to be a grantor trust, and the 2nd trust does not grant an equivalent power  
20 to the settlor or other person.

21 2. The first trust is a nongrantor trust and a 2nd trust is a grantor trust, in  
22 whole or in part, with respect to the settlor, unless any of the following applies:

23 a. The settlor has the power at all times to cause the 2nd trust to cease to be  
24 a grantor trust.

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1           b. The first-trust instrument contains a provision granting the settlor or  
2 another person a power that would cause the first trust to cease to be a grantor trust  
3 and the 2nd-trust instrument contains the same provision.

4           **701.1320 Duration of 2nd trust.** (1) Subject to sub. (2), a 2nd trust may have  
5 a duration that is the same as or different from the duration of the first trust.

6           (2) To the extent that property of a 2nd trust is attributable to property of the  
7 first trust, the property of the 2nd trust is subject to any rules governing maximum  
8 perpetuity, accumulation, or suspension of the power of alienation that apply to  
9 property of the first trust.

10          **701.1321 Need to distribute not required.** An authorized fiduciary may  
11 exercise the decanting power whether or not under the first trust's discretionary  
12 distribution standard the fiduciary would have made or could have been compelled  
13 to make a discretionary distribution of principal at the time of the exercise.

14          **701.1322 Saving provision.** (1) If exercise of the decanting power would be  
15 effective under this subchapter except that the 2nd-trust instrument in part does not  
16 comply with this subchapter, the exercise of the power is effective and the following  
17 rules apply with respect to the principal of the 2nd trust attributable to the exercise  
18 of the power:

19           (a) A provision in the 2nd-trust instrument that is not permitted under this  
20 subchapter is void to the extent necessary to comply with this subchapter.

21           (b) A provision required by this subchapter to be in the 2nd-trust instrument  
22 that is not contained in the instrument is deemed to be included in the instrument  
23 to the extent necessary to comply with this subchapter.

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1           **(2)** If a trustee or other fiduciary of a 2nd trust determines that sub. (1) applies  
2 to a prior exercise of the decanting power, the fiduciary shall take corrective action  
3 consistent with the fiduciary's duties.

4           **701.1323 Trust for care of animal.** **(1)** The decanting power may be  
5 exercised over an animal trust that has an animal protector to the extent the trust  
6 could be decanted under this subchapter if each animal that benefits from the trust  
7 were an individual, if the animal protector consents in a signed record to the exercise  
8 of the power.

9           **(2)** An animal protector has the rights under this subchapter of a qualified  
10 beneficiary.

11           **(3)** Notwithstanding any other provision of this subchapter, if a first trust is  
12 an animal trust, in an exercise of the decanting power, the 2nd trust must provide  
13 that trust property may be applied only to its intended purpose for the period the first  
14 trust benefitted the animal.

15           **701.1324 Terms of 2nd trust.** A reference in this chapter to a trust  
16 instrument or terms of the trust includes a 2nd-trust instrument and the terms of  
17 the 2nd trust.

18           **701.1325 Settlor.** **(1)** For purposes of law of this state other than this  
19 subchapter and subject to sub. (2), a settlor of a first trust is deemed to be the settlor  
20 of the 2nd trust with respect to the portion of the principal of the first trust subject  
21 to the exercise of the decanting power.

22           **(2)** In determining settlor intent with respect to a 2nd trust, the intent of a  
23 settlor of the first trust, a settlor of the 2nd trust, and the authorized fiduciary may  
24 be considered.

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1           **701.1326 Later-discovered property.** (1) Except as otherwise provided in  
2 sub. (3), if exercise of the decanting power was intended to distribute all the principal  
3 of the first trust to one or more 2nd trusts, later-discovered property belonging to the  
4 first trust and property paid to or acquired by the first trust after the exercise of the  
5 power is part of the trust estate of the 2nd trust or trusts.

6           (2) Except as otherwise provided in sub. (3), if exercise of the decanting power  
7 was intended to distribute less than all the principal of the first trust to one or more  
8 2nd trusts, later-discovered property belonging to the first trust or property paid to  
9 or acquired by the first trust after exercise of the power remains part of the trust  
10 estate of the first trust.

11           (3) An authorized fiduciary may provide in an exercise of the decanting power  
12 or by the terms of a 2nd trust for disposition of later-discovered property belonging  
13 to the first trust or property paid to or acquired by the first trust after exercise of the  
14 power.

15           **701.1327 Obligations.** A debt, liability, or other obligation enforceable  
16 against property of a first trust is enforceable to the same extent against the property  
17 when held by the 2nd trust after exercise of the decanting power.

18           **SECTION 118.** Chapter 702 of the statutes is repealed and recreated to read:

**CHAPTER 702****UNIFORM POWERS OF APPOINTMENT ACT****SUBCHAPTER I****GENERAL PROVISIONS**

23           **702.101 Short title.** This act may be cited as the Uniform Powers of  
24 Appointment Act.

25           **702.102 Definitions.** In this chapter:

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1           **(1)** “Appointee” means a person to which a powerholder makes an appointment  
2 of appointive property.

3           **(2)** “Appointive property” means the property or property interest subject to a  
4 power of appointment.

5           **(3)** “Blanket-exercise clause” means a clause in an instrument that exercises  
6 a power of appointment and is not a specific-exercise clause. “Blanket-exercise  
7 clause” includes a clause that does any of the following:

8           (a) Expressly uses the words “any power” in exercising a power of appointment  
9 the powerholder has.

10           (b) Expressly uses the words “any property” in appointing any property over  
11 which a powerholder has a power of appointment.

12           (c) Disposes of all property subject to disposition by the powerholder.

13           **(4)** “Broad limited power of appointment” means a power of appointment  
14 exercisable in favor of anyone other than the powerholder, the powerholder’s estate,  
15 the powerholder’s creditors, or the creditors of the powerholder’s estate.

16           **(5)** “Donor” means a person that creates a power of appointment.

17           **(6)** “Exclusionary power of appointment” means a power of appointment  
18 exercisable in favor of one or more permissible appointees to the exclusion of the  
19 other permissible appointees.

20           **(7)** “General power of appointment” means a power of appointment exercisable  
21 in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder,  
22 or a creditor of the powerholder’s estate.

23           **(8)** “Gift-in-default clause” means a clause that identifies a taker in default  
24 of appointment.

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1           **(9)** “Impermissible appointee” means a person that is not a permissible  
2 appointee.

3           **(10)** “Instrument” means a writing.

4           **(11)** “Nongeneral power of appointment” means a power of appointment that  
5 is not a general power of appointment.

6           **(12)** “Permissible appointee” means a person in whose favor a powerholder may  
7 exercise a power of appointment.

8           **(13)** “Person” means an individual, estate, trust, business or nonprofit entity,  
9 public corporation, government or governmental subdivision, agency, or  
10 instrumentality, or other legal entity.

11           **(14)** “Power of appointment” means a power that enables a powerholder acting  
12 in a nonfiduciary capacity to designate a recipient of an ownership interest in or  
13 another power of appointment over the appointive property. “Power of appointment”  
14 does not include a power of attorney.

15           **(15)** “Powerholder” means a person in which a donor creates a power of  
16 appointment.

17           **(16)** “Presently exercisable power of appointment” means a power of  
18 appointment exercisable by the powerholder at the relevant time. “Presently  
19 exercisable power of appointment” includes a power of appointment that is not  
20 exercisable until the occurrence of a specified event, the satisfaction of an  
21 ascertainable standard, or the passage of a specified time, and only after the  
22 occurrence of the specified event, the satisfaction of the ascertainable standard, or  
23 the passage of the specified time, but does not include a power exercisable only at the  
24 powerholder’s death.

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1           (17) “Specific-exercise clause” means a clause in an instrument that  
2 specifically refers to and exercises a particular power of appointment.

3           (18) “Taker in default of appointment” means a person that takes all or part  
4 of the appointive property to the extent the powerholder does not effectively exercise  
5 the power of appointment.

6           (19) “Terms of the instrument” means the manifestation of the intent of the  
7 maker of the instrument regarding the instrument’s provisions as expressed in the  
8 instrument or as may be established by other evidence that would be admissible in  
9 a legal proceeding.

10           **702.103 Governing law.** Unless the terms of the instrument creating a power  
11 of appointment manifest a contrary intent, the creation, revocation, or amendment  
12 of a power of appointment is governed by the law of the donor’s domicile at the  
13 relevant time. The exercise, release, or disclaimer of a power of appointment, or the  
14 revocation or amendment of an exercise, release, or disclaimer of a power of  
15 appointment is governed by the law of the powerholder’s domicile at the relevant  
16 time.

17           **702.104 Common law and principles of equity.** The common law and  
18 principles of equity supplement this chapter, except to the extent modified by this  
19 chapter or any other state law.

20           **702.105 Default rules.** The terms of a governing instrument prevail over any  
21 provision of this subchapter.

**SUBCHAPTER II****CREATION, REVOCATION, AND AMENDMENT****OF POWER OF APPOINTMENT**

24



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1           **702.201 Creation of power of appointment.** (1) A power of appointment  
2 is created only if the instrument creating the power satisfies all of the following:

3           (a) The instrument is valid under applicable law.

4           (b) Except as provided in sub. (2), the instrument governs the disposition of the  
5 appointive property.

6           (c) The terms of the instrument manifest the donor's intent to create in a  
7 powerholder a power of appointment over the appointive property exercisable in  
8 favor of a permissible appointee.

9           (2) Subsection (1) (b) does not apply to a power of appointment that is created  
10 by the exercise of a power of appointment.

11           (3) A power of appointment may not be created in a deceased individual.

12           (4) A power of appointment may be created in an unborn or unascertained  
13 powerholder.

14           **702.202 Nontransferability.** A powerholder may not transfer a power of  
15 appointment. If a powerholder dies without exercising or releasing a power of  
16 appointment, the power lapses.

17           **702.203 Presumption of unlimited authority.** Subject to ss. 702.204 and  
18 702.205, and unless the terms of the instrument creating a power of appointment  
19 manifest a contrary intent, a power of appointment is all of the following:

20           (1) A presently exercisable power of appointment.

21           (2) An exclusionary power of appointment.

22           (3) A general power of appointment.

23           **702.204 Exception to presumption of unlimited authority.** Unless the  
24 terms of the instrument creating a power of appointment manifest a contrary intent,  
25 the power is a nongeneral power of appointment if all of the following apply:

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1 (1) The power is exercisable only at the powerholder's death.

2 (2) The permissible appointees of the power are a defined and limited class that  
3 does not include the powerholder's estate, the powerholder's creditors, or the  
4 creditors of the powerholder's estate.

5 **702.205 Rules of classification.** (1) In this section, "adverse party" means  
6 a person with a substantial beneficial interest in appointive property that would be  
7 affected adversely by a powerholder's exercise or nonexercise of a power of  
8 appointment in favor of the powerholder, the powerholder's estate, a creditor of the  
9 powerholder, or a creditor of the powerholder's estate.

10 (2) If a powerholder may exercise a power of appointment only with the consent  
11 or joinder of an adverse party, the power is a nongeneral power of appointment.

12 (3) If the permissible appointees of a power of appointment are not defined and  
13 limited, the power is an exclusionary power of appointment.

14 **702.206 Power to revoke or amend.** A donor may revoke or amend a power  
15 of appointment only to the extent that any of the following applies:

16 (1) The instrument creating the power is revocable by the donor.

17 (2) The donor reserves a power of revocation or amendment over the power of  
18 appointment in the instrument.

19 SUBCHAPTER III

20 EXERCISE OF POWER OF APPOINTMENT

21 **702.301 Requisites for exercise of power of appointment.** (1) (a) A power  
22 of appointment is exercised only if all of the following apply:

23 1. The instrument exercising the power is valid under applicable law.

24 2. The terms of the instrument exercising the power do all of the following:

25 a. Manifest the powerholder's intent to exercise the power.

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1           b. Subject to s. 702.304, satisfy the requirements of exercise, if any, imposed by  
2 the donor.

3           (b) A power of appointment is exercised under par. (a) only to the extent the  
4 appointment is a permissible exercise of the power.

5           **(2)** If the donor requires the consent of the donor or any other person for the  
6 exercise of a power of appointment, the consent must be expressed in the instrument  
7 exercising the power of appointment or in a separate written instrument, signed in  
8 either case by the persons whose consent is required. If any person whose consent  
9 is required dies or becomes legally incapable of consenting, the power of appointment  
10 may be exercised by the powerholder without the consent of that person unless the  
11 terms of the instrument creating the power of appointment manifest a contrary  
12 intent.

13           **(3)** (a) Except as provided in par. (b) and unless the terms of the instrument  
14 creating a power of appointment manifest a contrary intent, if a power of  
15 appointment is vested in 2 or more persons, the joint powerholders may only exercise  
16 the power of appointment unanimously.

17           (b) If a power of appointment is vested in 2 or more persons and one or more  
18 of the joint powerholders die, become incapable of exercising the power of  
19 appointment, or renounce, release, or disclaim the power of appointment, the power  
20 of appointment may be exercised unanimously by the other powerholders.

21           **702.302 Intent to exercise: determining intent from residuary clause.**

22           **(1)** In this section:

23           (a) “Residuary clause” does not include a residuary clause containing a  
24 blanket-exercise clause or a specific-exercise clause.

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1 (b) "Will" includes a codicil and a testamentary instrument that revises another  
2 will.

3 (2) A residuary clause in a powerholder's will, or a comparable clause in the  
4 powerholder's revocable trust, manifests the powerholder's intent to exercise a  
5 power of appointment only if all of the following apply:

6 (a) The terms of the instrument containing the residuary clause do not manifest  
7 a contrary intent.

8 (b) The power of appointment is a general power of appointment exercisable in  
9 favor of the powerholder's estate.

10 (c) There is no gift-in-default clause in the instrument creating the power of  
11 appointment or the gift-in-default clause in the instrument creating the power of  
12 appointment is ineffective.

13 (d) The powerholder did not release the power of appointment.

14 **702.303 Intent to exercise: after-acquired power.** Unless the terms of the  
15 instrument exercising a power of appointment manifest a contrary intent, all of the  
16 following apply:

17 (1) Except as otherwise provided in sub. (2), a blanket-exercise clause extends  
18 to a power of appointment acquired by the powerholder after executing the  
19 instrument containing the clause.

20 (2) If the powerholder is also the donor of the power of appointment, a  
21 blanket-exercise clause does not extend to the power of appointment unless there is  
22 not a gift-in-default clause or the gift-in-default clause is ineffective.

23 **702.304 Substantial compliance with donor-imposed formal**  
24 **requirement.** A powerholder's substantial compliance with a formal requirement  
25 of appointment imposed by the donor, including a requirement that the instrument

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1 exercising the power of appointment make reference or specific reference to the  
2 power, is sufficient if all of the following apply:

3 (1) The powerholder knows of and intends to exercise the power of  
4 appointment.

5 (2) The powerholder's manner of attempted exercise of the power of  
6 appointment does not impair a material purpose of the donor in imposing the  
7 requirement.

8 **702.305 Permissible appointment.** (1) A powerholder of a general power  
9 of appointment that permits appointment to the powerholder or the powerholder's  
10 estate may make any appointment, including an appointment in trust or creating a  
11 new power of appointment, that the powerholder could make in disposing of the  
12 powerholder's own property.

13 (2) A powerholder of a general power of appointment that permits appointment  
14 only to the creditors of the powerholder or the creditors of the powerholder's estate  
15 may appoint only to those creditors.

16 (3) Unless the terms of the instrument creating a power of appointment  
17 manifest a contrary intent, the powerholder of a nongeneral power of appointment  
18 may do any of the following:

19 (a) Make an appointment in any form, including an appointment in trust, in  
20 favor of a permissible appointee.

21 (b) Create a general or nongeneral power of appointment in a permissible  
22 appointee that may be exercisable in favor of persons other than permissible  
23 appointees of the original nongeneral power of appointment.

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1 (c) Create a nongeneral power of appointment in any person to appoint to one  
2 or more of the permissible appointees of the original nongeneral power of  
3 appointment.

4 **702.306 Appointment to a deceased appointee.** Subject to s. 854.06, an  
5 exercise of a power of appointment is ineffective to the extent it is in favor of a  
6 deceased appointee.

7 **702.307 Impermissible appointment.** (1) Except as otherwise provided in  
8 s. 702.306, an exercise of a power of appointment is ineffective to the extent it is in  
9 favor of an impermissible appointee.

10 (2) An exercise of a power of appointment in favor of a permissible appointee  
11 is ineffective to the extent the appointment is a fraud on the power.

12 **702.308 Selective allocation doctrine.** If a powerholder exercises a power  
13 of appointment in a disposition that also disposes of property the powerholder owns,  
14 the owned property and the appointive property must be allocated in the permissible  
15 manner that best carries out the powerholder's intent.

16 **702.309 Capture doctrine: disposition of ineffectively appointed**  
17 **property under general power.** To the extent a powerholder of a general power  
18 of appointment, other than a power to withdraw property from, revoke, or amend a  
19 trust, makes an ineffective appointment, all of the following apply:

20 (1) The gift-in-default clause controls the disposition of the ineffectively  
21 appointed property.

22 (2) (a) If there is no gift-in-default clause or to the extent the gift-in-default  
23 clause is ineffective, the ineffectively appointed property passes to one of the  
24 following:

25 1. If the powerholder is a permissible appointee and living, the powerholder.

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1           2. If the powerholder is an impermissible appointee or deceased, the  
2 powerholder's estate if the estate is a permissible appointee.

3           (b) If there is no taker under par. (a), the ineffectively appointed property  
4 passes under a reversionary interest to the donor or the donor's transferee or  
5 successor in interest.

6           **702.310 Disposition of unappointed property under released or**  
7 **unexercised general power.** To the extent a powerholder releases or fails to  
8 exercise a general power of appointment other than a power to withdraw property  
9 from, revoke, or amend a trust, all of the following apply:

10           (1) The gift-in-default clause controls the disposition of the unappointed  
11 property.

12           (2) (a) If there is no gift-in-default clause or to the extent the gift-in-default  
13 clause is ineffective, except as otherwise provided in par. (b), the unappointed  
14 property passes to any of the following:

15           1. If the powerholder is a permissible appointee and living, the powerholder.

16           2. If the powerholder is an impermissible appointee or deceased, the  
17 powerholder's estate if the estate is a permissible appointee.

18           (b) To the extent the powerholder released the power, or if there is no taker  
19 under par. (a), the unappointed property passes under a reversionary interest to the  
20 donor or the donor's transferee or successor in interest.

21           **702.311 Disposition of unappointed property under released or**  
22 **unexercised nongeneral power of appointment.** To the extent a powerholder  
23 releases, ineffectively exercises, or fails to exercise a nongeneral power of  
24 appointment, all of the following apply:

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1           (1) The gift-in-default clause controls the disposition of the unappointed  
2 property.

3           (2) (a) If there is no gift-in-default clause or to the extent the gift-in-default  
4 clause is ineffective, the unappointed property passes to the permissible appointees  
5 if all of the following apply:

6                 1. The permissible appointees are defined and limited.

7                 2. The terms of the instrument creating the power do not manifest a contrary  
8 intent.

9           (b) If there is no taker under par. (a), the unappointed property passes under  
10 a reversionary interest to the donor or the donor's transferee or successor in interest.

11           **702.312 Disposition of unappointed property if partial appointment to**  
12 **taker in default.** Unless the terms of an instrument creating or exercising a power  
13 of appointment manifest a contrary intent, if the powerholder makes a valid partial  
14 appointment to a taker in default of appointment, the taker in default of  
15 appointment may share fully in unappointed property.

16           **702.313 Appointment to taker in default.** If a powerholder makes an  
17 appointment to a taker in default of appointment and the appointee would have  
18 taken the property under a gift-in-default clause had the property not been  
19 appointed, the power of appointment is considered not to have been exercised and the  
20 appointee takes under the gift-in-default clause.

21           **702.314 Powerholder's authority to revoke or amend exercise.** A  
22 powerholder may revoke or amend an exercise of a power of appointment only to the  
23 extent that any of the following applies:

24                 (1) The powerholder reserves a power of revocation or amendment in the  
25 instrument exercising the power of appointment and, if the power is a nongeneral



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1 power of appointment, the terms of the instrument creating the power of  
2 appointment do not prohibit the reservation.

3 (2) The terms of the instrument creating the power of appointment provide that  
4 the exercise of the power of appointment is revocable or amendable.

5 **702.315 Presumption of nonexercise of a power of appointment. (1)**

6 A personal representative, trustee, or other fiduciary who holds property subject to  
7 a power of appointment may administer that property as if the power of appointment  
8 was not exercised if the personal representative, trustee, or other fiduciary has no  
9 notice of the existence of any of the following within 6 months after the death of the  
10 powerholder:

11 (a) A document purporting to be a will of the powerholder if the power of  
12 appointment is exercised by the will.

13 (b) Other documentation of the powerholder purporting to exercise the power  
14 of appointment if the power of appointment is exercisable other than by a will.

15 (2) A personal representative, trustee, or other fiduciary who acts in good faith  
16 is not liable to any person for administering property as if a power of appointment  
17 was not exercised as provided in sub. (1).

18 **SUBCHAPTER IV**

19 **DISCLAIMER OR RELEASE; CONTRACT**

20 **TO APPOINT OR NOT TO APPOINT**

21 **702.401 Disclaimer. (1)** A powerholder may disclaim all or part of a power  
22 of appointment as provided under ss. 700.27 and 854.13.

23 (2) A permissible appointee, appointee, or taker in default of appointment may  
24 disclaim all or part of an interest in appointive property, as provided under ss. 700.27  
25 and 854.13.

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1           **702.402 Authority to release.** A powerholder may release a power of  
2 appointment, in whole or in part, except to the extent the terms of the instrument  
3 creating the power prevent the release.

4           **702.403 Method of release.** A powerholder of a releasable power of  
5 appointment may release the power in whole or in part by any of the following  
6 methods:

7           (1) Substantial compliance with a method provided in the terms of the  
8 instrument creating the power.

9           (2) If the terms of the instrument creating the power do not provide a method,  
10 a writing that manifests the powerholder's intent by clear and convincing evidence.

11           **702.404 Revocation of amendment of release.** A powerholder may revoke  
12 or amend a release of a power of appointment only to the extent that any of the  
13 following applies:

14           (1) The instrument of release is revocable by the powerholder.

15           (2) The powerholder reserves a power of revocation or amendment in the  
16 instrument of release.

17           **702.405 Power to contract: presently exercisable power of**  
18 **appointment.** A powerholder of a presently exercisable power of appointment may  
19 contract to do any of the following:

20           (1) Not to exercise the power.

21           (2) To exercise the power if the contract when made does not confer a benefit  
22 on an impermissible appointee.

23           **702.406 Power to contract: power of appointment not presently**  
24 **exercisable.** A powerholder of a power of appointment that is not presently

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1 exercisable may contract to exercise or not to exercise the power only if all of the  
2 following apply:

3 (1) The powerholder is also the donor of the power.

4 (2) The powerholder reserved the power in a revocable trust.

5 **702.407 Remedy for breach of contract to appoint or not to appoint.**

6 The remedy for a powerholder's breach of a contract to appoint or not to appoint  
7 appointive property is limited to damages payable out of the appointive property or,  
8 if appropriate, specific performance of the contract.

9 SUBCHAPTER V

10 RIGHTS OF POWERHOLDER'S CREDITORS

11 IN APPOINTIVE PROPERTY

12 **702.501 Creditor claim: general power created by powerholder.** (1) In  
13 this section, "power of appointment created by the powerholder" includes a power of  
14 appointment created in a transfer by another person to the extent the powerholder  
15 contributed value to the transfer.

16 (2) Appointive property subject to a general power of appointment created by  
17 a powerholder is subject to a claim of a creditor of the powerholder or of the  
18 powerholder's estate to the extent provided in ch. 242 and any other applicable law  
19 relating to fraudulent conveyances.

20 (3) Subject to sub. (2), appointive property subject to a general power of  
21 appointment created by a powerholder is not subject to a claim of a creditor of the  
22 powerholder or the powerholder's estate to the extent the powerholder irrevocably  
23 appointed the property in favor of a person other than the powerholder or the  
24 powerholder's estate.

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1           (4) Subject to subs. (2) and (3), and notwithstanding the presence of a  
2 spendthrift provision or whether the claim arose before or after the creation of the  
3 power of appointment, appointive property subject to a general power of  
4 appointment created by a powerholder is subject to a claim of a creditor of any of the  
5 following:

6           (a) If the power of appointment is a presently exercisable power of  
7 appointment, the powerholder, to the same extent as if the powerholder owned the  
8 appointive property.

9           (b) If the power of appointment is exercisable at the powerholder's death, the  
10 powerholder's estate, to the extent the estate is insufficient to satisfy the claim and  
11 subject to the right of a decedent to direct the source from which liabilities are paid.

12           **702.502 Creditor claim: general power not created by powerholder. (1)**  
13 Except as otherwise provided in sub. (2), appointive property subject to a general  
14 power of appointment created by a person other than the powerholder is subject to  
15 a claim of a creditor of any of the following:

16           (a) If the power of appointment is a presently exercisable power of  
17 appointment, the powerholder to the extent the powerholder's property is  
18 insufficient.

19           (b) If the power of appointment is exercisable at the powerholder's death, the  
20 powerholder's estate or revocable trust, subject to the right of a decedent to direct the  
21 source from which liabilities are paid, but only to the extent of the powerholder's  
22 exercise of that general power of appointment and only to the extent that the claim  
23 of the creditor has been filed and allowed in the powerholder's estate or filed with and  
24 approved by the trustee of a revocable trust but not paid because the assets of the  
25 estate or revocable trust are insufficient. For purposes of this paragraph, a revocable

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1 trust is a trust that is revocable, as defined in s. 701.0103 (22), by the powerholder  
2 or jointly by the powerholder and the powerholder's spouse.

3 (2) Subject to s. 702.504 (3), a power of appointment created by a person other  
4 than the powerholder that is subject to an ascertainable standard relating to an  
5 individual's health, education, support, or maintenance within the meaning of 26  
6 USC 2041 (b) (1) (A) or 2514 (c) (1), is considered for purposes of this subchapter as  
7 a nongeneral power of appointment.

8 (3) If during the powerholder's lifetime, the powerholder exercises a general  
9 power of appointment created by a person other than the powerholder, a creditor of  
10 the powerholder can reach the appointed interests to the same extent that under the  
11 law relating to fraudulent conveyances the creditor could reach property that the  
12 powerholder has owned and transferred during the powerholder's lifetime.

13 **702.503 Power to withdraw.** (1) For purposes of this subchapter, and except  
14 as otherwise provided in sub. (2), a power to withdraw property from a trust is  
15 considered, during the time the power may be exercised, as a presently exercisable  
16 general power of appointment to the extent of the property subject to the power to  
17 withdraw.

18 (2) On the lapse, release, or waiver of a power to withdraw property from a  
19 trust, the power is treated as a presently exercisable general power of appointment  
20 only to the extent the value of the property affected by the lapse, release, or waiver  
21 exceeds the greater of the following:

22 (a) The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal  
23 Revenue Code.

24 (b) The amount referenced in section 2503 (b) of the Internal Revenue Code for  
25 each individual other than the beneficiary who makes a transfer to the trust or who

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1 is considered to make a transfer to the trust pursuant to an election to split gifts  
2 under section 2513 (a) of the Internal Revenue Code.

3 **702.504 Creditor claim: nongeneral power of appointment.** (1) Except  
4 as otherwise provided in subs. (2) and (3), appointive property subject to a  
5 nongeneral power of appointment is exempt from a claim of a creditor of the  
6 powerholder or the powerholder's estate.

7 (2) Appointive property subject to a nongeneral power of appointment is  
8 subject to a claim of a creditor of the powerholder or the powerholder's estate to the  
9 extent that the powerholder owned the property and, reserving the nongeneral  
10 power, transferred the property in violation of the law relating to fraudulent  
11 conveyances.

12 (3) For purposes of this subchapter, if the initial gift in default of appointment  
13 is to the powerholder or the powerholder's estate, a nongeneral power of appointment  
14 is treated as a general power of appointment.

15 **702.505. Third parties in good faith protected.** Any person acting without  
16 actual notice of claims of creditors under this subchapter incurs no liability to those  
17 creditors for transferring property that is subject to a power of appointment or that  
18 has been appointed. A purchaser without actual notice and for a valuable  
19 consideration takes an interest in property, legal or equitable, and takes the interest  
20 free of any rights that a powerholder's creditor may have under this subchapter.

## 21 SUBCHAPTER VI

### 22 MISCELLANEOUS PROVISIONS

23 **702.601 Recording instruments relating to a power of appointment.** (1)  
24 Each of the following instruments relating to a power of appointment is entitled to  
25 be recorded as a conveyance upon compliance with s. 706.05 (1):

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1 (a) An instrument, other than a will, exercising a power of appointment.

2 (b) An instrument expressing consent to exercise a power of appointment.

3 (c) A disclaimer.

4 (d) A release.

5 **(2)** If a power of appointment is exercised by a will, a certified copy of the will  
6 and of the certificate of probate thereof may be recorded.

7 **702.602 Uniformity of application and construction.** In applying and  
8 construing this section, consideration shall be given to the need to promote  
9 uniformity of the law with respect to its subject matter among states that enact it.

10 **702.603 Relation to electronic signatures in global and national**  
11 **commerce act. (1)** Except as provided in sub. (2), this chapter modifies, limits, and  
12 supersedes the federal Electronic Signatures in Global and National Commerce Act,  
13 15 USC 7001, et seq.

14 **(2)** This chapter does not modify, limit, or supersede 15 USC 7001 (c) or  
15 authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

16 **702.604 Applicability. (1)** (a) This chapter applies to a power of appointment  
17 created before, on, or after the effective date of this paragraph .... [LRB inserts date].

18 (b) This chapter applies to a judicial proceeding concerning a power of  
19 appointment commenced on or after the effective date of this paragraph .... [LRB  
20 inserts date].

21 (c) This chapter applies to a judicial proceeding concerning a power of  
22 appointment commenced before the effective date of this paragraph .... [LRB inserts  
23 date], unless the court finds that application of a particular provision of this chapter  
24 would interfere substantially with the effective conduct of the judicial proceeding or

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1 prejudice a right of a party, in which case the particular provision of this chapter does  
2 not apply and the superseded law applies.

3 (d) A rule of construction or presumption in this chapter applies to an  
4 instrument executed before the effective date of this paragraph .... [LRB inserts  
5 date], unless there is a clear indication of a contrary intent in the terms of the  
6 instrument.

7 (e) Except as otherwise provided in pars. (a) to (d), this chapter does not apply  
8 to an action taken before the effective date of this paragraph .... [LRB inserts date].

9 **(2)** If a right is acquired, extinguished, or barred on the expiration of a  
10 prescribed period that commenced under a law of this state other than this chapter  
11 before the effective date of this subsection .... [LRB inserts date], the law continues  
12 to apply to the right.

13 **SECTION 119.** 711.03 (4m) of the statutes is created to read:

14 711.03 (4m) "Consent instrument" means a written notarized document in  
15 physical or electronic form evidencing the user's consent to the disclosure of the  
16 contents of electronic communications to a then acting fiduciary.

17 **SECTION 120.** 711.04 (1) of the statutes is renumbered 711.04 (1) (intro.) and  
18 amended to read:

19 711.04 (1) (intro.) A user may use an online tool to direct the custodian to  
20 disclose or not disclose to a designated recipient ~~or not to disclose~~ some or all of the  
21 user's digital property, including the content of electronic communications. If the  
22 online tool allows the user to modify or delete a direction at all times, a direction  
23 regarding disclosure using an online tool overrides a contrary direction by the user  
24 in ~~a~~ any of the following:

25 (a) A will, trust, ~~power of attorney,~~ or any other governing instrument.



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1           **SECTION 121.** 711.04 (1) (b) of the statutes is created to read:

2           711.04 (1) (b) A power of attorney.

3           **SECTION 122.** 711.04 (1) (c) of the statutes is created to read:

4           711.04 (1) (c) A consent instrument.

5           **SECTION 123.** 711.04 (1) (d) of the statutes is created to read:

6           711.04 (1) (d) Any other record.

7           **SECTION 124.** 711.04 (2) of the statutes is amended to read:

8           711.04 (2) If a user has not used an online tool to give direction under sub. (1),  
9           or if the custodian has not provided an online tool, the user may allow or prohibit  
10          disclosure to a fiduciary of some or all of the user's digital property, including the  
11          content of electronic communications sent or received by the user, in a will, trust, any  
12          other governing instrument, power of attorney, or ~~any other governing consent~~  
13          instrument.

14          **SECTION 125.** 711.05 (2) (b) of the statutes is amended to read:

15          711.05 (2) (b) Unless the user provided direction using an online tool, a copy  
16          of the user's will, certification of trust under s. 701.1013, ~~or~~ other governing  
17          instrument, or consent instrument evidencing the deceased user's consent to  
18          disclosure of the content of electronic communications.

19          **SECTION 126.** 711.06 (2) (intro.) of the statutes is amended to read:

20          711.06 (2) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; PRINCIPAL.  
21          (intro.) To the extent a power of attorney expressly grants an agent authority over  
22          the content of electronic communications sent or received by the principal, or to the  
23          extent a consent instrument expressly consents to the disclosure to the agent the  
24          content of electronic communications sent or received by the principal, and unless  
25          directed otherwise by the principal or the court, a custodian shall grant an agent

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1 authority over the content of electronic communications or disclose to the agent the  
2 content of electronic communications if the agent gives the custodian all of the  
3 following:

4 **SECTION 127.** 711.06 (2) (b) of the statutes is amended to read:

5 711.06 (2) (b) An original or a copy of the power of attorney that expressly  
6 grants the agent authority over the content of electronic communications of the  
7 principal or the consent instrument that expressly grants consent to disclosure to the  
8 agent of the content of electronic communications of the principal.

9 **SECTION 128.** 711.07 (3) (b) of the statutes is amended to read:

10 711.07 (3) (b) A consent instrument or certification of the trust under s.  
11 701.1013 that includes an original or successor user's consent to disclosure of the  
12 content of electronic communications to the trustee.

13 **SECTION 129.** 711.13 of the statutes is amended to read:

14 **711.13 Marital property classification of digital property.** ~~Chapter 766~~  
15 Section 766.625 governs the classification of digital property of a ~~user who is~~ married  
16 person.

17 **SECTION 130.** 766.01 (9) (a) of the statutes is amended to read:

18 766.01 (9) (a) Except as provided in pars. (b) to ~~(d)~~ (f), property is "held" by a  
19 person only if a document of title to the property is registered, recorded, or filed in  
20 a public office in the name of the person or a writing that customarily operates as a  
21 document of title to the type of property is issued for the property in the person's  
22 name.

23 **SECTION 131.** 766.01 (9) (e) of the statutes is created to read:

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1           766.01 (9) (e) 1. An account, as defined in s. 711.03 (1), and the digital property  
2           in the account, including the content of an electronic communication, as defined in  
3           s. 711.03 (6), are “held” by a person who is the user, as defined in s. 711.03 (28).

4           2. The catalogue of electronic communications, as defined in s. 711.03 (4), or  
5           similar identifying information for digital property in an account, is “held” by a  
6           person who holds such digital property, including the content of such electronic  
7           communications, under subd. 1.

8           3. For purposes of subds. 1. and 2., “person” has the meaning given under s.  
9           711.03 (19).

10          **SECTION 132.** 766.01 (9) (f) of the statutes is created to read:

11          766.01 (9) (f) A right or interest in digital property, not titled in the name of  
12          either spouse, that has been identified as having been originally created, purchased,  
13          or otherwise acquired by a spouse is “held” by that spouse.

14          **SECTION 133.** 766.31 (7) (b) of the statutes is amended to read:

15          766.31 (7) (b) In Except as provided in s. 766.625 (2) (b) 1., in exchange for or  
16          with the proceeds of other individual property of the spouse.

17          **SECTION 134.** 766.31 (7) (g) of the statutes is created to read:

18          766.31 (7) (g) By classification under s. 766.625 (2), designating an account and  
19          the digital property in an account, including the content of electronic  
20          communications, as defined in s. 711.03 (6), as the individual property of the holding  
21          spouse.

22          **SECTION 135.** 766.58 (7) (c) of the statutes is created to read:

23          766.58 (7) (c) Unless the marital property agreement expressly provides  
24          otherwise, a marital property agreement that classifies digital property as marital  
25          property does not affect the operation of s. 766.625 (2).

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1           **SECTION 136.** 766.58 (13) (b) of the statutes is renumbered 766.58 (13) (b) 1. and  
2 amended to read:

3           766.58 **(13)** (b) 1. After the death of a spouse, if an estate administration  
4 proceeding is filed, no action concerning a marital property agreement may be  
5 brought later than 6 months after the inventory is filed under s. 858.01. If an  
6 amended inventory is filed, the action may be brought within 6 months after the  
7 filing of the amended inventory if the action relates to information contained in the  
8 amended inventory that was not contained in a previous inventory.

9           **SECTION 137.** 766.58 (13) (b) 2. and 3. of the statutes are created to read:

10          766.58 **(13)** (b) 2. After the death of a spouse, if no estate administration  
11 proceeding is filed, no action concerning a marital property agreement may be  
12 brought later than 8 months after the death of the spouse.

13          3. If an action concerning a marital property agreement is barred under subd.  
14 2. and an estate administration proceeding is thereafter commenced, any judgment  
15 in an action concerning a marital property agreement not barred under subd. 1. may  
16 be recovered only from the estate of the deceased spouse.

17          **SECTION 138.** 766.58 (13) (c) of the statutes is amended to read:

18          766.58 **(13)** (c) The court may extend the 6-month period under par. (b) 1, for  
19 cause if a motion for extension is made within the applicable 6-month period.

20          **SECTION 139.** 766.59 (1) of the statutes is amended to read:

21          766.59 **(1)** ~~A~~ Except as provided in s. 766.625 (2) (b) 2., a spouse may  
22 unilaterally execute a written statement which classifies the income attributable to  
23 all or certain of that spouse's property other than marital property as individual  
24 property.

25          **SECTION 140.** 766.625 of the statutes is created to read:

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1           **766.625 Classification of digital property, including the content of**  
2           **electronic communications. (1) GENERAL.** Except as otherwise determined  
3           under sub. (2), classification of digital property, including the content of electronic  
4           communications, is determined under s. 766.31.

5           **(2) EXCEPTIONS. (a) *Digital property in an account.*** An account and the digital  
6           property held in an account, as defined in s. 766.01 (9) (e), including the content of  
7           electronic communications, as defined in s. 711.03 (6), not otherwise classified as  
8           individual property under s. 766.31 (6) and (7) (a) to (d), is classified as the individual  
9           property of the holding spouse, regardless of the classification of property used to  
10          create, purchase, or otherwise acquire the account and digital property held in the  
11          account, unless the nonholding spouse can prove that any of the following apply:

12           1. ‘Creation.’ The account or the digital property in the account was not  
13          originally created, purchased, or otherwise acquired exclusively for the personal,  
14          noneconomic purposes of the holding spouse.

15           2. ‘Use.’ The account or the digital property in the account has at any time been  
16          used for purposes other than the personal, noneconomic purposes of the holding  
17          spouse.

18           (b) *Exchanges; income.* Notwithstanding par. (a), with respect to an account  
19          and the digital property held in the account, as defined in s. 766.01 (9) (e), including  
20          the content of electronic communications, as defined in s. 711.03 (6), classified as  
21          individual property solely by reason of par. (a), all of the following apply:

22           1. ‘Exchanges; Proceeds.’ Section 766.31 (7) (b) does not apply, and in the event  
23          of a sale, exchange, or other disposition, property received in exchange for such  
24          account, or the digital property in the account, is classified as marital property.

**SENATE BILL 759****SECTION 140**

1           2. ‘Income.’ Section 766.59 does not apply, and income during marriage and  
2 after the determination date attributable to the account, or the digital property in  
3 the account, is classified as marital property.

4           **SECTION 141.** 766.63 (1) of the statutes is amended to read:

5           766.63 (1) Except as provided otherwise in ss. 766.61 ~~and~~, 766.62, and 766.625  
6 (2), mixing marital property with property other than marital property reclassifies  
7 the other property to marital property unless the component of the mixed property  
8 which is not marital property can be traced.

9           **SECTION 142.** 766.70 (3) (dm) of the statutes is created to read:

10           766.70 (3) (dm) An interest in a digital property account, as defined in s. 711.03  
11 (1).

12           **SECTION 143.** 814.66 (1) (o) of the statutes is created to read:

13           814.66 (1) (o) For filing a petition to commence a judicial proceeding under ch.  
14 701, \$250.

15           **SECTION 144.** 851.21 (2) (e) of the statutes is amended to read:

16           851.21 (2) (e) A beneficiary of a trust created under documents offered for  
17 probate as the will of the decedent upon the admission of the decedent’s will to  
18 probate and the issuance of letters of trust to court’s appointment of the trustee.

19           **SECTION 145.** 854.13 (1) (c) of the statutes is amended to read:

20           854.13 (1) (c) “Power of appointment” has the meaning given in s. 702.02 ~~(6)~~  
21 702.102 (14).

22           **SECTION 146.** 856.29 of the statutes is amended to read:

23           ~~856.29 Letters issued to trustee~~ **Appointment of testamentary trust**  
24 **trustee.** If the will of the decedent provides for a testamentary trust, letters of trust  
25 ~~shall be issued to~~ the court shall appoint the trustee upon admission of the will to

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1 probate at the same time that letters are granted to the personal representative,  
2 unless the court otherwise directs. ~~Upon issuance of letters of trust, the~~ The trustee  
3 so appointed shall continue to be interested in the estate, and beneficiaries in the  
4 testamentary trust shall cease to be interested in the estate except under s. 851.21  
5 (3). Letters of trust shall not be required to evidence the authority of a testamentary  
6 trustee and a certification of trust under s. 701.1013 shall be sufficient evidence of  
7 such authority. This section shall apply to wills admitted to informal probate and  
8 letters issued in informal administrations.

9 **SECTION 147.** 859.02 (3) of the statutes is amended to read:

10 859.02 (3) Failure of a claimant timely to file a claim against a decedent's estate  
11 does not bar the claimant from satisfying the claim not otherwise barred from  
12 property other than the decedent's estate.

13 **SECTION 148.** 865.08 (6) of the statutes is amended to read:

14 865.08 (6) If the will of the decedent provides for a testamentary trust, letters  
15 of trust shall be issued by the probate registrar to ~~shall appoint~~ shall appoint the trustee upon  
16 admission of the will to informal probate at the same time that letters are granted  
17 to the personal representative. Letters of trust shall not be required to evidence the  
18 authority of the appointed trustee and a certification of trust under s. 701.1013 shall  
19 be sufficient evidence of such authority. The probate registrar shall determine if  
20 bond shall be required and, if so, the amount thereof, and for such purpose the  
21 probate registrar shall have the authority granted to the court by, and shall proceed  
22 pursuant to s. 701.0702. Thereafter, the trustee shall continue to be interested in the  
23 estate, and beneficiaries of the testamentary trust shall cease to be interested in the  
24 estate except under s. 851.21 (3). The administration of the trust shall be  
25 administered under supervision of the court under governed by ch. 701.

