



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-2788 (For: Senator Risser)

has been transferred to the drafting file for

2013 LRB-0010 (For: Senator Risser)



RESEARCH APPENDIX - **PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 10/09/2012 (Per: FFK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2011 DRAFTING REQUEST

Bill

Received: 08/27/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Fred Risser (608) 266-1627

By/Representing: Terry

May Contact:

Drafter: tkuczens

Subject: Probate - trusts and trustees

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Risser@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Uniform Trust Code

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 12/11/2011	csicilia 01/20/2012	phenry 01/20/2012	_____	ggodwin 01/20/2012		

FE Sent For:

<END>

Kuczenski, Tracy

From: Elizabeth A. Heiner [lheiner@boardmanlawfirm.com]
Sent: Thursday, August 11, 2011 11:50 AM
To: Hurley, Peggy; Kuczenski, Tracy
Cc: victor.schultz@micorp.com; Wiensch, Adam J.; Christina Olson; Tuschen, Terry; 'Cale Battles'
Subject: Wisconsin Trust Code: Articles 1 and 4
Attachments: 8-11-2011 Clean Copy of Article One (A1246634).DOCX; Clean Article Four dated 9-24-10 from Phil Halley (A1233885).DOCX

Hi Peggy and Tracy –

I (hopefully) have attached Articles 1 and 4 for the Wisconsin Trust Code. This means that you should now have Articles 1, 2, 3, 4, 5, 6, 7, and 10.

Please feel free to call me if you have questions.

I have two initial questions for you:

- (1) The Study Group working on the Wisconsin Trust Code has prepared comments to most of the sections in the various Articles. The intention is that the statutory text of the Wisconsin Trust Code is to be supplemented by the Study Group comments. Do you have any suggestions on how best to accomplish this?
- (2) Some of the existing sections of chapter 701 will be incorporated into the Wisconsin Trust Code. For example, current Wis. Stat. sec. 701.065 (Debts of decedents) should be incorporated into Article Five because it is not addressed elsewhere in the Trust Code. However, the Study Group has not yet walked through chapter 701 and determined what stays and what goes. Does this make your job more difficult? Should determining what portions of current chapter 701 to retain be a priority for the Study Group? After we determine that a current statute should be retained, does it make more sense for you to incorporate it into the Wisconsin Trust Code or us?

The Wisconsin Trust Code Study Group is scheduled to meet again on Thursday, August 18. Please let me know if you have any questions or suggestions to pass along.

Thanks for your help!

Liz

Elizabeth A. Heiner
Boardman, Suhr, Curry & Field LLP
P. O. Box 927
Madison, WI 53701-0927
Telephone: 608-283-1702
Fax: 608-283-1709

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Monday, August 01, 2011 10:38 AM

8/31/2011

To: Elizabeth A. Heiner; Cale Battles
Cc: Kuczenski, Tracy; victor.schultz@micorp.com; Wiensch, Adam J.; Christina Olson; Tuschen, Terry
Subject: RE: Wisconsin Trust Code: Current Articles 2 ,3, 5, 6, 7, and 10

Liz and Cale,

I received your phone messages; thank you both for your prompt responses. Tracy Kuczenski will be the lead drafter on this project. I will be out of the office the week of August 8; Tracy will be out of the office for most of that week, but she will return on the 12th. Tracy can be reached at (608) 266-9867. We look forward to working with you all.

Peggy

From: Elizabeth A. Heiner [mailto:lheiner@boardmanlawfirm.com]
Sent: Friday, July 29, 2011 4:06 PM
To: 'Cale Battles'; Hurley, Peggy
Cc: Kuczenski, Tracy; victor.schultz@micorp.com; Wiensch, Adam J.; 'Christina Olson'
Subject: RE: Wisconsin Trust Code: Current Articles 2 ,3, 5, 6, 7, and 10

Hi Peggy –

Thank you for working on this project. Like Cale, I will be on vacation next week. I would be happy to meet with you when I get back (8/8).

I am new to the UTC Study Committee – it is chaired by Victor Schultz and Adam Wiensch, both of whom are located in Milwaukee. If possible, it would be helpful to have one or both of them participate in the meeting. The next Wisconsin Trust Code Study Group meeting is scheduled for Thursday, August 18 and I believe that Victor said he would be in Madison. Maybe we could schedule time with him then...but I would be happy to meet at an earlier time.

My understanding is that the Wisconsin version of the UTC will replace chapter 701. However, I believe that portions of chapter 701 that are not addressed in the UTC but that the Committee wants to retain, generally will be included in Article 12. Article 12, which will also include effective dates, has not yet been drafted. (I hope Victor or Adam corrects me if my understanding is not correct.)

Most members of the UTC study group have been working on the new trust code for the past 5 years. I have only been working on it for the past 3 months. In an attempt to force myself to understand the new code, I tried to compare the drafted Articles against current chapter 701. I attach my comparison for your reference. It is crude and has not been vetted by anyone. I don't know if it will help you. It is only a starting point.

I will give you a call when I return. I will also send you Articles One and Four at that time. If you need them before 8/8, please e-mail Christina Olsen. I copied Christina in on this e-mail.

Good luck!

Liz

Elizabeth A. Heiner
Boardman, Suhr, Curry & Field LLP

8/31/2011

P. O. Box 927
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From: Cale Battles [mailto:cbattles@wisbar.org]
Sent: Friday, July 29, 2011 2:52 PM
To: 'Hurley, Peggy'
Cc: Kuczenski, Tracy; Elizabeth A. Heiner
Subject: FW: Wisconsin Trust Code: Current Articles 2 ,3, 5, 6, 7, and 10

Peggy,

I just left you a voicemail trying to explain where we are at with this project. I have also including Liz Heiner on the e-mail. I am out of the office next week on vacation. If possible the best process might be to have a brief conference call sometime in August with Liz and some our other study group members to explain where they are at in the process. For your information I have attached all of the e-mails from Liz and I believe Article 1 and 4 are forthcoming.

Thanks in advance for helping us forward this project.

Cale

Mr. Battles,

I have received permission from Terry Tuschen to discuss with you the uniform law regarding the Wisconsin Trust Code that you and your colleagues have forwarded to his office. I or Tracy Kuczenski will be drafting this bill, and we were hoping that one or both of us could talk with you so we can more clearly understand the drafts you have submitted thus far. I cannot tell whether, in general, your goal is to amend Wisconsin law or replace it wholesale with the newly created Trust Code and the new Code "meshes" with current law.

I understand there is a document (perhaps forwarded to you by Liz Heiner) that compares/contrasts the proposed Wisconsin Trust Code with current chapter 71 of the Wisconsin Statutes. If you could forward that to me and Tracy, I think we would find it very helpful. If there is a day/time that would work for you to get together with one or both of us and with Mr. Tuschen, please let me know. I will be leaving the office shortly, but Tracy and I will be in all of next week; we look forward to working with you.

Sincerely,

Peggy Hurley
Legislative Reference Bureau
608 266 8906

From: Elizabeth A. Heiner [mailto:lheiner@boardmanlawfirm.com]
Sent: Friday, July 22, 2011 2:03 PM
To: Cale Battles
Cc: 'victor.schultz@micorp.com'; Wiensch, Adam J.
Subject: Wisconsin Trust Code: Current Articles 2 ,3, 5, 6, 7, and 10

Hi Cale –

The Wisconsin Study Group for the Uniform Trust Code asked me to contact you to arrange to

8/31/2011

have a LRB drafting attorney begin drafting Wisconsin's version of the Uniform Trust Code.

As we discussed, I am forwarding to you copies of Articles 2, 3, 5, 6, 7, and 10 of the proposed Wisconsin Trust Code. I hope to forward to you Articles 1 and 4 next week. Please let me know if you can't open the documents.

Please let me know when a drafting attorney has been assigned. We have some questions for the LRB regarding Wisconsin Study Group's comments to the trust code.

In addition, please e-mail me back to confirm that you received this. Many thanks.

Liz

Elizabeth A. Heiner
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Madison, WI 53701-0927
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Fax: 608-283-1709

From: Elizabeth A. Heiner

Sent: Friday, June 24, 2011 12:44 PM

To: 'victor.schultz@micorp.com'; 'awiensch@foley.com'; 'AECanellos@aol.com'; 'cpriebe@dkattorneys.com'; 'Doug.Barnes@firsteconnect.com'; 'Govan, J. Gardner'; 'mchamberlain@trustpointinc.com'; 'MShiller@gklaw.com'; 'peter.m.wolters@jpmorgan.com'; 'PHALLEY@whdlaw.com'; 'royfroemming@froemminglaw.com'; 'Randy S. Nelson'; 'steve.r.white@jpmorgan.com'; 'susan.collins@micorp.com'; 'Christina Olson'

Subject: Wisconsin Trust Code: Current Articles 2, 3, 5, 6, 7, and 10

To Wisconsin Study Group –

At the June 17, 2011 meeting, the Study Group asked me to send all members copies of the "Clean" and "Red-lined" Articles that are substantially complete.

I attach the following:

Article 2: Clean and Red-line Version
Article 3: Clean and Red-line Version
Article 5: Clean and Red-line Version
Article 6: Clean and Red-line Version
Article 7: Clean and Red-line Version
Article 10: Clean and Red-line Version

I do not have current versions of Articles 4 and 8. Victor is refining Article 1.

Unfortunately, I do not have the ability to post the current copies of the articles to a FTP site maintained by Boardman.

I was also asked to distribute a comparison of current chapter 701 to the Wisconsin Trust Code that I prepared for my own reference. This is a work in process and I do not vouch for its accuracy. It does point out that chapter 701 addresses issues not covered by the UTC. I

assume that the Wisconsin Study Group will review current chapter 701 and determine which parts of it will be supplanted by the Wisconsin Trust Code and which parts should be retained.

Please let me know if you have any questions about the attachments.

Liz

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Comparison of Current Chapter 701 to Wisconsin Trust Code

701.01 Definitions

- (1) Beneficiary
- (2) Charitable and Private trust
- (3) Court
- (4) Property
- (5) Settlor
- (6) Testamentary and Living
- (7) Trust
- (8) Trustee

103 Definitions

- 103(3)
103(4) for Charitable/no def of Private
None?
103(17)
103(20)
103(19) for Revocable/ none for test?
103(23) Terms of a trust
103(27)

[Confirm that 103 replaces 701.01. My cites are off - Victor keeps changing Section 103.]

701.02 Purpose (any purpose)

404/105(3) - purpose must be lawful

[Confirm 404 replaces 701.02]

701.03 Passive trusts abolished

? 102 Scope

[Confirm that 102(a) replaces 701.03. Do we need a reference to 706.08(4) as in current 701.03?]

701.04 Purchase money result. trusts abolished ? Maybe 102(a)

- (a) Cannot enforce purchase money resulting trust
- (b) Creditors may enforce a resulting trust
- (c) Establish a constructive trust based upon fraud, etc.

[Someone needs to decide whether 701.04 is still necessary. UTC 102(a) says that the chapter does not apply to resulting trust. Current 701.04 goes further - it says that the donor may not enforce a purchase money resulting trust.]

701.05 Title of Trustee, interest of benes

- (1) Trustee takes title
- (2) Beneficiary's right to compel fiduciary duties
- (3) Settlor's right to retained interest

UTC Cmt to 507
?105(b)(2), **814(a)**

[Confirm whether we need any part of 701.05.]

701.06 Spendthrift Provisions

501-507

- (1) Income Beneficiary
- (2) Principal Beneficiary
- (3) Disclaimer
- (4) Child Support
- (5) Public Support
- (5m) Disabled Person
- (6) Settlor as bene
- (7) Subsequent mod of ct order
- (8) Exempt Assets

502, 506 - although not specific to income
502, 506 although not specific to principal
? See UTC note to 502
503(a) - verbatim
503(b)
501(b)(2), 503(c); 103(24)
505
503(d), 505(b)(5)
505(a)(2) - but is there a glitch for rev trusts?

[Confirm that Sections 501-507 replace 701.06. It appears to do so. Note:

- 701.06(5m) - Should there be some reference in Article 5 to Wis. Stat. §§ 46.215 or 46.22 as in current 701.06(5m)?]

701.065 Debts of a Decedent

I assume that we need this somewhere.

- (1) Limitations on claims
- (2) Effect of statute of limitations
- (3) Claims of creditors without notice
- (4) Satisfaction of Claim from other property

[Victor suggested that 701.065 be included in Article 5. Does it need to be changed to accommodate the new provisions? The Study Group note to 604 says that 604(a)(2) was changed to be consistent with 701.065.]

701.07 Living Trusts

- (1) Validity Does 401/402 cover it?
- (2) Eligibility to receive assets Do we need this?
- (3) Creditors' Rights 505(a)(1) -

[Someone should confirm whether we need 701.07.]

701.08 Transfers to Living trusts

- (1). Validity and Effect Do we still need this? This keeps a rev trust out of probate and ignores order of execution of will/trust.
- (2) Governing terms Do we need this? It allows a beneficiary form designating a rev trust as the beneficiary to be effective even if trust is modified after the beneficiary form was executed. Section 401 may cover this: See UTC cmt. ¶
- (3) Disposition when no existing rev trust ?

[Someone should confirm whether we need any of 701.08. In particular, do we need (3) regarding the disposition of trust assets if a revocable trust has been revoked.]

701.09 Transfers to Testamentary Trusts

Testamentary Trusts are not defined in 103.

- (1) Transfer to trust of another 401 may cover this but look at 2year require
- (2) Invalid testamentary transfer ?????
- (3) Life insurance proceeds transferred to trust of 401, but part of this is procedural: life insurance proceeds are not included in probate if paid to testamentary trust
- (4) Employee benefits transferred to trust 401, but part of this is procedural/EB proceeds are not included in probate if paid to testamentary trust
- (5) transfer of other property 401

[Someone should confirm whether we need parts of 701.09.]

701.10 Charitable trust -

- (1) Validity 405

- (2) Modification and Termination 413
 - (3) Enforcement/Notice to AG 413(a), 110(c)
 - (4) Def. of established char entity No longer applicable
- [Someone should confirm that 701.10 has been replaced in full by Article 4.]

701.105 Private Foundations.

?

[Confirm that the Study Group wants to retain these references to the IRC in the statute as a safety valve.]

701.11 Honorary Trusts; cemetery trusts

- (1) No human beneficiary, no trust 408/409 changes the law
- (2) Cemetery trust 409(2) - Although the comment says updating may be needed
- (3) Capricious purpose, \$5,000 uneconomic 409

[Confirm that 701.11 has been replaced in full by Article 4 (408 and 409). Is the \$5,000 reference still appropriate? Who are the "successors in interest" under 409(4) and how does this tie into 854.03 and 854.06?].

701.115 Future Interest in Revocable Trust

Howie Erlanger cross reference to 854.06 103(19)

- (1)(a) Def of Rev Trust
- (1)(b) Beneficiary's right is contingent on Surviving the settlor
- (2) Survivorship governed by 854.03

?

Does the Study Group want to retain this as a cross-reference??

- (3) Issue of Predeceasing bene's rights 854.06

Does the Study Group want to retain this as a cross-reference?

[Someone needs to confirm whether we want to keep 1(b), (2) and (3). Note that when Prof. Erlanger wrote 701.115, he had a parallel definition of revocable in 854.01(3)]

701.12 Revocation , Modification and termination of Trusts with Consent of Settlor

- (1) Settlor and beneficiaries can modify by consent 411(a)
- (2) Representation: family benefit 303,304, 305
- (3) termination according to trust terms 105(b), 410(d)?

[Confirm that 701.12 has been replaced in full by UTC. Note:

- Do we need a cross reference in 411(a) to 445.125(1)(a)2-4 (burial trusts) as in 701.12(1)?
- Have we lost authorization under the statute to modify a trust based upon family benefit? See 701.12(2)]

701.13 Modification and termination of trusts by court action

- (1) Anticipation of directed accumulation of income Do we want to add this? Or discuss in the comment?
- (2) Application of principal to income bene *Do we want to add this? Or at least comt*
- (3) Termination 414, 411, 412

- | | |
|---|--|
| (4) Marital deduction trust | Shouldn't we keep this section? It protects the marital deduction. |
| (5) Charitable Trust Subs 2&3 don't apply | If we do not have 701.13(2) and (3), this is not applicable. |
| (6) Other applicable law | 410-14 |

[Someone needs to go through this section closely to see if the Study Group wants to keep any of these provisions.

- Do we want current (1) and (2)? If not, do we discuss in the comments?
- Does the Study Group want to maintain 701.12(4) in order to protect the marital deduction? I think we need it to protect the marital deduction.]

701.14 Circuit Court procedure in trust proceedings

- | | |
|--|--|
| (1) Commencement by trustee/Int pers & probate | 410(b) who commence/203(a) procedures |
| Procedures apply. | |
| (2) Notice | 109 - but 109 does not reference 879.05.
There are references through-out Article 4 to notice, but no specifics: should the comment to 109(a) reference 701.14(2)? Do we still need this? |
| (3) Atty for person in military | I could not find this in the UTC. |
| (4) Venue | 204(c) |

[Someone needs to confirm whether we need any of 701.14. Specifically:

- Do we need the specific notice requirements of 701.14(2) or is 109 sufficient?
- Do we need something specific for a person in the military or is 305 sufficient?]

701.15 Representation of others

- | | |
|--|-----|
| (1) Power to create or extinguish | 302 |
| (2) Guardian ad litem/virtual representation | 305 |

[Confirm that Article 3 replaces 701.15.]

701.16 Testamentary Trustees

- | | |
|-------------------------------|------------|
| (1) (a) Trustee named in will | N/A 201(b) |
| (b) Other original trustee | 704 |
| (c) Special Trustee | 704(d) |
| (d) Foreign Trustee | N/A 201(b) |
| (2) Bond | 702(c) |
| (3) Inventory | N/A 201(b) |
| (4) Annual Accounting | N/A 201(b) |
| (5) Final Accounting | N/A 201(b) |
| (6) Discharge | N/A 201(b) |

[Confirm that this section is not needed because testamentary trusts are no longer subject to court oversight per 201(b).

- Do we need to change 856.29 [Letters of trust issued to trustee of testamentary trust?]
- Do we need to delete the cross reference in 879.47?]

701.17 Successor and added trustees

- (1) Appointment of added trustee 704(c)
 - (2) Appointment of special trustee 704(d)
 - (3) Powers of successor trustee 103(27)
 - (4) Powers of co-trustee 704(b)
 - (5) Vesting of title of special trustee ? maybe 103(27)
- [Confirm that UTC replaced 701.17]

701.18 Resignation and removal of trustees

- (1) Resignation 705
 - (2) Removal 706
- [Confirm that 705/706 has replaced 701.18]

701.19 Powers of Trustees

- (1) Power to sell, mortgage or lease 816
- (2) Court authorization of administrative action
 - (a)
 - (b)
 - (c) trustee buy trust prop 802(b)
 - (d) sell trustee's prop to trust 802(b)?
- (3) When mandatory deemed discretionary ? maybe in 808
- (4) continuation of a business by ct order ? 816(6)??? No court order needed
- (5) formation of a business entity ?816(6) - can change the form of a biz
- (6) registration of securities in nominee 816(7)(B)
- (7) proxy voting of stock 816(7)
- (9) joint trustees 703(a)
- (10) restriction on exercise of power 814 Check this closely
- (11) protection of 3rd parties 1012

[Someone needs to go through Article 8 and compare it against 701.19. I do not have the Wisconsin version of Article 8. Carl Rasmussen thinks there are problems with the current 701.19(10). Maybe his concerns will be covered with the UTC?]

701.20

[I do not have the Wisconsin revised Principal and Income act to compare.]

- (31) Limits on Liability 1005

701.21 Income Payments and Accumulations ?803 Duty of Impartiality

- (1) Distribution of income (at least annually if not otherwise stated)
- (2) permitted accumulations ? maybe 808
- (3) charitable trust accumulation
- (4) disposition of accumulated income

[Confirm whether we want any of these provisions. I can't find them in the UTC.]

701.22 Distributions in kind by trustee: marital bequest

[Confirm whether we need this provision. I did not find something comparable in the UTC.]

701.23 Removal of Trusts

(1) Removal to foreign jurisdiction

N/A 201(b)

(2) Removal to this state

202?

[Confirm that 701.23 has been replaced by the UTC.]

701.24 Applicability

to be worked out:

701.25 Applicability of general transfers of death provisions:

Does the Study Group want to retain this as a cross-reference?

701.26 Disclaimers of nonprobate transfers

Does the Study Group want to retain this as a cross-reference?

F:\DOCS\WD\99999\59\UTC\A1211846.DOCX

WISCONSIN TRUST CODE

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE. This chapter may be cited as the Wisconsin Trust Code.

SECTION 102. SCOPE. This chapter applies to express trusts, charitable or noncharitable trusts, testamentary or inter vivos trusts, and other trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This chapter does not apply to: *any of the following*

- a. Constructive or resulting trusts *see ①*
- b. Guardianships *see ①*
- c. Conservatorships *see ①*
- d. Custodial arrangements pursuant to the Wisconsin Uniform Transfers to Minors Act *or* Wisconsin Uniform Custodial Trust Act *see under ch. —*
- e. Common trust or collective investment funds;
- f. Trusts created by a depository agreement with a financial institution;
- g. Trust funds held for a business transaction, including an escrow or other security arrangement;
- h. Voting trusts;
- i. Funds maintained pursuant to court order in conjunction with a bankruptcy proceeding, business liquidation or class action lawsuit;
- j. Trusts that are part of an employee benefit arrangement or an individual retirement account;

related to voting corporate stock

k. Trusts established under a qualified tuition savings program or education savings account;

*federal citation?
edvest
rec 529
college
savings plan*

l. Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys and by real estate brokers;

m. Endowment care funds established by cemetery authorities; ^{Under s. —} and

n. Any other arrangement under which a person is a nominee or escrowee for another.

SECTION 103. DEFINITIONS.

The following definitions apply to the Wisconsin Trust Code:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, trust protector or a directing party, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a).

(5) "Conservator" means a person appointed by the court pursuant to Wisconsin statute section 54.76.

(6) "Directed trust property" means all or any portion of the property of the trust that is managed by a directing party and for which the excluded trustee has no investment management responsibility.

(7) "Directing party" means any party (other than the settlor) who pursuant to the trust instrument is given a power to direct or consent to specified actions of the trustee.

(8) "Disabled individual" means an individual with a medically determined mental or physical impairment who meets one of the following tests:

(A) The individual receives Social Security, Supplemental Security Income, or Medicaid benefits on the basis of being a disabled individual as defined by such program; or

(B) The individual's impairment is of the type and severity that would qualify the individual for Social Security, Supplemental Security Income, or Medicaid if the individual applied and was financially eligible, regardless of the person's age, work record, and engagement in substantial gainful activity.

(9) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(10) "Excluded trustee" means any trustee who pursuant to the trust instrument is excluded from exercising specified powers that are given to a directing party, and who is directed to act in accordance with the exercise of such powers by the directing party. If the trust instrument provides that a trustee as to one or more specified matters is to act, omit action or make decisions only with the consent of a directing party, then such trustee is an excluded trustee with respect to such specified matters.

(11) "Guardian" means a person appointed by the court as guardian of the estate of a minor or adult individual pursuant to Wisconsin statute section 54.10. The term does not include a guardian ad litem or guardian of the person.

(12) "Incapacity" means the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his

or her decisions. The trustee may rely on the written report of an examining physician in determining whether an individual is under incapacity.

(13) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or such subsequent federal revenue law as may be in effect from time to time.

(15) "Jurisdiction," with respect to a geographic area, includes a State or country.

(16) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(17) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(18) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(19) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) without considering the existence or exercise of a power of appointment, would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(C) without considering the existence or exercise of a power of appointment, would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(20) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest regardless of whether the settlor has the mental capacity to do so.

(21) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke the trust or withdraw that portion.

(22) "Spendthrift provision" means a term of a trust which restrains either or both of a voluntary or involuntary transfer of a beneficiary's interest.

(23) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(24) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(25) "Trust for a disabled individual" means any trust that is established for the benefit of an individual with a disability of any age who has a medically determined impairment, if the trust does not result in ineligibility for public assistance under ch. 49.

(26) "Trust instrument" means an instrument executed by the settlor or an order of the court that contains terms of the trust, and includes any amendments executed by the settlor, nonjudicial settlement agreements, and modifications by court order or as otherwise permitted by statute.

(27) "Trust protector" means a person other than a settlor or a qualified beneficiary whose appointment is provided for by the trust instrument or who is appointed by a court of competent jurisdiction and whose powers are defined in section 818, but excludes a directing party.

(28) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

SECTION 104. KNOWLEDGE.

(a) Subject to subsection (b), a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) has reason to know the fact from all the facts and circumstances known to the person at the time in question.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been received by the employee if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

SECTION 105. DEFAULT AND MANDATORY RULES.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust instrument and the interests of the beneficiaries;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful;
- (4) the power of the court to modify or terminate a trust under sections 410 through 416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 501 through 507;
- (6) the power of the court under section 702;
- (7) the power of the court under subsection 708(b) to adjust a trustee's compensation specified in the terms of the trust;
- (8) the effect of an exculpatory term under section 1008;
- (9) the rights under sections 1010 through 1013 of a person other than a trustee or beneficiary;
- (10) periods of limitation for commencing a judicial proceeding;
- (11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(12) the jurisdiction of the court and venue for commencing a proceeding as provided in sections 202, 203 and 204; and

(13) the jurisdiction of the court under subsections 807(d), 808(h) and 818(g).

SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this State.

SECTION 107. GOVERNING LAW. The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the trust instrument provided there is a sufficient nexus to the designated jurisdiction at the time of the creation of the trust or during the trust administration, including, but not limited to, the place of execution of the trust instrument, the location of real property held by the trust or the residence or location of an office of the settlor, trustee or any beneficiary; or

(2) in the absence of a controlling designation in the trust instrument, the law of the jurisdiction in which the settlor is domiciled when the trust becomes irrevocable; or

(3) in the event of a conflict in the determination of governing law between jurisdictions, the law of the jurisdiction having the most significant relationship to the matter at issue.

SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) all or part of the administration occurs in the designated jurisdiction; or

(3) the trust instrument designates the jurisdiction where the settlor is domiciled at the time the trust instrument is executed.

(b) A trustee shall administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries; provided, however, a trustee shall not be required to transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(c) Without precluding the right of the court to approve or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 30 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 30 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee to act under this section without court approval to transfer a trust's principal place of administration is suspended if a qualified beneficiary commences a judicial proceeding objecting to the proposed transfer on or before the date specified in the notice. The suspension is effective until the judicial proceeding is resolved or withdrawn.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 704.

(g) Unless otherwise validly designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business or, if the trustee has no place of business, the trustee's residence. A corporate trustee who has offices in multiple states and who performs administrative functions for a particular trust in multiple states may designate the principal place of administration by providing notice to the qualified beneficiaries. The corporate trustee must have a nexus to the designated jurisdiction, including a trust office and the performance of some administrative functions in that particular jurisdiction. The transfer of some of the administrative functions of the corporate trustee to another state or states does not transfer the place of administration as long as the corporate trustee maintains an office and performs some administrative functions in the designated jurisdiction and the corporate trustee does not transfer the place of administration pursuant to subsection (d).

(h) The principal place of administration in the case of co-trustees is:

(1) The usual place of business of the corporate trustee, if there is only one corporate trustee; or

(2) The usual place of business or residence of any of the co-trustees as agreed on by the co-trustees.

(i) The law of the trust's principal place of administration will govern administrative matters.

SECTION 109. METHODS AND WAIVER OF NOTICE.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.

(a) A charitable organization that is (i) expressly designated to receive distributions under the terms of a charitable trust and (ii) is not subject to a right of substitution by the settlor or by any other party prior to the charitable organization becoming a distributee or permissible distributee of trust income or principal, has the rights of a qualified beneficiary under this chapter

if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this chapter .

(c) The attorney general of this State has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State only when the charitable interest to be represented would qualify under subsection (a) but no charitable organization has been expressly designated to receive distribution under the terms of a charitable trust.

SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS.

(a) For purposes of this section, the term "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. The rules of Article 3 (relating to representation) shall apply to the determination of interested persons under this section.

(b) Except as otherwise provided in subsection (c), interested persons may enter into a binding nonjudicial settlement agreement, which shall have the same effect as if approved by the court, with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it includes terms and conditions that could be properly approved by the court or under the Wisconsin Trust Code or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include, but are not limited to:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting;
- (3) direction to a trustee to perform or refrain from performing a particular act or the grant to a trustee of any necessary power;
- (4) the resignation or appointment of a trustee;
- (5) determination of a trustee's compensation;
- (6) transfer of a trust's principal place of administration;
- (7) liability or release from liability of a trustee for an action relating to the trust;
- (8) the criteria for distribution to a beneficiary where the trustee is given discretion;
- (9) Resolving disputes arising out of the administration or distribution of the trust;
- (10) An investment action;
- (11) Appointment of a directing party under section 808;
- (12) Appointment of a trust protector under section 818; and
- (13) Any other matter concerning the administration of a trust.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

SECTION 112. RULES OF CONSTRUCTION.

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SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUST.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not limited to, a proceeding to:

(1) determine the validity of all or any part of a trust;

(2) appoint or remove a trustee;

(3) appoint a representative or guardian ad litem as provided in s. [305] of this code, whether or not any other judicial proceeding concerning the trust is pending;

(4) review a trustee's fees;

(5) review and approve interim or final accounts;

(6) ascertain trust beneficiaries;

(7) determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(8) request trustee instructions;

(9) obtain a declaratory judgment;

(10) seek reformation or other equitable relief with respect to any trust;

(11) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; and

(12) determine any other matters involving trustees and beneficiaries.

SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.

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

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding

any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) Notwithstanding any contractual provision or other agreement between the trustee and the agent to the contrary, by accepting the delegation of a trust function from the trustee of a trust administered in this state pursuant to s. 881.01(10) or otherwise, the agent submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(d) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

SECTION 203. SUBJECT-MATTER JURISDICTION.

(a) The circuit court assigned to exercise probate jurisdiction shall have exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust. Except as otherwise provided in this code, and as applicable, the probate procedure described in ch. 879 governing circuit courts shall apply to such proceedings.

(b) This section does not preclude judicial or nonjudicial alternative dispute resolution, including, but not limited to, nonjudicial settlement agreements described in s. [111] of this code.

SECTION 204. VENUE.

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

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, in a county in which the holder of trust property maintains an office, and if the trust is a testamentary trust and the decedent's estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) Venue for a judicial proceeding involving a trust shall be further governed by ss. 801.50 through 801.62, as applicable, and such proceeding shall be regarded as a civil action for that purpose.

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ARTICLE 3
REPRESENTATION

SECTION 301. REPRESENTATION: BASIC EFFECT.

- (a) Notice, information, accountings, or reports given to a person who may represent and bind another person under this article serve as a substitute for and have the same effect as notice, information, accountings, or reports given directly to the other person.
- (b) The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative in writing before the consent would otherwise have become effective.
- (c) Except as otherwise provided in Sections 411 and 602, a person who under this article may represent a settlor who lacks capacity, may receive notice and may give a binding consent on the settlor's behalf.
- (d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under Section 411(a).
- (e) A trustee is not liable for giving notice, information, accountings, or reports to a beneficiary who is represented by another person under this section and nothing in this section prohibits the trustee from giving notice, information, accountings, or reports to the person represented.

SECTION 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

SECTION 303. REPRESENTATION BY FIDUCIARIES AND PARENTS.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- (1) a conservator may represent and bind the estate that the conservator controls;
- (2) a guardian of the estate may represent and bind the ward and a guardian of the person may represent and bind the ward if a guardian of the estate of the ward has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust, except as to matters relating to the administration or distribution of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate, except as to matters relating to the administration or distribution of the estate; and

(6) a parent may represent and bind the parent's minor or unborn child. If a disagreement arises between parents seeking to represent the same minor child or unborn issue:

a. The parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or unborn issue;

b. If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is related to the settlor (other than by reason of being married to the other parent) is entitled to represent the minor child or unborn issue;

c. If neither parent is a beneficiary of the trust that is the subject of the representation, subject to subsection 301(d), the parent who is the settlor of the trust that is the subject of the representation is entitled to represent the minor child or unborn issue; or

d. If neither parent is a beneficiary or settlor of the trust that is the subject of the representation, the parent who is related to the settlor (other than by reason of being married to the other parent) is entitled to represent the minor child or unborn issue.

(7) The order in which the representatives are listed above sets forth the priority each such representative has relative to the others.

(8) If there is no one permitted to act under Sections (1) - (6), or if all of the people entitled to act under Sections (1) - (6) have declined to act, the trustees may appoint a representative to act.

SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST.

Unless otherwise represented with respect to a particular question or dispute, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

SECTION 305. APPOINTMENT OF REPRESENTATIVE.

(a) If the court determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint a representative or guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative or guardian ad litem may be appointed to represent several persons or interests.

(b) A representative or guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this Wisconsin Trust Code, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative or guardian ad litem may consider general benefit accruing to the living members of the individual's family.

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ARTICLE 4
CREATION, VALIDITY, MODIFICATION,
AND TERMINATION OF TRUST

SECTION 401. METHODS OF CREATING TRUST.

A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee or declaration by any person who intends to create a trust with the expectation that property of the person or others will be transferred to the trust;

(3) exercise of a power of appointment in favor of a trustee;

(4) a court pursuant to its statutory or equitable powers;

(5) a guardian or conservator acting with authority of the court, a representative payee, an agent or an attorney in fact under a power of attorney that expressly grants authority to create the trust; or

(6) such other means authorized by statute, regulation, common law, or other provision having the effect of law

SECTION 402. REQUIREMENTS FOR CREATION.

(a) A trust is created only if:

(1) the settlor of the trust has capacity as defined in sub (d) to create the trust, unless the trust is created by court order or by an agent, guardian, conservator, or representative payee with authority to act;

(2) the settlor under Section 401 indicates an intention to create the trust, or a statute, regulation, common law, other provision having the effect of law, judgment, or decree creates or authorizes the creation of a trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in Section 408; or

(C) a trust for a noncharitable purpose, as provided in Section 409;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future.

(c) A power in a trustee, trust protector, or other person designated in the trust instrument to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Capacity required to create a trust is the same as the capacity to make a will.

SECTION 403. TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

SECTION 404. TRUST PURPOSES.

A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries or for a noncharitable but otherwise valid purpose as described in section 409.

SECTION 405. CHARITABLE PURPOSES; ENFORCEMENT.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, or designate persons or procedures for selecting charitable purposes or beneficiaries, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust or his or her designees, whether identified within or without the terms of the trust, or a charitable entity named in the governing instrument, or the attorney general, or a cotrustee, or such other person the court determines to have sufficient interest, among others, may maintain a proceeding to enforce the trust.

SECTION 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE

INFLUENCE. A trust is void, in whole or in part, to the extent its creation was induced by fraud, duress or undue influence.

SECTION 407. EVIDENCE OF ORAL TRUST. Except as required by a statute other than this Wisconsin Trust Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

SECTION 408. TRUST FOR CARE OF ANIMAL.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE

BENEFICIARY. Except as otherwise provided in Section 408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.

(2) A trust may be created for maintaining, keeping in repair and preserving any grave, tomb, monument, gravestone or any cemetery. Any cemetery company, association or corporation may receive property in trust for any of those purposes and apply the income from the trust to the purpose stated in the creating instrument.

(3) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(4) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.

(a) In addition to the methods of termination prescribed by Sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 411 through 416, or trust combination or division under Section 417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413. A trustee has no standing to oppose a proposed modification or termination commenced under subsection 411(a).

(c) A trustee may not be compelled by a modification or termination under this section or sections 411 through 416 or by any other statute or legal or equitable doctrine to make distributions to or for any beneficiary of a trust for an individual with a disability or to terminate the trust, during the lifetime of such disabled individual. A court may modify the terms of a trust for an individual with a disability with retroactive effect or reform the terms of such trust to achieve the settlor's objective or, if because of circumstances not anticipated by the settlor, to otherwise further the purposes of the trust so that it does not result in the disabled individual's ineligibility for public assistance.

(d) Sections 410 through 418 are not applicable to a conversion of a trust to a unitrust under Wis. Stat. s. 701.20(4g).

(e) Sections 410 through 418 are subject to s. 445.125 (1) (a) 2. to 4.

SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.

(a) A noncharitable irrevocable trust may be modified or terminated, with or without court approval, upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's

modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized; or by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized and a guardian has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust; provided, however, a court may not compel a beneficiary to consent to a modification or termination to satisfy a creditor of the beneficiary.

(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

(f) The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 413. CY PRES.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest;

and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In determining the alternative plan for disposition of the property, the court

shall take into account current and future community needs in the general field of charity within which the original charitable purpose falls, other charitable interest of the settlor, the amount of principal and income available under the trust and other relevant factors. A person with standing to enforce the terms of a charitable trust under section 405 has standing to commence a proceeding under this subsection (a)(3), and every person with standing shall receive notice of a proceeding hereunder. The attorney general is a necessary party in all proceedings under this subsection (a)(3).

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect the trust property is to revert to the settlor and the settlor is still living.

(c) It is the purpose of this subsection to broaden the power of the courts to make charitable gifts more effective. In any situation not expressly covered the court shall liberally apply the cy pres doctrine.

(d) The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The amount "\$100,000" in the preceding sentence ("applicable figure") shall be adjusted on the fifth anniversary of the year of enactment of this section, and every five years thereafter, based on changes in the cost of living as follows:

(1) January 1 of the year of enactment of this section shall be the base year.

(2) The base reference number shall be the Consumer Price Index – All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor (“CPI-U”) in effect on January 1 of the year of enactment of this section.

(3) The adjustment reference number shall be the CPI-U in effect on January 1 of the year in which an adjustment is to be made in accordance with subsection (a).

(4) The revised applicable figure shall be determined by first calculating the percentage change between the base reference number and the adjustment reference number for the year in which an adjustment must be made, and second by applying such percentage change to increase or decrease the figure “100,000” to determine the new applicable figure in subsection (a).

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration even if the trust property has a total value in excess of the amount described in subsection (a).

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

(e) The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 415. REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor’s intent if it is proved by clear and convincing evidence that both the settlor’s intent and the terms of the trust were

affected by a mistake of fact or law, whether in expression or inducement. The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect. The settlor, if living and not under incapacity, shall receive notice of a proceeding under this section.

SECTION 417. COMBINATION AND DIVISION OF TRUSTS.

(a) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trusts or trust, as the case may be.

(b) Subject to the terms of the trust, the trustee may take into consideration differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective. The effective date of the severance may be retroactive to a date before the date on which the trustee exercises such power.

(c) If the trustee combines two or more trusts into a single trust, the trustee shall identify which trust is deemed to be the surviving trust.

Section 418. Trustee's Power to Appoint Assets to New Trust

(a) **Definitions.** In this section;

(1) The "first trust" means the trust whose principal is appointed pursuant to the power granted under subsection (b).

(2) The "second trust" means the trust (or trusts) to which principal is appointed under subsection (b).

(3) The words "absolute power" refer to a power to invade trust assets for the benefit of one or more beneficiaries that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support, whether or not the term "absolute" is used. A power to invade principal for purposes such as best interests, welfare, comfort, or happiness shall constitute an absolute power not limited to specific or ascertainable purposes.

(4) The words "standard" or "standards" when used with reference to the basis upon which a decision is made by a trustee to invade income or principal means authority other than absolute power.

(b) **Power to appoint.** Except as otherwise provided in this section, a trustee who has the power under the terms of the first trust to invade the principal of the first trust for the benefit of a beneficiary who is eligible or entitled to the income of the first trust (or entitled to an annuity or unitrust payment from the first trust), whether or not the trustee has absolute power to invade principal and whether or not there is a current need to invade principal under the terms of the first trust, may exercise such power by appointing part or all of the assets of the first trust in favor of a trustee of a second trust under a trust instrument the same as or other than that governing the first trust if the exercise of such power –

(1) does not reduce any fixed income, annuity or unitrust interest of a beneficiary;

(2) results in the trustee of the second trust having the power to invade the income or principal of the second trust under a standard that is no less restrictive than the standard as set forth in the first trust (except as otherwise provided under subs. (d)(10) and (d)(11) of this section); and

(3) is in favor of the beneficiaries of the first trust; provided, however, and subject to sub. (1) above, if the power to invade principal of the first trust grants the trustee absolute power and the trustee has full discretion to determine who among a class of beneficiaries may receive distributions, the beneficiaries of the second trust may include less than all of the beneficiaries of the first trust.

(c) **Limitations on exercise of power.** The power under subsection (b) may not be exercised by a trustee –

(1) if the trust instrument creating the first trust expressly prohibits exercise of such power by specific reference to this section or reference to the term “decanting” or words of similar import.

(2) where any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code and

the second trust contains any provision which, if included in the first trust, would have prevented the first trust from qualifying for such deduction or would have reduced the amount of such deduction.

(3) who has a beneficial interest in the first trust (unless the second trust is one described in subs. (d)(10) or (d)(11) and the trustee's only beneficial interest in the first trust is as a remainder beneficiary); however, the disqualification of such trustee shall not preclude such power from being exercised by a co-trustee or co-trustees even where the terms of the first trust, applicable law or other circumstances would otherwise require the unanimous action of the trustees of the first trust.

(4) if such exercise would impair the withdrawal rights of a beneficiary of the first trust where such withdrawal rights were granted to such beneficiary in a manner designed to allow contributions subject to such withdrawal rights to qualify for the gift tax annual exclusion or if the terms of the second trust would prevent additions to the second trust from qualifying for the gift tax annual exclusion if the terms of the first trust would allow additions to so qualify.

(5) if such exercise would violate any perpetuities period governing the first trust or impair a trustee's power of alienation with respect to trust assets.

(6) if the assets of the first trust are subject to a presently exercisable power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions.

(7) if such exercise would impair the essential purpose of a trust for an individual with a disability.

(d) **Permissible terms of second trust.** Subject to the limitations of this section, the trust instrument of the second trust may provide for terms intended to achieve one or more of the following purposes (though the following list is not exclusive):

- (1) correcting drafting errors
- (2) clarifying potentially ambiguous terms of the first trust
- (3) changing ages of distribution to beneficiaries
- (4) extending trust duration
- (5) making distributions of income mandatory rather than discretionary
- (6) in the case of a first trust over which the trustee has absolute power with respect to invasion of income or principal, adding standards governing invasion of income or principal
- (7) granting general or special powers of appointment

(8) including as beneficiaries one or more persons who are or will become members of a class described in the first trust

(9) adding provisions to protect the interests of one or more beneficiaries, including without limitation provisions to protect beneficiaries from self-destructive behavior

(10) changing the terms of the trust applicable to a beneficiary who is an individual with a disability, regardless of whether the first trust includes standards for distribution, where the purpose of such change is to allow such beneficiary to qualify (or continue to be qualified) to receive benefits under a government program

(11) providing for transfer of trust assets to a community trust, meaning a master trust that is established and managed by a nonprofit organization that maintains sub-accounts for individual beneficiaries that meet the definition of a trust for an individual with a disability

(12) modifying investment provisions, including without limitation those relating to permissible investments, use of investment advisors, or self-dealing transactions

(13) changing present or future trustees, including defining the method by which trustees or co-trustees may be appointed or removed and replaced

(14) providing for appointment of a trust protector and defining the powers of such trust protector

- (15) changing the trust situs
- (16) changing the law governing the trust
- (17) allowing for division of or merger of trusts
- (18) adding or modifying trustee or trust protector exculpatory provisions
- (19) changing other administrative provisions which the trustee believes will provide for more effective and efficient administration of the trust
- (20) including provisions to obtain desirable tax treatment or to avoid adverse tax consequences, including without limitation provisions relating to grantor trust status under Internal Revenue Code Sections 671 *et seq.*

Notwithstanding the foregoing, the trust instrument of the second trust may not provide for terms that impair vested property rights of a beneficiary of the first trust. In the case of any term of the second trust that would reduce the potential liability of a trustee (such as one adopting or expanding an exculpatory provision relating to trustees), a trustee of the first trust who would benefit from the adoption of such term in the second trust must abstain from the consideration of and the adoption of such term, and such term may be considered and adopted only by such other trustees of the first trust who would not so benefit.

(e) **Procedural matters.**

(1) The exercise of a power to invade principal under subsection (b) shall be by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the first trust.

(2) The trustee shall give notice to all qualified beneficiaries of the first trust at least 30 days prior to the effective date of the trustee's exercise of the trustee's power to invade principal pursuant to subsection (b), of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power shall satisfy the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal shall be exercisable immediately (but waiver of the notice period shall not constitute consent to the exercise of the power by a beneficiary waiving notice). The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal except as provided in other applicable provisions of this Wisconsin Trust Code.

(3) The trustee may, at the trustee's option, petition the court to approve a proposed exercise of the power under subsection (b) by giving notice to all qualified beneficiaries of the first trust. Such notice shall include the proposed effective date of the exercise of the power and the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power (including the effective date) shall satisfy the trustee's notice obligation under this sub. (3) of this subsection (e).

(4) In determining whether to grant or deny a petition under sub. (3) of this subsection (e), the court shall consider the following factors:

a. The purpose of the proposed exercise of the power under subsection (b);

- b. The reasons for any objection made by a beneficiary;
- c. Any changes in circumstances occurring since the creation of the first trust; and
- d. The probable intent of the settlor in creating the first trust and whether the proposed exercise of the power under subsection (b) will further such intent.

The court may consider extrinsic evidence in evaluating the above factors. In the case of a trust with respect to which the trustee has absolute power to invade principal, the fact that a beneficiary of the first trust will not be a beneficiary of the second trust (or will have a lesser beneficial interest) shall not be a sufficient basis alone to deny a trustee's petition. The determination of the court to grant or deny the petition in whole or in part shall be a matter of discretion with the court.

(5) The settlor, if living, shall receive notice of the proposed exercise of the power under subsection (b) and of a petition filed pursuant to sub. (3).

(f) **Miscellaneous provisions.**

(1) This section applies to a trust governed by the laws of this state, including a trust whose situs is transferred to this state.

(2) The exercise of the power under subsection (b) is deemed to be the exercise of a special (as opposed to a general) power of appointment.

(3) The power under subsection (b) may be exercised even though the first trust includes a spendthrift clause or a provision that prohibits amendment or revocation of the trust.

(4) Nothing in this section is intended to create or imply a duty to exercise the power under subsection (b), and no inference of impropriety shall be made as a result of a trustee not exercising the power under subsection (b).

(5) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust or under any other section of this article or under another provision of law or under common law.

(6) Subsection (b) shall not apply to trusts described in s. 445.125.

(7) The appointment of all of the assets comprising the principal of the first trust in favor of the second trust shall be deemed to include subsequently discovered assets otherwise belonging to the first trust and undistributed principal paid to or acquired by the first trust subsequent to the appointment in favor of the second trust.

(8) The appointment of part but not all of the assets comprising the principal of the first trust in favor of the second trust shall not include subsequently discovered assets belonging to the first trust and principal paid to or acquired by the first trust subsequent to the appointment in favor of the second trust; such assets shall remain the assets of the first trust.

(9) If the beneficiaries of the first trust are defined, in whole or in part, as a class of persons, for purposes of this section such class shall include any person who falls within the class of persons after the distribution to the second trust.

(10) In exercising the power granted under this section, the trustees shall consider the settlor's probable intent.

(11) No trustee exercising the power under subsection (b) shall be liable to any beneficiary unless such beneficiary can prove that the trustee, in exercising the power, did not act in good faith.