

1 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
2 protector.

3 11. Appoint a directing party of the 2nd trust and define the powers of the
4 directing party.

5 12. Change the principal place of administration of the first trust.

6 13. Change the governing law of the first trust.

7 14. Allow for the division of the first trust into 2 or more trusts.

8 15. Allow for the merger of the first trust with one or more trusts.

9 16. Add or modify an exculpatory provision for a trustee, trust protector, or
10 directing party.

11 17. Obtain desirable tax treatment, as determined by the trustee of the first
12 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
13 trust, including provisions relating to grantor trust status under sections 671 to 679
14 of the Internal Revenue Code.

 ****NOTE: It is a LRB drafting convention not to use “et seq.” Please confirm that
I have included the correct range of sections of the IRC. Also, the adjectives “desirable”
and “adverse” are subjective, especially if the sentence does not say to whom the tax
treatment is supposed to be desirable or adverse. Is it possible that a tax treatment could
be desirable to one interested party and adverse to another? I assumed it would be up
to the trustee of the first trust to determine whether a tax treatment was desirable or
adverse. Please let me know if this does not reflect your intent.

15 (b) Notwithstanding par. (a), the trust instrument of the 2nd trust may include
16 terms that are intended to do any of the following only if the trustee of the first trust
17 has the absolute power to invade income and principal:

18 1. Modify the terms of the first trust governing the invasion of income and
19 principal.

 ****NOTE: Would it be accurate to say “modify the terms governing the trustee’s
power to invade income and principal?”

20 2. Grant, eliminate, or modify a general or special powers of appointment.

1 (c) 1. Notwithstanding par. (a), the trust instrument of the 2nd trust may
 2 include terms that are intended to change terms of the first trust that are applicable
 3 to a beneficiary who is an individual with a disability only if the purpose of the change
 4 is to allow the beneficiary to qualify or continue to be qualified to receive benefits
 5 under a government program.

****NOTE: Did you intentionally use "government program" here to refer to more than Medical Assistance? The definition for a "trust for an individual with a disability" is limited to a trust the assets of which are not counted for purposes of Medical Assistance. As you can see, I modified standards with "specific or ascertainable." This change incorporates the definition of ascertainable standard from s. 701.0301.

6 2. Subdivision 1. applies regardless of whether the first trust includes specific
 7 or ascertainable standards for distribution.

8 (d) Notwithstanding par. (a), the trust instrument of the 2nd trust may include
 9 terms that are intended to change a provision governing the administration of the
 10 first trust only if the trustee of the first trust believes it will provide for more effective
 11 and efficient administration of the trust.

12 (e) Notwithstanding par. (a), unless the appointment of assets to a 2nd trust,
 13 is approved by the court, the trust instrument of the 2nd trust may include a term
 14 that would reduce the potential liability of a trustee, including a term that adopts
 15 or expands an exculpatory provision relating to the trustee, only if the trustee of the
 16 first trust who would benefit from the adoption of the term in the 2nd trust abstains
 17 from the consideration and the adoption of the term. The term may be considered
 18 and adopted by other trustees of the first trust, if any, who would not benefit from
 19 such term.

****NOTE: I do not think the 2nd sentence is necessary. As the first sentence only applies to a trustee who would benefit from the term.

20 (5) PROCEDURAL MATTERS. (a) The trustee shall appoint assets to a 2nd trust,
 21 as described in sub. (2), by an instrument in writing that is signed and acknowledged

1 by the trustee and shall include the written instrument with the records of the first
2 trust. A trustee may appoint assets to a 2nd trust, as described in sub. (2), upon
3 notice, without court approval, under the procedure described in par. (b), or with
4 court approval, under the procedure described in par. (c).

5 (b) 1. If the trustee chooses to proceed without a court order, the trustee shall
6 give notice of the manner in which the trustee intends to appoint assets to a 2nd
7 trust, as described in sub. (2), to all of the following:

- 8 a. The qualified beneficiaries of the first trust.
- 9 b. Any trust protector appointed under the terms of the first trust.
- 10 c. Any directing party appointed under the terms of the first trust.
- 11 d. The settlor of the first trust, if living.

12 2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall
13 provide each person entitled to receive notice under subd. 1. all of the following:

- 14 a. A copy of the proposed written instrument under which the trustee will
15 appoint assets to a 2nd trust.
- 16 b. The proposed effective date of the appointment.
- 17 c. A copy of the trust instrument of the first trust.
- 18 d. A copy of the trust instrument of the 2nd trust.

19 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
20 trustee provides notice as required under this paragraph unless every person who
21 is entitled to receive notice under subd. 1. waives the 30-day notice period by
22 delivering a signed written instrument to the trustee. A person's waiver of the
23 30-day notice period does not constitute that person's consent to the trustee's
24 appointment of assets to a 2nd trust.

1 4. If a person entitled to receive notice under subd. 1. delivers a written
 2 objection to the trustee before the effective date of the appointment of assets to a 2nd
 3 trust, the trustee may not appoint the assets to a 2nd trust, as specified in the
 4 trustee’s notice, without obtaining court approval under par. (c).

 ****NOTE: I removed the sentence about a trustee’s notice having the same effect
 as a court order. It was not clear what “notice” would have the effect of a court order.
 Second, how would anyone put in a position to accept the “notice” know if anyone had
 delivered a written objection to the trustee? Please let me know if I am missing the
 purpose of that sentence. Put another way, please let me know in what situations, if any,
 the notice would be relied on as a court order. Also, please confirm that the changes I
 made to this paragraph are consistent with your intent.

5 (c) 1. If a trustee chooses to proceed with court approval, including after
 6 receiving a written objection to a proposed appointment of assets, the trustee shall
 7 petition a court to approve a proposed appointment of assets to a 2nd trust, as
 8 described in sub. (2). The trustee shall provide notice of the petition to all qualified
 9 beneficiaries of the first trust, any trust protector appointed under the first trust and
 10 any directing party appointed under the first trust and to the settlor of the first trust,
 11 if living. The trustee shall include in the notice of the petition the proposed effective
 12 date of the appointment of assets to a 2nd trust and the manner in which the trustee
 13 intends to appoint the assets to a 2nd trust. The trustee shall also provide a copy of
 14 the proposed instrument under which the trustee will appoint assets to a 2nd trust,
 15 the proposed effective date of the appointment, a copy of the trust instrument of the
 16 first trust, and a copy of the trust instrument of the 2nd trust to each person who is
 17 entitled to receive notice under this paragraph.

 ****NOTE: Does “the manner in which the trustee intends to appoint the assets to
 a 2nd trust” make sense in this context?

18 2. If a person who is entitled to receive notice under subd. 1. files an objection
 19 with the court, in determining whether to grant or deny a petition under subd. 1., the
 20 court shall consider all of the following:

1 a. The purpose of the proposed appointment of assets under sub. (2).

2 b. The reasons for any objection made by a beneficiary.

***NOTE: Should this be expanded to the reasons for any objection made by an
person entitled to receive notice under subd. 1.?

3 c. Changes in circumstances that have occurred since the creation of the first
4 trust.

5 d. Whether the appointment of assets under sub. (2) complies with the
6 requirements of this section.

7 3. If no person who is entitled to receive notice under subd. 1. files an objection
8 with the court, the court shall enter an order approving the appointment of assets
9 under sub. (2) as set forth in the trustee's notice unless the court determines that the
10 appointment of assets does not comply with the requirements of this section.

11 (6) SUBSEQUENTLY DISCOVERED ASSETS. (a) The appointment of all of the assets
12 comprising the first trust in favor of the trustee of the 2nd trust includes
13 subsequently discovered assets otherwise belonging to the first trust and assets paid
14 to or acquired by the first trust subsequent to the appointment in favor of the 2nd
15 trust.

16 (b) Except as otherwise provided by the trustee of the first trust, the
17 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
18 does not include subsequently discovered assets belonging to the first trust and
19 assets paid to or acquired by the first trust subsequent to the appointment in favor
20 of the 2nd trust. Subsequently discovered assets belonging to the first trust and
21 assets paid to or acquired by the first trust subsequent to the appointment in favor
22 of the 2nd trust remain the assets of the first trust.

1 (7) LIABILITY. (a) This section does not create or imply a duty on a trustee to
2 appoint assets to a 2nd trust, as described in sub. (2), and a trustee that does not
3 appoint assets to a 2nd trust, as described in sub. (2), is not liable for the failure to
4 do so.

5 (b) A trustee who appoints assets to a 2nd trust, as described in sub. (2), is not
6 liable to any beneficiary for any loss related to the appointment unless the trustee
7 did not appoint the assets to a 2nd trust, as described in sub. (2), in good faith.

8 (8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust,
9 as described in sub. (2), is considered to be the exercise of a special power of
10 appointment.

 ****NOTE: What is the purpose of this paragraph? Would it make more sense to
include the appointment of assets under sub. (2) in a definition of “special power of
appointment” somewhere? For example, you could create a definition of special power of
appointment in s. 701.0103 that cross-references the definition in ch. 702 and that
includes a reference to this section.

11 (b) A trustee may appoint assets to a 2nd trust, as described in sub. (2), even
12 if the first trust includes a spendthrift clause or a provision that prohibits
13 amendment or revocation of the trust.

 ****NOTE: What is the basis for the argument that a spendthrift clause or a
provision that prohibits amendment or revocation would prevent the appointment of
assets under sub. (2)? It is not clear to me why this paragraph is included.

14 (c) This section does not limit any trustee who has a power to invade principal
15 to appoint property in further trust to the extent such power arises under the terms
16 of the first trust or under any other section of this chapter or under another provision
17 of law or under common law.

 ****NOTE: What does “to appoint property in further trust” mean?

18 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
19 cotrustee who does not have a beneficial interest in the first trust from appointing
20 assets to a 2nd trust, as described in sub. (2), even if the terms of the first trust,

1 applicable law, or other circumstances would otherwise require the majority or
2 unanimous action of the trustees of the first trust.

3 (e) For purposes of this section, if beneficiaries of a first trust are defined as a
4 class of persons, the class shall include any person who falls within the class of
5 persons after the trustee appoints assets to the 2nd trust.

6 SECTION 52. 701.05 of the statutes is repealed.

7 **CHAPTER 701**

8 **SUBCHAPTER V**

9 **CREDITOR'S CLAIMS; SPENDTHRIFT**

10 **AND DISCRETIONARY TRUSTS**

11 **SECTION 53.** Subchapter V (title) of chapter 701 [precedes 701.0501] of the
12 statutes is created to read:

13 **SECTION 54.** 701.0501 of the statutes is created to read:

14 **701.0501 Article V, Section 501 — Rights of beneficiary's creditor or**
15 **assignee.** (1) (a) To the extent a beneficiary's interest is not protected by a
16 spendthrift provision, the court may authorize a judgment creditor or an assignee of
17 the beneficiary to reach the beneficiary's interest by attachment of present or future
18 distributions to or for the benefit of the beneficiary or other means. The court may
19 limit the award to such relief as is appropriate under the circumstances.

20 (b) This subsection does not apply to a trust for an individual with a disability.

****NOTE: In accordance with LRB drafting rules, I altered this paragraph to avoid
a false imperative. This paragraph does not direct someone to do something, rather it is
a statement of law. I made a similar change in sub. (2).

21 (2) A trustee is not liable to any creditor of a beneficiary for any distributions
22 made to or for the benefit of the beneficiary if any of the following applies:

23 (a) The beneficiary's interest is protected by a spendthrift provision.

1 (b) The trust is a trust for an individual with a disability.

2 SECTION 55. 701.0502 of the statutes is created to read:

3 701.0502 Article V, Section 502 — Spendthrift provision. (1) A
4 spendthrift provision is valid only if all of the following apply:

5 (a) The provision restrains either a voluntary or an involuntary transfer, or
6 both, of a beneficiary's interest.

****NOTE: When you replace "spendthrift provision" with its definition, this provision reads "A term of a trust that restrains either or both of a voluntary or involuntary transfer of a beneficiary's interest is valid only if [all of the following apply: (a) the provision restrains either a voluntary or an involuntary transfer, or both, of a beneficiary's interest." When the term is replaced with its definition the redundancy of par. (a) becomes obvious. Your note indicated that you wanted to keep this language in order to emphasize that either approach is valid. Is it possible to emphasize this new aspect of the law in a different way?

7 (b) One of the following applies:

8 1. The beneficiary is other than the settlor.

9 2. The trust is a trust for an individual with a disability.

10 (2) Subject to sub. (1), a term of a trust providing that the interest of a
11 beneficiary is held subject to a spendthrift trust, or words of similar import, restrains
12 both a voluntary and involuntary transfer of the beneficiary's interest.

13 (3) A beneficiary may not transfer an interest in a trust in violation of a valid
14 spendthrift provision and, except as otherwise provided in this subchapter, a creditor
15 or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach
16 the interest or a distribution by the trustee before its receipt by the beneficiary.

17 (4) Real property or tangible personal property that is owned by the trust but
18 that is made available for a beneficiary's occupancy or use in accordance with the
19 trustee's authority under the trust instrument may not be considered to have been
20 distributed by the trustee or received by the beneficiary for purposes of allowing a
21 creditor or assignee of the beneficiary to reach the property.

1 **SECTION 56.** 701.0503 of the statutes is created to read:

2 **701.0503 Article V, Section 503 — Exceptions to spendthrift provision.**

3 **(1) CLAIMS FOR CHILD SUPPORT.** Notwithstanding s. 701.0502, upon application of a
4 person having a valid order directing a beneficiary to make payment for support of
5 the beneficiary's child, a court may do any of the following:

 ****NOTE: I removed "any provision in the trust instrument" from subs. (1) and (2).
 In light of s. 701.0105 (2) (e), the language is unnecessary. Additionally, it may create an
 ambiguity as to whether s. 701.0105 (2) (e) applies to provisions that do not include the
 notwithstanding phase.

6 (a) If the beneficiary is entitled to receive income or principal under the trust,
7 order the trustee to satisfy part or all of the claim out of part or all of the payments
8 of income or principal as they are due, presently or in the future.

9 (b) If the beneficiary may receive income or principal under the trust, order the
10 trustee to satisfy part or all of the claim out of part or all of any future payments of
11 income or principal that are made pursuant to the exercise of the trustee's discretion
12 in favor of the beneficiary.

 ****NOTE: The intent of this paragraph may be more clear if the introductory phrase
 said something like "If, under the terms of the trust, the beneficiary may receive income
 or principal in the trustee's discretion, ..." I recommend a similar change to sub. (2). As
 written, both pars. (a) and (b) could apply to a beneficiary of a nondiscretionary
 distribution because a beneficiary who is entitled to a distribution also "may" receive the
 distribution.

13 **(2) CLAIMS FOR PUBLIC SUPPORT.** Notwithstanding s. 701.0502, and except as
14 provided in sub. (3), if the settlor is legally obligated to pay for the public support of
15 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
16 to pay for the beneficiary's public support or for support furnished to the beneficiary's
17 spouse or minor child under s. 46.10, 49.345, or 301.12, upon application by the
18 appropriate state department or county official, a court may do any of the following:

1 (a) If the beneficiary is entitled to receive income or principal under the trust,
2 order the trustee to satisfy part or all of the liability out of part or all of the payments
3 of income or principal as they are due, presently or in the future.

4 (b) 1. Except as provided in subd. 2., if the beneficiary may receive income or
5 principal under the trust, order the trustee to satisfy part or all of the liability out
6 of part or all of any future payments of income or principal that are made pursuant
7 to the exercise of the trustee's discretion in favor of the beneficiary.

8 2. In the case of a beneficiary who may receive income or principal of the trust
9 and who is a settlor or a spouse or minor child of the settlor, order the trustee to
10 satisfy part or all of the liability without regard to whether the trustee has then
11 exercised or may thereafter exercise the trustee's discretion in favor of the
12 beneficiary.

13 (3) TRUST FOR AN INDIVIDUAL WITH A DISABILITY. Subsection (2) does not apply to
14 any trust for an individual with a disability.

15 (4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by a court
16 under sub. (1) or (2) may be modified upon application of an interested person.

17 (5) EXEMPT ASSETS. Assets of a trust that are exempt from claims of creditors
18 under other statutes are not subject to sub. (1) or (2).

****NOTE: I altered this subsection to avoid a false imperative. This is a statement
of law.

19 SECTION 57. 701.0504 of the statutes is created to read:

20 **701.0504 Article V, Section 504 — Discretionary trusts; effect of**
21 **standard.** (1) For purposes of this subchapter, and except as provided in sub. (3),
22 a beneficiary's interest in a trust that is subject to the trustee's discretion does not
23 constitute an interest in property or an enforceable right even if the discretion is

1 expressed in the form of a standard of distribution or the beneficiary is then serving
2 as sole trustee or cotrustee.

3 (2) Except as provided in this subchapter, a creditor or other claimant may not
4 attach present or future distributions from such an interest in property or an
5 enforceable right, obtain an order from a court forcing the judicial sale of the interest
6 or compelling the trustee to make distributions, or reach the interest or right by any
7 other means, even if the trustee has abused the trustee's discretion.

8 (3) Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee
9 of a trust for his or her benefit and his or her discretion to make distributions to
10 himself or herself is not limited by an ascertainable standard or the consent of a party
11 holding an adverse interest to the beneficiary.

****NOTE: I changed "shall" to "do" to avoid the false imperative. This is a statement
of law.

12 (4) (a) Except as provided in par. (b), this section does not limit the right of a
13 beneficiary to maintain a judicial proceeding against a trustee for an abuse of
14 discretion or failure to comply with a standard for distribution.

15 (b) The right of a beneficiary described in par. (a) may not be exercised by a
16 creditor.

17 **SECTION 58.** 701.0505 of the statutes is created to read:

18 **701.0505 Article V, Section 505 — Creditor's claim against settlor. (1)**

19 (a) Whether or not the terms of a trust include a spendthrift provision and except
20 as provided in par. (b), the following rules apply to claims of a settlor's creditors:

21 1. During the lifetime of the settlor, the property of a revocable trust is subject
22 to claims of the settlor's creditors.

1 2. With respect to an irrevocable trust that is not a trust for an individual with
2 a disability, upon application of a judgment creditor of the settlor, the court may, if
3 the trust instrument requires or authorizes the trustee to make payments of income
4 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
5 out of part or all of the payments of income or principal as they are due, presently
6 or in the future, or which are payable in the trustee's discretion. If a trust has more
7 than one settlor, the amount the judgment creditor of a particular settlor may reach
8 may not exceed the settlor's interest in the trust.

9 3. After the death of a settlor, and subject to the settlor's right to direct the
10 source from which liabilities will be paid, the property of a trust that was revocable
11 at the settlor's death is subject to claims of the settlor's creditors, costs of
12 administration of the settlor's estate, the expenses of the settlor's funeral and
13 disposal of remains, and statutory allowances to a surviving spouse and children to
14 the extent the settlor's probate estate is inadequate to satisfy those claims, costs,
15 expenses, and allowances.

16 (b) Assets of a trust that are exempt from claims of creditors under other
17 statutes are not subject to par. (a).

****NOTE: I modified this paragraph to be consistent with s. 701.0503 (5).

18 (2) For purposes of this section, all of the following apply:

19 (a) During the period the power may be exercised, the holder of a power of
20 withdrawal is treated in the same manner as the settlor of a revocable trust to the
21 extent of the property subject to the power.

22 (b) A beneficiary of a trust may not be considered a settlor solely because of a
23 lapse, waiver, or release of any of the following:

****NOTE: It appears that you have moved existing s. 701.06 (6) (b) and (c) to this
paragraph. Under current law, s. 701.06 (6) applies to the entire section, including

whether a beneficiary is a settlor for purposes of s. 701.06 (1) and (2). Please note that because these paragraphs follow the introductory language of s. 701.0505 (2), this language only applies to s. 701.0505 and will not apply to s. 701.0502 (1) (b) 1. Is this consistent with your intent?

- 1 1. A power described under par. (c).
- 2 2. The beneficiary's right to withdraw part of the trust property, to the extent
- 3 the value of the property affected by the lapse, waiver, or release in any year does not
- 4 exceed the greater of the following:
 - 5 a. The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal
 - 6 Revenue Code.
 - 7 b. The amount referenced in section 2503 (b) of the Internal Revenue Code for
 - 8 each individual other than the beneficiary who makes a transfer to the trust or who
 - 9 is deemed to make a transfer to the trust pursuant to an election to split gifts under
 - 10 section 2513 (a) of the Internal Revenue Code.
 - 11 (c) A beneficiary of a trust is not a settlor, has not made a voluntary or
 - 12 involuntary transfer of the beneficiary's interest in the trust, and does not have the
 - 13 power to make a voluntary or involuntary transfer of the beneficiary's interest in the
 - 14 trust solely because the beneficiary holds, exercises, or allows in any capacity, any
 - 15 of the following:
 - 16 1. A presently exercisable power to consume, invade, appropriate, or distribute
 - 17 property to or for the benefit of the beneficiary if the power is any of the following:
 - 18 a. Exercisable only with the consent of another person holding an interest
 - 19 adverse to the beneficiary's interest.
 - 20 b. Limited by an ascertainable standard of the beneficiary.
 - 21 2. A presently exercisable power to appoint any property of the trust to or for
 - 22 the benefit of a person other than the beneficiary, a creditor of the beneficiary, the
 - 23 beneficiary's estate, or a creditor of the beneficiary's estate.

- 1 3. A testamentary power of appointment.
- 2 4. A presently exercisable right described in sub. (2) (b).
- 3 (d) A beneficiary of a trust is not a settlor solely because the beneficiary is
- 4 entitled to nondiscretionary distributions from the trust.
- 5 (e) 1. Amounts and property contributed to the following trusts are not
- 6 considered to have been contributed by the settlor:

****NOTE: The 2nd part of the introductory language is in subd. 2. "For purposes of this section" is not needed here because it is included in the introduction to this paragraph. Also, it is LRB policy to avoid using the phrase "deemed to be." Where applicable, I replaced the phrase "deemed to be" with "considered to be." I also eliminated the reference to a "deemed settlor." Please confirm that I have not altered the meaning in a manner that is inconsistent with your intent.

****NOTE: May I replace "Amounts and property contributed" with "Contributions"?

- 7 a. An irrevocable living marital trust that is treated as qualified terminable
- 8 interest property under section 2523 (f) of the Internal Revenue Code if after the
- 9 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
- 10 trust that receives property from the trust.
- 11 b. An irrevocable living marital trust that is treated as a general power of
- 12 appointment trust under section 2523 (e) of the Internal Revenue Code if after the
- 13 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
- 14 trust that receives property from the trust.
- 15 c. An irrevocable living trust for the settlor's spouse if after the death of the
- 16 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
- 17 receives property from the trust.
- 18 d. An irrevocable trust for the benefit of a person, the settlor of which is the
- 19 person's spouse, regardless of whether or when the person was the settlor of an
- 20 irrevocable trust for the benefit of that spouse.

1 e. An irrevocable trust for the benefit of a person to the extent that the property
2 of the trust was subject to a general power of appointment in another person.

3 2. A person who would otherwise be treated as a settlor of a trust described in
4 subd. 1. a. to e. is not treated as a settlor of the trust.

5 3. For purposes of this paragraph, a person is a beneficiary if the person is
6 named under the initial trust instrument or through the exercise of a limited or
7 general power of appointment by that person's spouse or by another person.

****NOTE: I assumed that this subdivision was intended to apply to the new
paragraph rather than the entire subsection. Please let me know if this assumption is
not correct.

8 (f) Any order entered by a court under this section is subject to modification
9 upon application of an interested person.

10 **SECTION 59.** 701.0506 of the statutes is created to read:

11 **701.0506 Article V, Section 506 — Overdue distribution.** (1) In this
12 section, “mandatory distribution” means a distribution of income or principal that
13 the trustee is required to make to a beneficiary under the terms of the trust, including
14 a distribution upon termination of the trust. “Mandatory distribution” does not
15 include a distribution subject to the exercise of the trustee's discretion even if any of
16 the following applies:

17 (a) The discretion is expressed in the form of a standard of distribution.

18 (b) The terms of the trust authorizing a distribution couple language of
19 discretion with language of direction.

20 (2) Whether or not a trust contains a spendthrift provision, a creditor or
21 assignee of a beneficiary may reach a mandatory distribution of income or principal,
22 including a distribution upon termination of the trust, if the trustee has not made

1 the distribution to the beneficiary within a reasonable time after the designated
2 distribution date.

3 **SECTION 60.** 701.0507 of the statutes is created to read:

4 **701.0507 Article V, Section 507 — Personal obligations of trustee.** Trust
5 property is not subject to personal obligations of the trustee, even if the trustee
6 becomes insolvent or bankrupt.

7 **SECTION 61.** 701.06 of the statutes is repealed.

8 **SECTION 62.** Subchapter VI (title) of chapter 701 [precedes 701.0601] of the
9 statutes is created to read:

10 **CHAPTER 701**

11 **SUBCHAPTER VI**

12 **REVOCABLE TRUSTS**

13 **SECTION 63.** 701.0601 of the statutes is created to read:

14 **701.0601 Article VI, Section 601 — Capacity of settlor of revocable**
15 **trust.** The capacity required to create, amend, revoke, or add property to a revocable
16 trust, or to direct the actions of the trustee of a revocable trust, is the same as that
17 required to make a will.

****NOTE: Is s. 701.0402 (4) intended to apply only to irrevocable trusts? If not, the
capacity to create a revocable trust is addressed in that section.

18 **SECTION 64.** 701.0602 of the statutes is created to read:

19 **701.0602 Article VI, Section 602 — Revocation or amendment of**
20 **revocable trust.** (1) Unless the terms of a trust expressly provide that the trust
21 is irrevocable, the settlor may revoke or amend the trust. This subsection does not
22 apply to a trust created under an instrument executed before the effective date of this
23 subsection [LRB inserts date].

***NOTE: The effective date of this subsection will be the effective date of the Act. It is LRB policy to use the narrowest subdivision to avoid ambiguity. For example, different portions of an Act could have different effective dates.

1 **(2)** If a revocable trust is created or funded by more than one settlor, all of the
2 following apply:

3 (a) To the extent the trust consists of marital or community property, the trust
4 may be revoked by either spouse acting alone but may be amended only by joint
5 action of both spouses.

6 (b) To the extent the trust consists of property other than marital or community
7 property, each settlor may revoke or amend the trust with regard to the portion of
8 the trust property attributable to that settlor's contribution.

9 (c) Upon the revocation or amendment of the trust by fewer than all of the
10 settlors, the trustee shall promptly notify the other settlors of the revocation or
11 amendment.

12 **(3)** A settlor may revoke or amend a revocable trust by any of the following
13 means:

14 (a) By substantial compliance with a method provided in the terms of the trust.

15 (b) If the terms of the trust do not provide a method, by any of the following
16 means:

17 1. A later will or codicil that expressly refers to the trust or specifically devises
18 property that would otherwise have passed according to the terms of the trust.

19 2. Any other method manifesting clear and convincing evidence of the settlor's
20 intent.

21 **(4)** Upon revocation of a revocable trust, the trustee shall transfer the trust
22 property as the settlor directs. However, with respect to marital or community

1 property, the trustee shall transfer the property to both spouses as marital or
2 community property unless the governing instrument specifically states otherwise.

3 (5) A settlor's powers with respect to revocation, amendment, or distribution
4 of trust property may be exercised by an agent under a power of attorney only to the
5 extent expressly authorized by the terms of the power of attorney.

6 (6) A guardian or conservator of the settlor may exercise a settlor's powers with
7 respect to revocation, amendment, or distribution of trust property only with the
8 approval of the court supervising the guardianship or conservatorship.

****NOTE: I removed "of the estate" in this subsection because "guardian" is defined
to mean guardian of the estate in s. 701.0103.

9 (7) A trustee who does not know that a trust has been revoked or amended is
10 not liable for distributions made and other actions taken on the assumption that the
11 trust had not been amended or revoked, or for distributions made pursuant to sub.
12 (5).

13 **SECTION 65.** 701.0603 of the statutes is created to read:

14 **701.0603 Article VI, Section 603 — Settlor's powers; powers of**
15 **withdrawal.** (1) While a trust is revocable, rights of the beneficiaries are subject
16 to the control of, and the duties of the trustee are owed exclusively to, the settlor.

17 (2) If a revocable trust has more than one settlor, the duties of the trustee are
18 owed to all of the settlors.

19 (3) During the period in which a power of withdrawal may be exercised, the
20 holder of the power has the rights of a settlor of a revocable trust under this section
21 to the extent of the property subject to the power.

22 **SECTION 66.** 701.0604 of the statutes is created to read:

1 **701.0604 Article VI, Section 604 — Limitation on action contesting**
2 **validity of revocable trust; distribution of trust property.** (1) A person must
3 commence a judicial proceeding to contest the validity of a trust that was revocable
4 immediately before the settlor's death within the earlier of the following:

5 (a) One year after the settlor's death.

6 (b) Four months after the trustee sent the person a copy of the trust instrument
7 and a notice informing the person of the trust's existence, of the trustee's name and
8 address, and of the time allowed for commencing a proceeding. Except as provided
9 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
10 information described in this paragraph.

11 (2) Upon the death of the settlor of a trust that was revocable immediately
12 before the settlor's death, the trustee may proceed to distribute the trust property
13 in accordance with the terms of the trust. The trustee is not subject to liability for
14 doing so unless one of the following applies:

15 (a) The trustee knows of a pending judicial proceeding contesting the validity
16 of the trust.

17 (b) A potential contestant has notified the trustee of a possible judicial
18 proceeding to contest the trust and a judicial proceeding is commenced within 60
19 days after the contestant sent the notification.

20 (3) A beneficiary of a trust that is determined to have been invalid is liable to
21 return any distribution received.

22 **SECTION 67.** 701.065 of the statutes is renumbered 701.0605, and 701.0605
23 (title), as renumbered, is amended to read:

24 **701.0605 (title) Article VI, Section 605 — Debts of decedents.**

25 **SECTION 68.** 701.07 of the statutes is repealed.

1 (b) Inspect or investigate trust property to determine potential liability under
2 environmental or other law or for any other purpose.

3 SECTION 71. 701.0702 of the statutes is created to read:

4 701.0702 Article VII, Section 702 — Trustee's bond. (1) A trustee shall
5 give bond to secure performance of the trustee's duties only if the court finds that a
6 bond is needed to protect the interests of the beneficiaries or is required by the terms
7 of the trust and the court has not dispensed with the requirement.

8 (2) The court may specify the amount of a bond, its liabilities, and whether
9 sureties are necessary. The court may modify or terminate a bond at any time.

10 (3) No bond shall be required of a trust company bank, state bank, or national
11 bank that is authorized to exercise trust powers and that has complied with s. 220.09
12 or 223.02 nor shall a bond be required of a religious, charitable, or educational
13 corporation or society.

14 SECTION 72. 701.0703 of the statutes is created to read:

15 701.0703 Article VII, Section 703 — Cotrustees. (1) Cotrustees shall act
16 by majority decision.

****NOTE: Would it be acceptable to say "Cotrustees may act only by majority
decision"?

17 (2) If a vacancy occurs in a cotrusteeship as provided under s. 701.0704, a
18 majority of the remaining cotrustees may act for the trust.

19 (3) A cotrustee ~~must~~ ^{shall} participate in the performance of a trustee's function
20 unless the cotrustee is unavailable to perform the function because of absence,
21 illness, disqualification under other law, or other temporary incapacity or the
22 cotrustee has properly delegated the performance of the function to another trustee.

CS
***NOTE: This is in the passive voice. Would it be acceptable to
say "A court may not require a bond from a..."?

1 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
2 disqualification under other law, or other temporary incapacity, and prompt action
3 is necessary to achieve the purposes of the trust or to avoid injury to the trust
4 property, the remaining cotrustee or a majority of the remaining cotrustees may act
5 for the trust.

6 (5) A trustee may delegate to a cotrustee a function unless the delegation is
7 expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a
8 trustee may revoke a delegation previously made.

9 (6) Except as provided in sub. (7), a trustee who does not join in an action of
10 another trustee is not liable for the action.

11 (7) Each trustee shall exercise reasonable care to do all of the following:

12 (a) Prevent a cotrustee from committing a material breach of trust.

13 (b) Compel a cotrustee to redress a material breach of trust.

14 (8) A dissenting trustee who joins in an action at the direction of the majority
15 of the trustees and who notified all cotrustees of the dissent at or before the time of
16 the action is not liable for the action unless the action is a material breach of trust.

17 **SECTION 73.** 701.0704 of the statutes is created to read:

18 **701.0704 Article VII, Section 704 — Vacancy in trusteeship;**
19 **appointment of successor.** (1) A vacancy in a trusteeship exists if any of the
20 following occurs:

21 (a) A person designated as trustee declines the trusteeship.

22 (b) A person designated as trustee cannot be identified or does not exist.

23 (c) A trustee resigns.

24 (d) A trustee is disqualified or removed.

25 (e) A trustee dies.

1 (f) A guardian or conservator is appointed for an individual serving as trustee.

2 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship does

3 not need to be filled. A vacancy in a trusteeship ~~must~~^{shall} be filled if the trust has no
4 remaining trustee.

5 (3) A vacancy in a trusteeship that is required to be filled shall be filled in the
6 following order of priority:

7 (a) By a person designated in the terms of the trust to act as successor trustee.

8 (b) By a person appointed by unanimous agreement of the qualified
9 beneficiaries. The person appointed under this paragraph may not be a person who
10 is both an individual with a disability and a beneficiary of a trust for an individual
11 with a disability or his or her spouse.

***NOTE: Please confirm that this is consistent with your intent.

12 (c) By a person appointed by the court.

13 (4) Whether or not a vacancy in a trusteeship exists or is required to be filled,
14 the court may appoint an additional trustee or special fiduciary whenever the court
15 considers the appointment necessary for the administration of the trust.

16 SECTION 74. 701.0705 of the statutes is created to read:

17 701.0705 Article VII, Section 705 — Resignation of trustee. (1) A trustee
18 may resign in any of the following manners:

19 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
20 living, and all cotrustees.

21 (b) With the approval of the court.

22 (2) In approving a resignation, the court may issue orders and impose
23 conditions reasonably necessary for the protection of the trust property.

1 **(3)** Any liability of a resigning trustee or of any sureties on the trustee's bond
2 for acts or omissions of the trustee is not discharged or affected by the trustee's
3 resignation.

4 **SECTION 75.** 701.0706 of the statutes is created to read:

5 **701.0706 Article VII, Section 706 — Removal of trustee.** (1) The settlor,
6 a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or
7 a trustee may be removed by the court on its own initiative.

8 **(2)** The court may remove a trustee if any of the following applies:

9 (a) The trustee has committed a material breach of trust.

10 (b) A lack of cooperation among cotrustees substantially impairs the
11 administration of the trust.

12 (c) The court determines that removal of the trustee best serves the interests
13 of the beneficiaries because of unfitness, unwillingness, or persistent failure of the
14 trustee to administer the trust effectively.

15 (d) There has been a substantial change of circumstances or removal is
16 requested by all of the qualified beneficiaries, the court finds that removal of the
17 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
18 a material purpose of the trust, and a suitable cotrustee or successor trustee is
19 available.

20 **(3)** Pending a final decision on a request to remove a trustee, or in lieu of or in
21 addition to removing a trustee, the court may order such appropriate relief under s.
22 701.1001 (2) as may be necessary to protect the trust property or the interests of the
23 beneficiaries.

24 **SECTION 76.** 701.0707 of the statutes is created to read:

1 **701.0707 Article VII, Section 707 — Delivery of property by former**
2 **trustee. (1)** Unless a cotrustee remains in office or the court otherwise orders, and
3 until the trust property is delivered to a successor trustee or other person entitled
4 to it, a trustee who has resigned or been removed has the duties of a trustee and the
5 powers necessary to protect the trust property.

6 **(2)** A trustee who has resigned or been removed shall proceed expeditiously to
7 deliver the trust property within the trustee's possession to the cotrustee, successor
8 trustee, or other person entitled to it.

9 **SECTION 77.** 701.0708 of the statutes is created to read:

10 **701.0708 Article VII, Section 708 — Compensation of trustee. (1)** If the
11 terms of a trust do not specify the trustee's compensation, a trustee is entitled to
12 compensation that is reasonable under the circumstances.

13 **(2)** If the terms of a trust specify the trustee's compensation or refer to another
14 ascertainable source for determining that compensation, the trustee is entitled to be
15 compensated as specified, but the court may allow more or less compensation if any
16 of the following applies:

17 **(a)** The duties of the trustee are substantially different from those
18 contemplated when the trust was created.

19 **(b)** The compensation specified by the terms of the trust would be unreasonably
20 low or high.

21 **(3)** If the trustee has rendered other services in connection with the
22 administration of the trust, the trustee may receive reasonable compensation for the
23 other services rendered, in addition to reasonable compensation as trustee.

24 **SECTION 78.** 701.0709 of the statutes is created to read:

1 **701.0801 Article VIII, Section 801 — Duty to administer trust.** Upon
2 acceptance of a trusteeship, the trustee shall administer the trust in good faith, in
3 accordance with its terms and purposes and the interests of the beneficiaries, and
4 in accordance with this chapter.

5 **SECTION 83.** 701.0802 of the statutes is created to read:

6 **701.0802 Article VIII, Section 802 — Duty of loyalty.** (1) A trustee shall
7 administer the trust solely in the interests of the beneficiaries.

8 (2) Subject to the rights of persons dealing with or assisting the trustee as
9 provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the
10 investment or management of trust property and is entered into by the trustee for
11 the trustee's own personal account or that is otherwise affected by a conflict between
12 the trustee's fiduciary and personal interests is voidable by a beneficiary affected by
13 the transaction unless any of the following applies:

14 (a) The transaction was authorized by the terms of the trust.

15 (b) The transaction was approved by the court.

16 (c) The beneficiary did not commence a judicial proceeding within the time
17 allowed by s. 701.1005.

18 (d) The beneficiary consented to the trustee's conduct, ratified the transaction,
19 or released the trustee in compliance with s. 701.1009.

20 (e) The transaction involves a contract entered into or claim acquired by the
21 trustee before the person became trustee.

22 (3) A sale, encumbrance, or other transaction involving the investment or
23 management of trust property is presumed to be affected by a conflict between
24 personal and fiduciary interests if it is entered into by the trustee with any of the
25 following:

- 1 (a) The trustee's spouse.
- 2 (b) The trustee's descendants, siblings, parents, or their spouses.
- 3 (c) An agent or attorney of the trustee.
- 4 (d) A corporation or other person or enterprise in which the trustee, or a person
- 5 that owns a significant interest in the trustee, has an interest that might affect the
- 6 trustee's best judgment.

7 (4) A transaction not concerning trust property in which the trustee engages
 8 in the trustee's individual capacity involves a conflict between personal and fiduciary
 9 interests if the transaction concerns an opportunity properly belonging to the trust.

10 (5) An investment by a trustee in securities of an investment company or
 11 investment trust to which the trustee, or its affiliate, provides services in a capacity
 12 other than as trustee is not presumed to be affected by a conflict between personal
 13 and fiduciary interests if the investment otherwise complies with the prudent
 14 investor rule of s. 881.01. In addition to receiving compensation for acting as trustee,
 15 the trustee may be compensated by the investment company or investment trust for
 16 providing those services out of fees charged to the trust. If the trustee receives
 17 compensation from the investment company or investment trust for providing
 18 investment advisory or investment management services, the trustee ~~must~~ ^{shall} at least
 19 annually notify the persons entitled under s. 701.0813 to receive a copy of the
 20 trustee's annual report ^{under s. 701.0813 (3)} of the rate and method by which that compensation was
 21 determined.

22 (6) In voting shares of stock or in exercising powers of control over similar
 23 interests in other forms of enterprise, the trustee shall act in the best interests of the
 24 beneficiaries. If the trust is the sole owner of a corporation or other form of

NOTE: I narrowed the cross-reference to sub. (3) because s. 701.0813 does not use the term "annual report." Please confirm that the cross-reference is consistent with your intent.

S. 701.0813

1 enterprise, the trustee shall elect or appoint directors or other managers who will
2 manage the corporation or enterprise in the best interests of the beneficiaries.

3 (7) This section does not preclude the following transactions, if fair to the
4 beneficiaries:

5 (a) An agreement between a trustee and a beneficiary relating to the
6 appointment or compensation of the trustee.

7 (b) Payment of reasonable compensation to the trustee.

8 (c) A transaction between a trust and another trust, a decedent's estate, a
9 guardianship, a conservatorship, or a custodianship of which the trustee is a
10 fiduciary or in which a beneficiary has an interest.

****NOTE: Neither custodian or custodianship are defined in this chapter. You may wish to add a cross-reference here to clarify the meaning. If so, would a cross-reference to ss. 54.854 to 54.898 be appropriate?

11 (d) A deposit of trust money in a regulated financial-service institution
12 operated by the trustee.

13 (e) An advance by the trustee of money for the protection of the trust.

14 (8) The court may appoint a special fiduciary to make a decision with respect
15 to any proposed transaction that might violate this section if entered into by the
16 trustee.

17 **SECTION 84.** 701.0803 of the statutes is created to read:

18 **701.0803 Article VIII, Section 803 — Impartiality.** If a trust has 2 or more
19 beneficiaries, the trustee shall act impartially in investing, managing, and
20 distributing the trust property, giving due regard to the beneficiaries' respective
21 interests and the purposes and terms of the trust.

22 **SECTION 85.** 701.0804 of the statutes is created to read:

1 **701.0804 Article VIII, Section 804 — Prudent administration.** A trustee
2 shall administer the trust as a prudent person would, by considering the purposes,
3 terms, distributional requirements, and other circumstances of the trust. In
4 satisfying this standard, the trustee shall exercise reasonable care, skill, and
5 caution.

6 **SECTION 86.** 701.0805 of the statutes is created to read:

7 **701.0805 Article VIII, Section 805 — Costs of administration.** In
8 administering a trust, the trustee may incur only costs that are reasonable in
9 relation to the trust property, the purposes of the trust, the skills of the trustee, and
10 the complexity of the trust administration.

11 **SECTION 87.** 701.0806 of the statutes is created to read:

12 **701.0806 Article VIII, Section 806 — Trustee’s skills.** A trustee who has
13 special skills or expertise, or is named trustee in reliance upon the trustee’s
14 representation that the trustee has special skills or expertise, shall use those special
15 skills or expertise.

16 **SECTION 88.** 701.0807 of the statutes is created to read:

17 **701.0807 Article VIII, Section 807 — Delegation by trustee.** (1) A trustee
18 may delegate duties and powers that a prudent trustee of comparable skills could
19 properly delegate under the circumstances. The trustee shall exercise reasonable
20 care, skill, and caution in each of the following:

21 (a) Selecting an agent.

22 (b) Establishing the scope and terms of the delegation, consistent with the
23 purposes and terms of the trust.

24 (c) Periodically reviewing the agent’s actions in order to monitor the agent’s
25 performance and compliance with the terms of the delegation.

1 (2) In performing a delegated function, an agent owes a duty to the trust to
2 exercise reasonable care to comply with the terms of the delegation.

3 (3) A trustee who complies with sub. (1) is not liable to the beneficiaries or to
4 the trust for an action of the agent to whom the function was delegated.

5 (4) By accepting a delegation of powers or duties from the trustee of a trust that
6 is subject to the law of this state, an agent submits to the jurisdiction of the courts
7 of this state even if the terms of the delegation provide for a different jurisdiction or
8 venue.

9 (5) This section does not apply to the delegation of investment and
10 management functions. Delegation of investment and management functions is
11 governed by s. 881.01 (10).

 ***NOTE: I modified this subsection to avoid the false imperative. This is a
statement of law.

12 **SECTION 89.** 701.0808 of the statutes is created to read:

13 **701.0808 Article VIII, Section 808 — Powers to direct.** (1) While a trust
14 is revocable, the trustee may follow a direction of the settlor that is contrary to the
15 terms of the trust.

16 (2) The trust instrument may appoint a directing party to direct specified
17 actions of the trustee. If the excluded trustee acts in accordance with the direction
18 of the directing party or fails to act due to lack of direction, then, except for acts or
19 omissions as a result of willful misconduct, the excluded trustee is not liable for any
20 loss resulting directly or indirectly from any action taken or omitted with respect to
21 the specified action.

22 (3) An excluded trustee does not have a duty to do any of the following:

1 (a) Provide advice to, consult with, monitor, or evaluate the directing party's
2 conduct.

3 (b) Provide information to the directing party, except for reasonable
4 information related to the directing party's power that is requested by the directing
5 party.

6 (c) Inform or warn a beneficiary, a 3rd party, or the directing party that the
7 excluded trustee disagrees with any of the directing party's actions or directions.

8 (d) Prevent the directing party from giving a direction or taking any action.

9 (e) Compel the directing party to redress a breach of the directing party's
10 fiduciary duty.

11 (4) The administrative actions of an excluded trustee related to matters within
12 the scope of a directing party's power, including confirming that the directing party's
13 directions have been carried out and recording and reporting actions taken pursuant
14 to the directing party's direction, do not constitute either monitoring the directing
15 party's actions or participating in the actions of the directing party.

16 (5) A directing party is a fiduciary with respect to its powers to direct specified
17 actions. As a fiduciary, the directing party is subject to the same duties and
18 standards that are applicable to a trustee of a trust, except to the extent the
19 governing instrument provides otherwise. A directing party may not exonerate itself
20 from its fiduciary duties and will be subject to the provisions of subch. X in the event
21 of a breach of its duties.

22 (6) Any directing party who accepts an appointment under a trust subject to
23 the laws of this state submits to the jurisdiction of the courts of this state with respect
24 to matters involving the trust, regardless of any term to the contrary in any other
25 agreement or the trust instrument.

***NOTE: This subsection relates to personal jurisdiction and is very similar to the language in s. 701.0202. You may wish to consider moving this language to s. 701.0202 so that a reader doesn't miss the personal jurisdiction rules for directed parties.

1 (7) A trust protector is not a directing party and is subject to the provisions of
2 s. 701.0818.

3 **SECTION 90.** 701.0809 of the statutes is created to read:

4 **701.0809 Article VIII, Section 809 — Control and protection of trust**
5 **property.** A trustee shall take reasonable steps to take control of and protect the
6 trust property.

7 **SECTION 91.** 701.0810 of the statutes is created to read:

8 **701.0810 Article VIII, Section 810 — Record keeping and identification**
9 **of trust property.** (1) A trustee shall keep adequate records of the administration
10 of the trust.

11 (2) A trustee shall keep trust property separate from the trustee's own
12 property.

13 (3) Except as otherwise provided in sub. (4), a trustee shall cause the trust
14 property to be designated so that the interest of the trust, to the extent feasible,
15 appears in records maintained by a party other than a trustee or beneficiary.

16 (4) If the trustee maintains records clearly indicating the respective interests,
17 a trustee may invest as a whole the property of 2 or more separate trusts.

18 **SECTION 92.** 701.0811 of the statutes is created to read:

19 **701.0811 Article VIII, Section 811 — Enforcement and defense of**
20 **claims.** A trustee shall take reasonable steps to enforce claims of the trust known
21 to the trustee and to defend claims against the trust known to the trustee.

22 **SECTION 93.** 701.0812 of the statutes is created to read:

1 **701.0812 Article VIII, Section 812 — Collecting trust property; duties**
2 **of successor trustees.** (1) A trustee shall take reasonable steps to compel a former
3 trustee or other person to deliver trust property to the trustee, and to redress a
4 breach of trust known to the trustee to have been committed by a former trustee or
5 other fiduciary of the trust.

6 (2) A successor trustee does not have a duty to examine the accounts of a former
7 trustee.

8 **SECTION 94.** 701.0813 of the statutes is created to read:

9 **701.0813 Article VIII, Section 813 — Duty to inform and report.** (1) A
10 trustee shall keep the distributees or permissible distributees of trust income or
11 principal, and other qualified beneficiaries who so request, reasonably informed
12 about the administration of the trust. Unless unreasonable under the
13 circumstances, a trustee shall promptly respond to a qualified beneficiary's request
14 for information related to the administration of the trust.

 ****NOTE: The intended meanings of "distributee" and "permissible distributee"
may not be readily apparent to the average reader. Because these terms occur throughout
the draft, you may want to add definitions to s. 701.0103.

15 (2) A trustee shall do all of the following:

16 (a) Upon request of a qualified beneficiary, promptly furnish to the qualified
17 beneficiary either a copy of the portions of the trust instrument relating to the
18 interest of the qualified beneficiary or a copy of the trust instrument, in the discretion
19 of the trustee.

20 (b) Within a reasonable period of time after accepting a trusteeship, notify the
21 qualified beneficiaries of the acceptance and of the trustee's name, address, and
22 telephone number.

1 (c) Within a reasonable period of time after the date on which the trustee
2 acquires knowledge of the creation of an irrevocable trust, or the date on which the
3 trustee acquires knowledge that a formerly revocable trust has become irrevocable,
4 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
5 all of the following:

- 6 1. The trust's existence.
- 7 2. The identity of the settlor or settlors.
- 8 3. The right to request a copy of the documentation referred to in par. (a).
- 9 4. The right to request information under sub. (1).
- 10 5. The right to a trustee's report as provided in sub. (3).

11 (d) Notify the distributees or permissible distributees of trust income or
12 principal, and other qualified beneficiaries who so request, of any change in the
13 method or rate of the trustee's compensation.

14 (3) (a) At least annually and upon the termination of a trust, a trustee shall
15 send to the distributees or permissible distributees of trust income or principal, and
16 to other qualified beneficiaries who request it, all of the following:

17 1. A report of the trust property, liabilities, receipts, and disbursements,
18 including the source and amount of the trustee's compensation. *the former trustee shall send*

19 2. A listing of the trust assets and, if feasible, their respective market values.

20 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a
21 report containing the information described under par. (a) 1. must be sent to the
22 qualified beneficiaries by the former trustee. A personal representative or guardian
23 may send the qualified beneficiaries a report containing the information described
24 in par. (a) 1. on behalf of a deceased or incapacitated trustee.

1 (4) A qualified beneficiary may waive the right to a trustee’s report or other
2 information otherwise required to be furnished under this section. A qualified
3 beneficiary, with respect to future reports and other information, may withdraw a
4 waiver previously given.

5 (5) Subsection (2) (b) and (c) and sub. (3) do not apply to a trustee who accepts
6 a trusteeship before the effective date of this subsection [LRB inserts date], to an
7 irrevocable trust created before the effective date of this subsection [LRB inserts
8 date], or to a revocable trust that becomes irrevocable before the effective date of this
9 subsection [LRB inserts date].

10 **SECTION 95.** 701.0814 of the statutes is created to read:

11 **701.0814 Article VIII, Section 814 — Discretionary powers; tax savings.**

12 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of
13 the trust, including the use of such terms as “absolute,” “sole,” or “uncontrolled,” the
14 trustee shall exercise a discretionary power in good faith and in accordance with the
15 terms and purposes of the trust and the interests of the beneficiaries. A court may
16 not determine that a trustee abused its discretion merely because the court would
17 have exercised the discretion in a different manner or would not have exercised the
18 discretion.

19 (2) Subject to sub. (4), and unless the terms of the trust expressly indicate that
20 a provision of this subsection does not apply, all of the following apply:

 ****NOTE: In light of s. 701.0105 (2), please consider whether “unless the terms of
the trust ...” is necessary in the intro.

21 (a) A person other than a settlor who is a beneficiary and trustee of a trust that
22 confers on the trustee a power to make discretionary distributions to or for the

1 trustee's personal benefit may exercise the power only in accordance with an
2 ascertainable standard.

3 (b) A trustee may not exercise a power to make discretionary distributions to
4 satisfy a legal obligation of support that the trustee personally owes another person.

5 (3) A power whose exercise is limited or prohibited by sub. (2) may be exercised
6 by a majority of the remaining trustees whose exercise of the power is not so limited
7 or prohibited. If the power of all trustees is so limited or prohibited, the court may
8 appoint a special fiduciary with authority to exercise the power.

9 (4) Subsection (2) does not apply to any of the following:

10 (a) A power held by the settlor's spouse who is the trustee of a trust for which
11 a marital deduction, as defined in section 2056 (b) (5) or 2523 (e) of the Internal
12 Revenue Code, was previously allowed.

13 (b) Any trust during any period that the trust may be revoked or amended by
14 its settlor.

15 (c) A trust if contributions to the trust qualify for the annual exclusion under
16 section 2503 (c) of the Internal Revenue Code.

17 **SECTION 96.** 701.0815 of the statutes is created to read:

18 **701.0815 Article VIII, Section 815 — General powers of trustee.** (1) A
19 trustee, without authorization by the court, may exercise the following powers:

20 (a) Powers conferred by the terms of the trust.

21 (b) Except as limited by the terms of the trust, all of the following powers:

22 1. All powers over the trust property that an unmarried, competent owner has
23 over individually owned property.

24 2. Any other powers appropriate to achieve the proper investment,
25 management, and distribution of the trust property.

1 3. Any other powers conferred by this chapter.

2 (2) The exercise of a power is subject to the fiduciary duties prescribed by this
3 chapter.

4 **SECTION 97.** 701.0816 of the statutes is created to read:

5 **701.0816 Article VIII, Section 816 — Specific powers of trustee.** Without
6 limiting the authority conferred by s. 701.0815, a trustee may do all of the following:

7 (1) Collect trust property and accept or reject additions to the trust property
8 from a settlor or any other person.

9 (2) Acquire or sell property, for cash or on credit, at public or private sale.

10 (3) Exchange, partition, or otherwise change the character of trust property.

11 (4) Deposit trust money in an account in a regulated financial-service
12 institution.

13 (5) Borrow money, with or without security, and mortgage or pledge trust
14 property for a period within or extending beyond the duration of the trust.

15 (6) With respect to an interest in a proprietorship, partnership, limited liability
16 company, business trust, corporation, or other form of business or enterprise,
17 continue the business or other enterprise and take any action that may be taken by
18 shareholders, members, or property owners, including merging, dissolving, or
19 otherwise changing the form of business organization or contributing additional
20 capital.

21 (7) With respect to a stock or other security, exercise the rights of an absolute
22 owner, including the right to do any of the following:

23 (a) Vote, or give proxies to vote, with or without power of substitution, or enter
24 into or continue a voting trust agreement.

1 (b) Hold a stock or other security in the name of a nominee or in other form
2 without disclosure of the trust so that title may pass by delivery.

3 (c) Pay calls, assessments, and other sums chargeable or accruing against the
4 stock or other security, and sell or exercise stock subscription or conversion rights.

5 (d) Deposit the stock or other security with a depository or other regulated
6 financial-service institution.

7 (8) With respect to an interest in real property, construct, or make ordinary or
8 extraordinary repairs to, alterations to, or improvements in, buildings or other
9 structures, demolish improvements, raze existing or erect new party walls or
10 buildings, subdivide or develop land, dedicate land to public use or grant public or
11 private easements, and make or vacate plats and adjust boundaries.

12 (9) Enter into a lease for any purpose as lessor or lessee, including a lease or
13 other arrangement for exploration and removal of natural resources, with or without
14 the option to purchase or renew, for a period within or extending beyond the duration
15 of the trust.

16 (10) Grant an option involving a sale, lease, or other disposition of trust
17 property or acquire an option for the acquisition of property, including an option
18 exercisable beyond the duration of the trust, and exercise an option so acquired.

19 (11) Insure the property of the trust against damage or loss and insure the
20 trustee, the trustee's agents, and beneficiaries against liability arising from the
21 administration of the trust.

22 (12) Abandon or decline to administer property of no value or of insufficient
23 value to justify its collection or continued administration.

24 (13) With respect to possible liability for violation of environmental law, do any
25 of the following:

1 (a) Inspect or investigate property the trustee holds or has been asked to hold,
2 or property owned or operated by an organization in which the trustee holds or has
3 been asked to hold an interest, for the purpose of determining the application of
4 environmental law with respect to the property.

5 (b) Take action to prevent, abate, or otherwise remedy any actual or potential
6 violation of any environmental law affecting property held directly or indirectly by
7 the trustee, whether taken before or after the assertion of a claim or the initiation
8 of governmental enforcement.

9 (c) Decline to accept property into trust or disclaim any power with respect to
10 property that is or may be burdened with liability for violation of environmental law.

11 (d) Compromise claims against the trust that may be asserted for an alleged
12 violation of environmental law.

13 (e) Pay the expense of any inspection, review, abatement, or remedial action to
14 comply with environmental law.

15 **(14)** Pay or contest any claim, settle a claim by or against the trust, and release,
16 in whole or in part, a claim belonging to the trust.

17 **(15)** Pay taxes, assessments, compensation of the trustee and of employees and
18 agents of the trust, and other expenses incurred in the administration of the trust.

19 **(16)** Exercise elections with respect to federal, state, and local taxes.

20 **(17)** Select a mode of payment under any employee benefit or retirement plan,
21 annuity, or life insurance payable to the trustee, exercise rights thereunder,
22 including exercise of the right to indemnification for expenses and against liabilities,
23 and take appropriate action to collect the proceeds.

24 **(18)** Make loans out of trust property, including loans to a beneficiary on terms
25 and conditions the trustee considers to be fair and reasonable under the

1 circumstances. The trustee has a lien on future distributions for repayment of loans
2 under this subsection.

****NOTE: I retained the UTC language but divided it into 2 sentences. The issue
is that the trustee having a lien is not a “power” or something the trustee can “do.” Rather,
it is a result of the trustee exercising the power to make loans. Is this construction okay?

3 (19) Pledge trust property to guarantee loans made by others to the beneficiary.

4 (20) Appoint a trustee to act in another jurisdiction with respect to trust
5 property located in the other jurisdiction, confer upon the appointed trustee all of the
6 powers and duties of the appointing trustee, require that the appointed trustee
7 furnish security, and remove any trustee so appointed.

8 (21) Pay an amount distributable to a beneficiary who is under a legal
9 disability or who the trustee reasonably believes is incapacitated, by paying it
10 directly to the beneficiary, applying it for the beneficiary’s benefit, or by doing any
11 of the following:

12 (a) Paying the amount to the beneficiary’s conservator or the beneficiary’s
13 guardian.

****NOTE: I changed “guardian of the beneficiary’s estate” to “beneficiary’s
guardian” in this paragraph because “guardian” is defined as a guardian of the estate in
s. 701.0103 (10).

14 (b) Paying the amount to the beneficiary’s custodian under the Uniform
15 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
16 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
17 custodial trust.

18 (c) If the trustee does not know of a conservator, guardian, custodian, or
19 custodial trustee, paying the amount to an adult relative or other person having legal
20 or physical care or custody of the beneficiary or to the guardian of the person of the
21 beneficiary, to be expended on the beneficiary’s behalf.

****NOTE: I removed “of the estate” in this paragraph because guardian is defined in s.701.0103 as a guardian of the estate.

1 (d) Managing the amount as a separate fund on the beneficiary’s behalf, subject
2 to the beneficiary’s continuing right to withdraw the distribution.

3 (22) On distribution of trust property or the division or termination of a trust,
4 make distributions in divided or undivided interests, allocate particular assets in
5 proportionate or disproportionate shares, value the trust property for those
6 purposes, and adjust for resulting differences in valuation.

7 (23) Resolve a dispute concerning the interpretation of the trust or its
8 administration by mediation, arbitration, or other procedure for alternative dispute
9 resolution.

10 (24) Prosecute or defend an action, claim, or judicial proceeding in any
11 jurisdiction to protect trust property and the trustee in the performance of the
12 trustee’s duties.

13 (25) Sign and deliver contracts and other instruments that are useful to
14 achieve or facilitate the exercise of the trustee’s powers.

15 (26) On termination of the trust, exercise the powers appropriate to wind up
16 the administration of the trust and distribute the trust property to the persons
17 entitled to it.

18 (27) Create or fund a plan under section 529 of the Internal Revenue Code, or
19 other college savings vehicle, for the beneficiary’s benefit.

20 **SECTION 98.** 701.0817 of the statutes is created to read:

21 **701.0817 Article VIII, Section 817 — Distribution upon termination. (1)**

22 Upon termination or partial termination of a trust, the trustee may send a proposal
23 for distribution to the beneficiaries of the trust. The right of any beneficiary to whom

1 the proposal is sent to object to the proposed distribution terminates if the
2 beneficiary does not notify the trustee of an objection within 30 days after the
3 proposal was sent but only if the proposal informed the beneficiary of the right to
4 object and of the time allowed for objection.

5 (2) Upon the occurrence of an event terminating or partially terminating a
6 trust, the trustee shall proceed within a reasonable time to distribute the trust
7 property to the persons entitled to it, subject to the right of the trustee to retain a
8 reasonable reserve for the payment of debts, expenses, and taxes.

9 (3) A release by a beneficiary of a trustee from liability for breach of trust is
10 invalid to the extent any of the following applies:

11 (a) The release was induced by improper conduct of the trustee.

12 (b) The beneficiary, at the time of the release, did not know of the beneficiary's
13 rights or of the material facts relating to the breach.

14 **SECTION 99.** 701.0818 of the statutes is created to read:

15 **701.0818 Article VIII, Section 818 — Trust protectors.** (1) A settlor or a
16 court may appoint a trust protector in a trust instrument, whether referred to as a
17 trust protector, another title, or no title. A trust protector has the powers specified
18 in the trust instrument.

****NOTE: I added "a court" to this subsection because a trust instrument may be
created by a court order. If this is inconsistent with your intent, please let me know.

19 (2) (a) A settlor or a court may specify, in a trust instrument, whether a
20 particular power granted to a trust protector is required to be exercised in a fiduciary
21 or nonfiduciary capacity.

22 (b) Except as provided in par. (c) and sub. (3), if a trust instrument does not
23 specify whether a particular power granted to a trust protector is required to be

1 exercised in a fiduciary or nonfiduciary capacity, the power is to be exercised in the
2 trust protector's nonfiduciary capacity, including the power to do any of the following:

****NOTE: I combined your subs. (2) and (3). Subsection (3) creates a default rule that, if the trust document does not specify whether a power is fiduciary or nonfiduciary, the power is nonfiduciary. Therefore, the specific powers in sub. (2) are really examples of the default rule and the powers in your sub. (1) are the exception to the default rule. Please let me know if this is not consistent with your intent.

3 1. Modify or amend the trust instrument to achieve a different tax status or to
4 respond to changes in federal or state law.

****NOTE: How does this interact with par. (c) 1., which says a power to modify or amend a trust instrument to respond to opportunities related to, or changes in, other state laws restricting the terms of a trust is to be exercised in a fiduciary capacity? It seems that the same power described in par. (c) 1. could be nonfiduciary under this subdivision, as a modification or amendment to a trust instrument made to respond to a change in state law.

5 2. Eliminate or modify the interests of a beneficiary or add a new beneficiary.

****NOTE: The proposed second sentence of this subdivision and of subd. 3. prohibit the trust protector from taking certain actions. These prohibitions do not follow the introduction, which related to whether a power to do one of these actions must be exercised in a fiduciary or nonfiduciary capacity. I recommend moved these provisions to sub. (7) of this draft.

6 3. Modify the terms of a power of appointment granted under the trust.

7 4. Remove, replace, or appoint a trustee, trust protector, directing party, or
8 other special fiduciary.

9 5. Terminate the trust.

10 6. Appoint assets to a new trust under s. 701.0418.

11 7. Appoint a successor trust protector, trustee, directing party, or other special
12 fiduciary.

13 8. Advise the trustee on matters concerning a beneficiary.

14 9. Consent to, veto, or advise the trustee on the exercise of a trustee duty or
15 power, including the duty to provide notification to qualified beneficiaries under s.
16 701.0813.

17 10. Any other power granted to the trust protector.

1 (c) If a trust instrument grants a trust protector the power to do any of the
2 following actions and the trust instrument does not specify whether the power is
3 required to be exercised in the trust protector’s fiduciary or nonfiduciary capacity,
4 the power is to be exercised in the trust protector’s fiduciary capacity:

****NOTE: Please confirm that the changes to this introduction are consistent with
your intent.

5 1. Modify or amend the trust instrument to respond to opportunities related
6 to, or to changes in, restraints on alienation or other state laws restricting the terms
7 of a trust, the distribution of trust property, or the administration of the trust.

8 2. Change the principal place of administration, the tax situs of the trust, or
9 the governing law of the trust.

10 3. Interpret terms of the trust instrument at the request of the trustee.

11 4. Correct errors or ambiguities that might otherwise require court
12 construction or defeat the settlor’s intent.

13 5. Review and approve a trustee’s reports or accounting.

14 6. Resolve disputes between the trustee and a beneficiary.

15 **(3)** A trust protector who is also serving as a trustee is required to exercise any
16 power granted to a trust protector in a fiduciary capacity.

17 **(4)** A trust protector may resign or release any power granted to the trust
18 protector by giving written notice to the trustee and to any successor trust protector.

****NOTE: I think there was a word missing in your instructions between “trustee”
and “any successor.” I assumed the missing word was “and.” If this not correct, please
let me know the intended meaning.

19 **(5)** A trust protector is not liable for any of the following:

20 (a) The exercise or nonexercise of nonfiduciary powers unless the exercise or
21 nonexercise of the nonfiduciary power is determined to be in bad faith.

1 (b) The actions or inactions of a fiduciary over whom the trust protector has a
2 power of removal unless the failure to exercise the power of removal is determined
3 to be in bad faith.

4 (6) Unless otherwise provided in the trust instrument, a trust protector does
5 not have a fiduciary responsibility to elect to exercise its nonfiduciary or fiduciary
6 powers and has no duty to monitor the conduct of the trustee or any other fiduciary
7 or changes in the law or the circumstances of the beneficiaries.

****NOTE: Is there a difference between a "fiduciary responsibility to elect to
exercise" and a "fiduciary responsibility to exercise"? If not, I recommend removing "to
elect." I also removed "unless otherwise provided in the trust instrument,"
to avoid any ambiguity with the general default rule under s. 701.0105.

8 (7) A trust protector may not modify any of the following:
9 (a) A beneficial interest of a trust that qualified for a marital deduction or
10 charitable deduction from federal or state estate tax in a manner that would have
11 caused the trust not to qualify for the deduction.

12 (b) The terms of a power of appointment in a manner that grants a beneficial
13 interest to an individual or class of individuals who is not specifically provided for
14 under the trust instrument.

****NOTE: This language is from your proposed (b) (2) (B) and (C). Is it your
intention that these prohibitions may be overridden by the terms of the trust?

15 (8) A trust protector may not exercise any authority, power, or discretion in a
16 manner that would create or expand any beneficial interest, power of appointment,
17 right of withdrawal, or right to receive trust property as a result of the exercise of a
18 power of appointment in favor of any of the following:

****NOTE: It is not clear to me what "as a result of the exercise of a power of
appointment" is intended to modify. Is it "may not exercise as a result of a power of
appointment" or "that would create or expand, as a result of a power of appointment, any
beneficial interest ... in favor of any of the following"?

19 (a) The trust protector, the trust protector's estate, the trust protector's
20 creditors, or creditors of the trust protector's estate.

****NOTE: How is this intended to apply to a trust protector who is a committee of persons? Is each member of the committee a “trust protector”?

1 (b) An ancestor or descendant of the trust protector who is not also related to
2 the settlor or the settlor’s spouse.

****NOTE: What does “related” mean in this paragraph? Paragraph (c) specifically includes related by marriage. I replaced “spouse of any such individual” with “the settlor’s spouse.” Please let me know if the language is not consistent with your intent.

3 (c) A person related to the trust protector by blood or marriage who is not also
4 related to a descendant of the settlor or the settlor’s spouse.

****NOTE: Who is this category intended to capture who is not captured under par.
(b)?

5 (d) Any officer, employee, or director of any corporate trust protector or
6 corporate trustee.

****NOTE: What if a relative of the settlor or the settlor’s spouse is also an employee of a corporate trust protector or corporate trustee? For example, is a trust protector prohibited from exercising a power of appointment in favor of a descendant of the settlor who is a teller at BMO or US Bank because the specific bank is appointed a corporate trust protector? Should this include an exception for a person who is related to the settlor or the settlor’s spouse?

7 (9) A trust protector is not subject to the direction of the settlor and the settlor
8 may not bring a cause of action against the trust protector. A trust protector may
9 consider the settlor’s goals, objectives, and philosophies in establishing the trust and
10 the trust’s structure when exercising the powers granted to the trust protector.

11 (10) A trustee or other fiduciary is not liable for any loss or injury that results
12 from the trustee or other fiduciary taking actions that are consistent with a
13 modification of the trustee’s or other fiduciary’s powers, authority, or discretion as
14 a result of the action of a trust protector unless the trustee or other fiduciary breaches
15 a duty owed for the exercise of the power, authority, or discretion, as modified by the
16 trust protector. A trustee or other fiduciary may refuse to act consistently with a
17 trust protector’s modification if the trustee or other fiduciary knows that the
18 modification is manifestly contrary to the terms of the trust or would constitute a

1 serious breach of any fiduciary duty owed by the trust protector. A trustee has no
2 duty to monitor the conduct of the trust protector, provide advice to or consult with
3 the trust protector, or communicate with, warn, or apprise any beneficiary
4 concerning instances in which the trustee would or might have exercised the
5 trustee's own discretion in a manner different from the manner exercised by the trust
6 protector.

7 (11) A trustee shall provide to a trust protector, from the assets of the trust for
8 which a trust protector is acting, reasonable compensation and reimbursement of the
9 reasonable costs and expenses incurred in determining whether to carry out, and in
10 carrying out, the powers granted to the trust protector.

****NOTE: Who determines is reasonable compensation? Should the trust protector
be required to request compensation and reimbursement in order to trigger the trustee's
obligation to pay the trust protector?

11 (12) A trustee shall provide to a trust protector, from the assets of the trust for
12 which the trust protector is acting, reimbursement of the reasonable costs and
13 expenses, including attorney fees, of defending any claim made against the trust
14 protector arising from the acts or omissions of the trust protector acting in that
15 capacity unless it is established by clear and convincing evidence that the trust
16 protector was acting in bad faith or with reckless indifference.

****NOTE: Should this be dependent on a court awarding attorney fees and other
reasonable costs and expenses or can a trust protector request these amounts from a
trustee regardless of whether there is a court order?

17 (13) (a) Subject to par. (b), upon the reasonable request of a trust protector, a
18 trustee shall promptly provide to the trust protector any information related to the
19 trust that relates to the exercise or nonexercise of a power expressly granted to the
20 trust protector. A trustee has no obligation to provide any information to a trust
21 protector unless the trust protector requests information from the trustee.

****NOTE: What is the meaning "reasonable" as it modifies "request" in this paragraph? Since the trustee is only required to provide information that the pertains to the trust protector's powers, what would be an unreasonable request? If you are getting at the reasonableness of the timing of the request, I think that is covered by requiring the trustee to "promptly provide" the information. Is it your intent that there are types of requests that the trustee would be entitled to ignore as "unreasonable"?

1 (b) If a trustee is bound by confidentiality restrictions with respect to a trust
2 asset or other information about the trust, the trustee may require that a trust
3 protector who requests information that is subject to the confidentiality restrictions
4 agree to be bound by the confidentiality restrictions before the trustee provides the
5 information to the trust protector.

6 (14) A term of trust that relieves a trust protector of liability for breach of duty
7 is unenforceable to the extent the term satisfies any of the following:

8 (a) Relieves the trust protector of liability for a breach committed in bad faith
9 or with reckless indifference.

10 (b) Was included in the trust instrument as the result of an abuse by the trust
11 protector of a confidential relationship to the settlor. An exculpatory term included
12 or caused to be included in the trust instrument by the trust protector is invalid as
13 an abuse of a fiduciary or confidential relationship unless the trust protector proves
14 that the exculpatory term was fair under the circumstances existing at the time the
15 trust instrument was executed and that its existence and contents were adequately
16 communicated to the settlor.

17 (15) If a person accepts an appointment to serve as a trust protector of a trust
18 having its principal place of administration in this state, the person submits to the
19 jurisdiction of the courts of this state with respect to matters involving the trust,
20 regardless of any term to the contrary in an agreement or instrument.

21 (16) If a trust instrument grants a trust protector the power to direct a
22 trustee's or directing party's investment decisions, distribution decisions, or other

1 decisions of the trustee required in carrying out the duties of the trustee or the
2 directing party in administering the trust, the person's exercise or nonexercise of
3 such power is subject to the provisions of s. 701.0808.

****NOTE: The language you provided in your par. (m) could be interpreted to be inconsistent with the definition of a trust protector. The definition states that a trust protector is a person who is expressly granted a power over the trust other than a power to direct the trustee's investment decisions, distribution decisions, or other decisions required to administer the trust. Please review the definition of trust protector and advise me how to proceed.

4 SECTION 100. 701.09 (title) of the statutes is renumbered 853.34 (title).

5 SECTION 101. 701.09 (1) of the statutes is renumbered 853.34 (1) and amended
6 to read:

7 853.34 (1) TESTAMENTARY TRANSFER TO TRUST OF ANOTHER. A transfer or
8 appointment by will shall not be held invalid because it is made to a trust created,
9 or to be created, under the will of another person if the will of such other person was
10 executed, or was last modified with respect to the terms of such trust, prior to the
11 death of the person making the transfer or appointment and such other person's will
12 is admitted to probate prior to, or within 2 years after, the death of the person making
13 the transfer or appointment. ~~Property included in such a transfer or appointment~~
14 ~~shall not be considered property subject to administration as part of the other~~
15 ~~person's estate but shall pass directly to that other person's testamentary trustee, be~~
16 ~~added to the designated trust and administered as a part thereof.~~

17 SECTION 102. 701.09 (2) of the statutes is renumbered 853.34 (2).

18 SECTION 103. 701.09 (3), (4) and (5) of the statutes are repealed.



****NOTE: I assumed that you wanted me to repeal ss. 701.09 (3), (4), and (5). Please confirm.

19 SECTION 104. Subchapter IX (title) of chapter 701 [precedes 701.0901] of the
20 statutes is created to read: