

1 **SECTION 249.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)
2 and amended to read:

3 701.1134 (3) (a) From income to the extent that receipts from the entity are
4 allocated only to income.

5 **SECTION 250.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,
6 renumbered 701.1134 (3) (b) and amended to read:

7 701.1134 (3) (b) From principal to the extent that: ~~2. a. Receipts~~ receipts from
8 the entity are allocated only to principal.

9 **SECTION 251.** 701.20 (29) (c) 2. b. of the statutes is repealed.

10 **SECTION 252.** 701.20 (29) (d) of the statutes is repealed.

11 **SECTION 253.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135
12 (1) (a), as renumbered, is amended to read:

13 701.1135 (1) (a) Elections and decisions, other than those described in ~~par. (b)~~
14 sub. (2), that the fiduciary makes from time to time regarding tax matters.

15 **SECTION 254.** 701.20 (31) of the statutes is repealed.

16 **SECTION 255.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),
17 (2) and (4), as renumbered, are amended to read:

18 701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the
19 trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust distributions,
20 if a beneficiary is entitled to receive income from a trust, but the ~~creating~~ trust
21 instrument fails to specify how frequently it is to be paid, the trustee shall distribute
22 at least annually the income to which such beneficiary is entitled.

23 (2) PERMITTED ACCUMULATIONS. No provision directing or authorizing
24 accumulation of ~~trust~~ income shall be is invalid.

1 (4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed
2 by the creating trust instrument, ~~in the absence of a governing provision in the~~
3 ~~instrument,~~ may, in the trustee's discretion, be held in reserve for future distribution
4 as income or be added to principal subject to retransfer to income of the dollar amount
5 originally transferred to principal; ~~but at.~~ At the termination of the income interest,
6 any undistributed income shall be distributed as principal.

7 SECTION 256. 701.22 (title) of the statutes is repealed.

8 SECTION 257. 701.22 of the statutes is renumbered 701.0417 (4) and amended
9 to read:

10 701.0417 (4) In case of a division of ^{a ← SCORE} trust assets into 2 or more trusts or shares,
11 any distribution or allocation of assets as an equivalent of a dollar amount fixed by
12 formula or otherwise shall be made at current fair market values unless the
13 governing trust instrument expressly provided that another value may be used. If
14 the governing trust instrument requires or permits a different value to be used, all
15 assets property available for distribution, including cash, shall, ~~unless otherwise~~
16 ~~expressly provided,~~ be so distributed so that the assets property, including cash,
17 ~~distributed as such an equivalent will be~~ is fairly representative of the net
18 appreciation or depreciation in the value of the available property on the date or
19 dates of distribution. A provision in the governing trust instrument that the trustee
20 may fix values for purposes of distribution or allocation does not of itself constitute
21 authorization to fix a value other than current fair market value.

22 SECTION 258. 701.23 of the statutes is repealed.

23 SECTION 259. 701.24 (title) of the statutes is renumbered 701.1205 (title).

24 SECTION 260. 701.24 (1) of the statutes is renumbered 701.1205 (1) and
25 amended to read:

1 701.1205 (1) Except as otherwise provided in sub. (3) (2) and s. 701.19 (9) (a),
2 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ are ss. 701.0602, 701.0813, and
3 701.0903 (4), this chapter is applicable to a trust existing on July 1, 1971 the effective
4 date of this subsection [LRB inserts date], as well as a trust created after such
5 date, and shall govern trustees acting under such trusts. If application of any
6 provision of ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ this chapter to a trust
7 in existence on ~~August 1, 1971~~ the effective date of this subsection [LRB inserts
8 date], is unconstitutional, it shall not affect application of the provision to a trust
9 created after that date.

10 **SECTION 261.** 701.24 (2) of the statutes is renumbered 701.1205 (2) and
11 amended to read:

12 701.1205 (2) ~~Section 701.20 Subchapter XI of this chapter~~ applies to every a
13 trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this
14 subsection [LRB inserts date], and to every a trust or decedent's estate created or
15 coming into existence after that date, except as otherwise expressly provided in s.
16 ~~701.20 subch. XI~~ or by the decedent's will or the terms of the trust. With respect to
17 a trust or decedent's estate existing on ~~May 17, 2005, s. 701.20 (5) to (30)~~ the effective
18 date of this subsection [LRB inserts date], ss. 701.1110 to 701.1135 shall apply at
19 the beginning of the trust's or estate's first accounting period, as defined in s. ~~701.20~~
20 ~~701.1125 (2) (a), that begins on or after May 17, 2005~~ the effective date of this
21 subsection [LRB inserts date].

22 **SECTION 262.** 701.24 (3) of the statutes is repealed.

23 **SECTION 263.** 701.25 of the statutes is renumbered 701.1204.

24 **SECTION 264.** 701.26 of the statutes is repealed.

25 **SECTION 265.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

1 **SECTION 266.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
2 to read:

3 702.02 (2) “Creating instrument” means the will, trust agreement, or other
4 document which creates or reserves the power of appointment.

5 **SECTION 267.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
6 to read:

7 702.02 (4) “Donor” means the person who creates or reserves the power;
8 “donee” means the person in whom the power is created or reserved; and “appointee”
9 means the person to whom an interest is appointed of appointment.

10 **SECTION 268.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
11 to read:

12 702.02 (5) “General power of appointment” means a power exercisable in favor
13 of the donee, the donee’s estate, the donee’s creditors, or the creditors of the donee’s
14 estate, whether or not it is also exercisable in favor of others. A power to appoint to
15 any person or a power ~~which~~ of appointment that is not expressly restricted as to
16 appointees may be exercised in favor of the donee or the donee’s creditors if
17 exercisable during lifetime, and in favor of the donee’s estate or the creditors of the
18 donee’s estate if exercisable by will.

19 **SECTION 269.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
20 to read:

21 702.02 (6) “Power of appointment” means a power ~~of appointment over to~~
22 appoint legal or equitable interests in real or personal property. A power of
23 appointment is ~~a power~~ created or reserved by a person having property subject to
24 his or her disposition which enables the donee of the power of appointment to
25 designate, within such limits as may be prescribed, the transferees of the property

1 or the shares or the interests in which it shall be received; it. A power of appointment
2 does not include a power of sale, a power of attorney, a power of revocation, or a power
3 exercisable by a trustee ~~or other, a directing party, as defined in s. 701.0103 (7),~~
4 another fiduciary in his or her fiduciary capacity, ^{or} a trust protector, as defined in s.
5 701.0103 (31).

6 **SECTION 270.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
7 to read:

8 702.02 (7) “Special power of appointment” means a power of appointment
9 exercisable only in favor of one or more persons not including the donee, the donee’s
10 estate, the donee’s creditors or the creditors of the donee’s estate and, when
11 exercisable in favor of a class, so limited in size by description of the class that in the
12 event of nonexercise of the power a court can make distribution to persons within the
13 class if the donor has failed to provide for this contingency that is not a general power
14 of appointment.

15 **SECTION 271.** 702.01 (6) of the statutes is repealed.

16 **SECTION 272.** 702.02 (1) of the statutes is created to read:

17 702.02 (1) “Appointee” means the person to whom an interest is appointed.

18 **SECTION 273.** 702.02 (3) of the statutes is created to read:

19 702.02 (3) “Donee” means the person in whom the power of appointment is
20 created or reserved.

21 **SECTION 274.** 702.03 of the statutes is amended to read:

22 **702.03 Manifestation of intent to exercise powers a power of**
23 **appointment.** (1) Unless the person who executed it had a contrary intention, if
24 a governing creating instrument, as defined in s. 854.01 (2), ~~or an inter vivos~~
25 ~~governing instrument, as defined in s. 700.27 (1) (c),~~ creates a power of appointment

1 that expressly requires that the power of appointment be exercised by any type of
2 reference to the power of appointment or its source, the donor's intention in requiring
3 the reference is presumed to be to prevent an inadvertent exercise of the power of
4 appointment. Extrinsic evidence, as defined in s. 854.01 (1), may be used to construe
5 the intent.

6 (2) In the case of other powers, ~~an~~ of appointment, a creating instrument
7 manifests an intent to exercise the power of appointment if the creating instrument
8 purports to transfer an interest in the appointive property which the donee would
9 have no power to transfer except by virtue of the power of appointment, even though
10 the power of appointment is not recited or referred to in the creating instrument, or
11 if the creating instrument either expressly or by necessary implication from its
12 wording interpreted in light of the circumstances surrounding its drafting and
13 execution manifests an intent to exercise the power of appointment. If there is a
14 general power of appointment exercisable by will with no gift in default in the
15 creating instrument, a residuary clause or other general language in the donee's will
16 purporting to dispose of all of the donee's estate or property operates to exercise the
17 power of appointment in favor of the donee's estate, but in all other cases such a
18 clause or language does not in itself manifest an intent to exercise a power of
19 appointment exercisable by will.

20 SECTION 275. 702.05 of the statutes is amended to read:

21 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO
22 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by
23 a person who would have the capacity to transfer the property covered by the power
24 of appointment.

1 (2) KIND OF INSTRUMENT AND FORMALITIES OF EXECUTION. A donee can exercise
2 a power of appointment only by an instrument which meets the intent of the donor
3 as to kind of instrument and formalities of execution. If the power of appointment
4 is exercisable by will, this means a will executed with the formalities necessary for
5 a valid will. A written instrument signed by the donee is sufficient if the donor fails
6 to require any additional formalities or fails to indicate a will, but if the power of of
7 appointment is to appoint interests in land, it can be exercised only by an instrument
8 executed with sufficient formalities for that purpose.

9 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
10 person is required by the donor for the exercise of a power of appointment, such
11 consent must be expressed in the creating instrument exercising the power of of
12 appointment or in a separate written instrument, signed in either case by the
13 persons whose consent is required. If any person whose consent is required dies or
14 becomes legally incapable of consenting, the power of of appointment may be exercised
15 by the donee without the consent of that person unless the donor has manifested a
16 contrary intent in the creating instrument ~~creating the power~~.

17 (4) POWER OF APPOINTMENT VESTED IN 2 OR MORE DONEES. Unless the donor
18 manifests a contrary intent, when a power of of appointment is vested in 2 or more
19 persons, all must unite in its exercise, but if one or more of the donees dies, becomes
20 incapable of exercising the power of of appointment, or renounces, releases, or
21 disclaims the power of of appointment, the power of of appointment may be exercised by
22 the others.

23 **SECTION 276.** 702.05 (5) of the statutes is created to read:

24 702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal
25 representative, trustee, or other fiduciary who holds property subject to a power of

1 appointment may administer that property as if the power of appointment was not
2 exercised if the personal representative, trustee, or other fiduciary has no notice of
3 the existence of any of the following within 6 months after the death of the donee of
4 the power of appointment:

5 (a) A document purporting to be a will of the donee of the power of appointment
6 if the power of appointment is exercisable by a will.

7 (b) Some other documentation of the donee purporting to exercise the power of
8 appointment if the power of appointment is exercisable other than by a will.

9 **SECTION 277.** 702.07 of the statutes is amended to read:

10 **702.07 Powers Power of appointment to be construed as exclusive.** The
11 donee of any power of appointment may appoint the whole or any part of the
12 appointive assets to any one or more of the permissible appointees and exclude
13 others, except to the extent that the donor specifies either a minimum share or
14 amount to be appointed to each permissible appointee or to designated appointees,
15 or a maximum share or amount appointable to any one or more appointees.

16 **SECTION 278.** 702.08 of the statutes is amended to read:

17 **702.08 Disclaimer of ~~powers~~ a power of appointment.** The donee of any
18 power of appointment may disclaim all or part of the power of appointment as
19 provided under s. 700.27 or 854.13.

20 **SECTION 279.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
21 amended to read:

22 **702.09 (title) Release of ~~powers~~ a power of appointment.** (1) ~~Except as~~
23 Unless the creating instrument expressly provides that the power of appointment
24 cannot be released or expressly restricts the time, manner, or scope of release, the
25 donee of any power of appointment may do any of the following:

- 1 (a) At any time completely release the donee's power; of appointment.
- 2 (b) At any time or times release the donee's power of appointment in any one
3 or more of the following respects:
- 4 1. As to the whole or any part of the property which is subject thereto;.
- 5 2. As to any one or more persons or objects, or classes of persons or objects, in
6 whose favor such power of appointment is exercisable;.
- 7 3. So as to limit in any other respect the extent to or manner in which ~~it~~ the
8 power of appointment may be exercised.
- 9 (3) (a) Delivery to any person specified in the creating instrument;.
- 10 (b) Delivery to a trustee or to one of several trustees of the property to which
11 the power of appointment relates, or filing with the court having jurisdiction over the
12 trust;.
- 13 (c) Delivery to any person, other than the donee, who could be adversely
14 affected by an exercise of the power; ~~or~~ of appointment.

15 **SECTION 280.** 702.11 of the statutes is amended to read:

16 **702.11 Irrevocability of creation, exercise and release of powers a**
17 **power of appointment**. The creation, exercise or release of a power of appointment
18 is irrevocable unless the power to revoke is reserved in the creation, exercise or
19 release of the power of appointment.

20 **SECTION 281.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
21 are amended to read:

22 **702.13 (title) Recording instruments relating to powers a power of**
23 **appointment**. (1) (intro.) Any of the following instruments relating to powers a
24 power of appointment is entitled to be recorded as a conveyance upon compliance
25 with s. 706.05 (1):

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

2 (b) An instrument expressing consent to exercise;.

3 (c) A disclaimer;.

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

6 SECTION 282. 702.15 (intro.), (1) and (2) of the statutes are amended to read:

7 **702.15 Disposition when a special power of appointment is**
8 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise
9 effectively the special power of appointment, the interests which might have been
10 appointed under the special power of appointment pass in one of the following ways:

11 (1) If the creating instrument contains an express gift in default, then in
12 accordance with the terms of such gift;.

13 (2) If the creating instrument contains no express gift in default and does not
14 clearly indicate that the permissible appointees are to take only if the donee exercises
15 the special power of appointment, then to the permissible appointees equally, but if
16 the ^{special}power is to appoint among a class such as “relatives,” “issue,” or “heirs,” then to
17 those persons who would have taken had there been an express gift to the described
18 class; ~~or~~.

19 SECTION 283. 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
20 amended to read:

21 702.15 (3) (a) If Except as provided in par. (b), if the creating instrument
22 contains no express gift in default and clearly indicates that the permissible
23 appointees are to take only if the donee exercises the special power of appointment,
24 then by reversion to the donor or the donor’s estate. ~~But if~~

1 (b) If the creating instrument expressly states that there is no reversion in the
2 donor, then any language in the creating instrument indicating or stating that the
3 permissible appointees are to take only if the donee exercises the special power of
4 appointment is to be disregarded and the interests shall pass in accordance with sub.

5 (2).

6 SECTION 284. 702.17 (1), (2), (3) and (5) of the statutes are amended to read:

7 702.17 (1) GENERAL POLICY. If the donee has either a general power or an
8 ~~unclassified power which is unlimited as to permissible appointees except for~~
9 ~~exclusion of the donee, the donee's estate, the donee's creditors and the creditors of~~
10 ~~the donee's estate, or a substantially similar exclusion of appointment,~~ any interest
11 which the donee has power to appoint or has appointed is to be treated as property
12 of the donee for purposes of satisfying claims of the donee's creditors, as provided in
13 this section.

14 (2) DURING LIFETIME OF THE DONEE. If the donee has an unexercised general
15 ~~power of the kinds specified in sub. (1) appointment,~~ and can presently exercise such
16 ~~a the general power of appointment in favor of the donee or the donee's creditors,~~ any
17 creditor of the donee may by appropriate proceedings reach any interest which the
18 donee could appoint, to the extent that the donee's individual assets are insufficient
19 to satisfy the creditor's claim. Such an interest is to be treated as property of the
20 donee within ch. 816. If the donee has exercised such a general power of
21 appointment, the creditor can reach the appointed interests to the same extent that
22 under the law relating to fraudulent conveyances the creditor could reach property
23 which the donee has owned and transferred.

24 (3) AT DEATH OF THE DONEE. If the donee has at the time of his or her the donee's
25 death a general power of the kinds specified in sub. (1) appointment, whether or not

GENERAL POWER OF APPOINTMENT

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1 the donee exercises the general power of appointment, any creditor of the donee may
2 reach any interest which the donee could have appointed or has appointed, to the
3 extent that the claim of the creditor has been filed and allowed in the donee's estate
4 but not paid because the assets of the estate are insufficient.

5 (5) THIRD PARTIES IN GOOD FAITH PROTECTED. Any person acting without actual
6 notice of claims of creditors under this section incurs no liability to such creditors in
7 transferring property which is subject to a general power of appointment or which
8 has been appointed; and a purchaser without actual notice and for a valuable
9 consideration of any interest in property, legal or equitable, takes such interest free
10 of any rights which a creditor of the donee might have under this section.

11 SECTION 285. 702.21 of the statutes is amended to read:

12 **702.21 Applicability of chapter.** The provisions of this chapter are
13 applicable to any power of appointment existing on May 16, 1965, as well as a power
14 of appointment created after such date.

15 SECTION 286. 766.575 (1) (e) of the statutes is amended to read:

16 766.575 (1) (e) "Trustee" has the meaning given under s. 701.01(8) 701.0103
17 (28).

18 SECTION 287. 840.01 (1) of the statutes is amended to read:

19 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
20 estates in, powers of appointment under ch. 702 over, present and future rights to,
21 title to, and interests in real property, including, without limitation by enumeration,
22 security interests and liens on land, easements, profits, rights of appointees under
23 powers of appointment, rights under covenants running with the land, powers of
24 termination, and homestead rights. The interest may be an interest that was

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163-10

1 formerly designated legal or equitable. The interest may be surface, subsurface,
2 suprasurface, riparian, or littoral.

3 SECTION 288. 853.17 (2) of the statutes is amended to read:

4 853.17 (2) This section does not prevent the court from requiring the contract
5 beneficiary to elect under s. 853.15 in order to take property under the will; nor does
6 it apply to naming a testamentary trustee as designated by a life insurance policy
7 under s. 701.09.

8 SECTION 289. 853.32 (3) of the statutes is amended to read:

9 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
10 will provision that purports to transfer or appoint property to a ~~living~~ ^{stake} trust are
11 governed by s. 701.08 [✓] ~~701.0600~~ ⁸⁰⁴¹⁹

12 SECTION 290. 853.34 (3) of the statutes is created to read:

13 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
14 created by a testator's will is designated as the beneficiary of a transfer under
15 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
16 or at the death of a 3rd party, the transfer of any assets under that other governing
17 instrument to the trustee does not cause the transferred assets to be included in the
18 property administered as part of the testator's estate. The transferred assets are not
19 subject to taxes, debts, or charges enforceable against the testator's estate to any
20 greater extent than if the proceeds were payable to a beneficiary other than the
21 testator's estate.

22 SECTION 291. 853.61 (2) (a) of the statutes is amended to read:

23 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
24 trustee shall have all the powers listed in s. ~~701.16~~ ss. 701.0815 and 701.0816.

1 **SECTION 292.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
2 of the statutes are amended to read:

3 854.13 (1) (c) “Power of appointment” has the meaning given in s. 702.01 (4)
4 702.02 (6).

5 **(2) (a) 2.** A person who is an heir, recipient of property, or beneficiary under a
6 governing instrument, donee of a power of appointment created by a governing
7 instrument, appointee under a power of appointment exercised by a governing
8 instrument, taker in default under a power of appointment created by a governing
9 instrument, or person succeeding to disclaimed property may disclaim any property,
10 including contingent or future interests or the right to receive discretionary
11 distributions, by delivering a written instrument of disclaimer under this section.

12 **(d) *Partial disclaimer.*** Property may be disclaimed in whole or in part, except
13 that a partial disclaimer of property passing by a governing instrument or by the
14 exercise of a power of appointment may not be made if partial disclaimer is expressly
15 prohibited by the governing instrument or by the instrument exercising the power
16 of appointment.

17 **(4) (e) *Interests arising by disclaimer.*** Notwithstanding pars. (a) and (b), a
18 person whose interest in property arises by disclaimer or by default of exercise of a
19 power of appointment created by a governing instrument may disclaim at any time
20 not later than 9 months after the day on which the prior instrument of disclaimer is
21 delivered, or the date of death of the donee of the power of appointment.

22 **(5) (b) *Delivery to trustee.*** If the trustee of any trust to which the interest or
23 power of appointment relates does not receive the instrument of disclaimer under
24 par. (a), a copy shall also be delivered to the trustee.

1 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
2 the governing instrument provides otherwise, either expressly or as construed from
3 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
4 before the decedent. If the disclaimed interest is a remainder contingent on
5 surviving to the time of distribution, the disclaimed interest passes as if the
6 disclaimant had died immediately before the time for distribution. If the disclaimant
7 is an appointee under a power of appointment exercised by a governing instrument,
8 the disclaimed property devolves as if the disclaimant had died before the effective
9 date of the exercise of the power of appointment. If the disclaimant is a taker in
10 default under a power of appointment created by a governing instrument, the
11 disclaimed property devolves as if the disclaimant had predeceased the donee of the
12 power of appointment.

13 (10) (a) *Subsequent interest not held by disclaimant.* Unless the governing
14 instrument provides otherwise, either expressly or as construed from extrinsic
15 evidence, upon the disclaimer of a preceding interest, a subsequent interest not held
16 by the disclaimant and limited to take effect in possession or enjoyment after the
17 termination of the interest that is disclaimed accelerates to take effect as if the
18 disclaimant had died immediately before the time when the disclaimed interest
19 would have taken effect in possession or enjoyment or, if the disclaimant is an
20 appointee under a power of appointment and that power of appointment has been
21 ~~exercised by a power of appointment~~, as if the disclaimant had died before the
22 effective date of the exercise of the power of appointment.

23 **SECTION 293.** 854.23 (5) (b) of the statutes is amended to read:

24 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
25 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and

1 705 a financial institution is not liable for having transferred an account to a
2 beneficiary designated in a governing instrument who, under this chapter, is not
3 entitled to the account, or for having taken any other action in reliance on the
4 beneficiary's apparent entitlement under the terms of a governing instrument,
5 regardless of whether the financial institution received written notice of a claimed
6 lack of entitlement under this chapter.

7 **SECTION 294.** 859.18 (5) (a) of the statutes is amended to read:

8 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
9 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

10 **SECTION 295.** 859.18 (5) (b) of the statutes is amended to read:

11 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
12 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

13 **SECTION 296.** 861.015 (2) of the statutes is amended to read:

14 861.015 (2) For purposes of this section, property subject to a directive is valued
15 by its clear market value on the date of the decedent's death. Satisfaction of the
16 nonholding spouse's marital property interest in the property subject to the directive
17 shall be based on that value, plus any income from the property subject to the
18 directive after the death of the decedent and before satisfaction. For purposes of
19 determining the income from the property subject to a directive, such property shall
20 be treated as a legacy or devise of property other than money under s. ~~701.20~~
21 701.1115.

22 **SECTION 297.** 861.11 (5) (b) of the statutes is amended to read:

23 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
24 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
25 705 a financial institution is not liable for having transferred an account included

1 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
2 designated in a governing instrument, or for having taken any other action in
3 reliance on the beneficiary's apparent entitlement under the terms of a governing
4 instrument, regardless of whether the financial institution received written notice
5 of an intent to file, or the filing of, a petition for the deferred marital property elective
6 share amount.

7 **SECTION 298.** 865.08 (6) of the statutes is amended to read:

8 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
9 of trust shall be issued by the probate registrar to the trustee upon admission of the
10 will to informal probate at the same time that letters are granted to the personal
11 representative. The probate registrar shall determine if bond shall be required and,
12 if so, the amount thereof, and for such purpose the probate registrar shall have the
13 authority granted to the court by, and shall proceed pursuant to s. ~~701.16 (2)~~
14 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
15 beneficiaries of the testamentary trust shall cease to be interested in the estate
16 except under s. 851.21 (3). The trust shall be administered under supervision of the
17 court under ch. 701.

18 **SECTION 299.** 867.03 (2g) (a) of the statutes, as affected by 2013 Wisconsin Act
19 20, is amended to read:

20 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
21 trustee, or guardian assumes a duty to apply the property transferred for the
22 payment of obligations according to priorities established under s. 859.25 and to
23 distribute any balance to those persons designated in the appropriate governing
24 instrument, as defined in s. 854.01, of the decedent or if there is no governing
25 instrument, according to the rules of intestate succession under ch. 852, subject to

1 par. (b). An heir or guardian may publish a notice to creditors in the same manner
2 and with the same effect as a trustee under s. ~~701.065~~ [✓] ~~701.060~~ ^{9/30/508}. This paragraph does
3 not prohibit any appropriate person from requesting administration of the
4 decedent's estate under s. 856.07 or ch. 865.

5 **SECTION 300.** 879.03 (2) (c) of the statutes is amended to read:

6 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
7 ~~701.01(2)~~ 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

8 **SECTION 301.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
9 read:

10 879.47 (1) The attorney for any person desiring to file any paper in court is
11 responsible for the preparation of the paper. Except as provided in s. ~~701.16 (4) (d)~~
12 sub. (2), all papers shall be legibly written on substantial paper and shall state the
13 title of the proceeding in which they are filed and the character of the paper. Either
14 uniform forms or computer-generated forms, if the forms exactly recreate the
15 original forms in wording, format and substance, shall be used. If papers are not so
16 written or if uniform forms or computer-generated forms that exactly recreate the
17 original forms in wording, format and substance are not used, the court may refuse
18 to receive and file them. The court shall show on all papers the date of their filing.

19 **SECTION 302.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

20 881.01 (1) (title) DEFINITIONS.

21 **SECTION 303.** 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
22 and amended to read:

23 881.01 (1) (a) (intro.) "Beneficiary," ~~with respect to a guardianship of the~~
24 estate, means any of the following:

1 3. With respect to guardianship of the estate, a ward for whom a guardian of
2 the estate has been appointed and, with respect to a conservator, means.

3 4. With respect to a conservatorship, a person for whose estate a conservator
4 has been appointed.

5 **SECTION 304.** 881.01 (1) (a) 1. and 2. of the statutes are created to read:

6 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.

7 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3).

8 **SECTION 305.** 881.01 (1) (b) of the statutes is amended to read:

9 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
10 conservator, ~~or guardian of the estate,~~ a directing party, as defined in s. 701.0103 (7),
11 who has the power to direct the trustee’s investment decisions, a trust protector, as
12 defined in s. 701.0103 (31), who has a power, ^{exercisable in a fiduciary capacity} over the investment of trust assets, and
13 any other person to whom a court appoints a power over the investment of the assets
14 of a decedent’s estate, a trust, a conservatorship, or a guardianship of the estate.

15 **SECTION 306.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
16 amended to read:

17 881.01 (4) (a) General rule. A fiduciary shall diversify investments unless the
18 fiduciary reasonably determines that, because of special circumstances, the
19 purposes of the estate, trust, conservatorship, or guardianship are better served
20 without diversifying.

21 **SECTION 307.** 881.01 (4) (b) of the statutes is created to read:

22 881.01 (4) (b) Special rule for assets collected by a fiduciary. 1. For purposes
23 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
24 the fiduciary did not exercise discretion over to acquire or purchase.

INS 87-12

1

(7) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,

2

in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees

3

and costs to defend any claim made against the directing party.

END INS 87-12

INS 163-10

4

SECTION 1. 702.17 (3) of the statutes is renumbered 702.17 (3) (a) and amended

5

to read:

6

702.17 (3) (a) AT DEATH OF THE DONEE. If Except as provided in par. (b), if the

7

donee has at the time of his or her death the donee's a general power of the kinds

8

specified in sub. (1) appointment, whether or not the donee exercises the general

9

power of appointment, any creditor of the donee may reach any interest which the

10

donee could have appointed or has appointed, to the extent that the claim of the

11

creditor has been filed and allowed in the donee's estate or filed with and allowed by

12

the trustee of a revocable trust but not paid because the assets of the estate or

13

revocable trust are insufficient.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1975 c. 218, § 993 a. 486.

14

SECTION 2. 702.17 (3) (b) of the statutes is created to read:

15

702.17 (3) (b) If the donee fails to exercise a general power of appointment, in

16

whole or in part, that the donee has at the time of the donee's death and neither the

17

donee nor the donee's spouse is the donor of the power, the interest subject to the

18

power, to the extent the power was not exercised, may not be reached by a creditor

19

of the donee.

20

SECTION 3. 702.17 (6) of the statutes is created to read:

a creditor of the donee may not reach an



Stet

- 1
- 2
- 3

702.17 (6) GENERAL POLICY: SPECIAL POWER OF APPOINTMENT If the donee has a special power of appointment, property subject to the donee's special power of appointment is exempt from a claim of a creditor of the donee or the donee's estate.

END INS 163-10

Knepp, Fern

From: victor.schultz@bmo.com
Sent: Tuesday, October 01, 2013 5:30 PM
To: Knepp, Fern
Cc: Wiensch, Adam J.
Subject: Requested changes to draft #5

Hi Fern - this email confirms the changes we discussed on Sept. 30 to your most recent draft of the Wisconsin Trust Code (we refer to this as draft #5.)

Beyond a couple of minor typo changes which we noted to you, we discussed the following more substantive changes.

- ✓ 1. Page 4, LRB analysis, change the description of a "qualified beneficiary" to mean " a person who is a current beneficiary of trust income or principal, a person who would be eligible to receive trust income or principal if the current beneficiaries' interests in the trust terminate, or a person who would receive a distribution if the trust terminates."
- ✓ 2. Pages 23 - 24, Fern to modify section 701.0105(2) to add a provision that requires a trust protector who is also serving as the trustee or a directing party to exercise any power granted to the trust protector in a fiduciary capacity. (Consistent with section 701.0818(2)(c).) Fern will advise if we should retain s. 701.0818(2)(c). *Yes*
3. Page 29, section 701.0111(5), line 23 -24 - change this subsection to read:
"~~(5)~~ Except as provided in sub. (4), matters that may be addressed by a nonjudicial settlement agreement include any of the following:"
- ✓ 4. Page 30, section 701.0111(5)(k), line 15, change this to read:
"(k) The appointment of, and powers granted to, a directing party or a trust protector."
- ✓ 5. Page 80, section 701.0419(3)(b), line 12, change "testamentary trust" to "trust".
- ✓ 6. Page 85, section 701.0808(3)(d), line 23, change this to read:
"Compel a directing party to redress the directing party's actions or directions."
- ✓ 7. Page 87-88, section 701.0812, leave this section as drafted.
8. Pages 97 - 102, section 701.0818, Fern to review and redraft entire section to define an "appointing document" that relates to a trust instrument created by the settlor, a trust instrument or court order created by a court, or a nonjudicial settlement agreement created by the interested persons. At a minimum this affects 701.0818(1), (2)(a), (2)(b), and (3).
- ✓ 9. Page 97, section 701.0818(1), last sentence, lines 16 - 17, Fern to revise this sentence to read something like:
"A trust protector only has the powers granted to the trust protector in the appointing document." *3 instruments*
10. Page 97, section 701.0818(2)(a), lines 18 - 22, Fern to revise this subsection to read something like:
"(a) A settlor, a court, or the interested persons may specify the capacity in which a particular power granted to the trust protector may be exercised and whether a power granted to the trust protector in a capacity other than a fiduciary capacity is required to be exercised in good faith."
- ✓ 11. Page 100, section 701.0818(6)(b)2.a., line 23, add a reference to section 2056A of the Internal Revenue Code.
- ✓ 12. Page 101, section 701.0818(6)(b)2.c., change this to read:
"c. A trust in which the settlor has a qualified interest under section 2702(b) of the Internal Revenue Code, during any period in which the settlor is a beneficiary."
- ✓ 13. Page 162, section 702.17(5), line 1, change "general power of appointment" to "power of appointment".
- ✓ 14. Page 162, section 702.17(3)(a), line 8, insert "death" after "the donee's".

15. Page 162, section 702.17(3)(a), lines 12 - 14, Fern to rewrite these lines to read something like:
"and allowed in the donee's estate or filed with and allowed by the trustee of a trust that was revocable by the donee or jointly by the donee and the donee's spouse but not paid because the assets of the estate or trust are insufficient."

16. Our WBA lobbyist also said work is continuing on the Medicaid estate recovery fix. The lobbyist mentioned the State wants to leave the reference to "living trust" in s. 701.0508(5)(b) (see pages 71-72.) If that is done, I said we need the State to advise us on a definition of "living trust".

Victor J. Schultz | Vice President | Estate Planning Specialist - Financial Planning Strategy | BMO Harris Bank N.A. | 111 East Kilbourn Avenue, Suite 200 | Milwaukee, Wisconsin 53202 |
Phone (414) 287-7019 / Cell (262) 844-8756 / Toll free 800-342-2265
email: victor.schultz@bmo.com

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9-30-13 Telephone Call
w/ Victor & Adam

Analysis changes - Subch 1

Sentence re: qualified beneficiary
reword to avoid "beneficiary"
insert "eligible to receive trust income."
& "who would receive a distribution"

Subch 4 - title remove "a"

pg 52. OK w/ par. (c)

p. 80 strike "testamentary"

p. 97-102 - insert "interest persons in a
everywhere ~~everywhere~~ ^{nonjudicial settlement} ^{agreement"}
to make clear
it is necessary to equate w/ settlor in a trust
& court in a court order or trust instr.

See final sentence sub. (1) instr
sub. (2) (a) + (b)
sub. (3) (a) + (b)

* Add 701.0818(2)(c) to mandatory
provision in 701.0105

* p. 100 line 23 - Add 2056A

* p. 101 - Adam to provide new language
current language may be too limited

* p. 162 line 1 - remove "general"
line 13 - clarify that revocable trust of

is space - standard will substitute trust