



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment VI

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.

(title)

1

SECTION 43. Subchapter V of chapter 701 [precedes 701.0501] of the statutes

2

is created to read:

(B) all caps
CHAPTER 701
SUBCHAPTER V

use text:title:chapter

3

V

4

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

hard return

5

SECTION 44. 701.0501 of the statutes is created to read:

6

701.0501 Article 5, Section 501 - Rights of beneficiary's creditor or

7

assignee. (1) (a) Except as provided in par. (b), to the extent a beneficiary's

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interest is not protected by a spendthrift provision, the court may authorize a

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judgment creditor or assignee of the beneficiary to reach the beneficiary's interest by

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attachment of present or future distributions to or for the benefit of the beneficiary

11

or other means. The court may limit the award to such relief as is appropriate under

12

the circumstances.

Insert 49-13

****NOTE: Can only a portion of a beneficiary's interest be protected by a spendthrift provision? If not, I'm not sure what "to the extent" means as it is used here. I would recommend rewriting this intro as either "Except as provided in par. (b), if a beneficiary's interest . . ." or "Except as provided in par. (b), a beneficiary's interest that is not . . ." Please advise. See also the note following sub. (2), below.

13

(b) This subsection shall not apply to a trust for a disabled individual.

14

(2) A trustee shall have no liability to any creditor of a beneficiary for any

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distributions made to or for the benefit of the beneficiary to the extent any of the

16

following apply:

****NOTE: The use of the phrase "to the extent" implies that a portion (but not all) of a beneficiary's interest may be protected by a spendthrift provision. Is that the case? If not, I believe it would be cleaner if this introductory language read "A trustee shall have no liability to any creditor . . . if any of the following apply:" This is particularly true given that the phrase "to the extent" doesn't seem appropriate as an intro to "The trust is a trust for a disabled individual," which is more black and white (either the trust is or is not a trust for a disabled individual). Please advise.

17

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

18

(b) The trust is a trust for a disabled individual.

19

SECTION 45. 701.0502 of the statutes is created to read:

V

Insert 50-5

1 **701.0502 Article 5, Section 502 - Spendthrift provision.** (1) A spendthrift
2 provision is valid only if all of the following apply:

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

5 (b) One of the following applies:

- 6 1. The beneficiary is other than the settlor.
- 7 2. The trust is a trust for a disabled individual.

8 **(2)** A term of a trust providing that the interest of a beneficiary is held subject
9 to a spendthrift trust, or words of similar import, is sufficient to restrain both
10 voluntary and involuntary transfer of the beneficiary's interest.

Insert 50-11

****NOTE: Should this say "held subject to a spendthrift provision. . . (rather than
"held subject to a spendthrift trust)? Also, could you provide other examples of "words
of similar import"?

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

Insert 50-15

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

20 **SECTION 46.** 701.0503 of the statutes is created to read:

21 **701.0503 Article 5, Section 503 - Exceptions to spendthrift provision.**

22 **(1) CLAIMS FOR CHILD SUPPORT.** Notwithstanding any provision in the creating
23 instrument ^{or}s. 701.0502, upon application of a person having a valid order directing

and notwithstanding V

Insert 51-2

1 a beneficiary to make payment for support of the beneficiary's child, a court may do
2 any of the following:

3 (a) If the beneficiary is entitled to receive income or principal under the trust,
4 order the trustee to satisfy part or all of the claim out of part or all of ^{the} payments of
5 income or principal as they are due, presently or in the future.

Insert 51-10

6 (b) In the case of a beneficiary under a discretionary trust, order the trustee to
7 satisfy part or all of the claim out of part or all of ~~the~~ any future payments of income or
8 principal which are to be made pursuant to the exercise of the trustee's discretion in
9 favor of such beneficiary.

Insert 51-17 (before note)

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

****NOTE: I am confused by that portion of this subsection that reads "... or the beneficiary is legally obligated to pay for the beneficiary's public support ..." Should the first occurrence of beneficiary be settlor? If yes, then this language (but not that portion of the subsection relating to the beneficiary's spouse or minor child) ~~is duplicative~~. If no, I don't understand how a beneficiary can be legally obligated to pay for his or her own support. Please advise.

duplicates the preceding clause.

17 (a) If such beneficiary is entitled to receive income or principal under the trust,
18 order the trustee to satisfy part or all of the liability out of part or all of ^{the} payments of
19 income or principal as they are due, presently or in the future.

20 (b) 1. Except as provided in subd. 2., in the case of a beneficiary under a
21 discretionary trust, order the trustee to satisfy part or all of the liability out of part

1 or all of ^{any} future payments of income or principal which are to be made pursuant to the
2 exercise of the trustee's discretion in favor of such beneficiary.

3 2. In the case of a beneficiary under a discretionary trust who is a settlor or a
4 spouse or minor child of the settlor, order the trustee to satisfy part or all of the
5 liability without regard to whether the trustee has then exercised or may thereafter
6 exercise the trustee's discretion in favor of the beneficiary.

7 (3) TRUST FOR A DISABLED INDIVIDUAL. Subsection (2) does not apply to any trust
8 for a disabled individual.

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

***NOTE: I changed "is subject to modification" to "may be modified". Okay?

11 (5) EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from claims
12 of creditors under other statutes, shall not be subject to sub. (1) or (2).

***NOTE: Can the phrase "Assets of a trust, to the extent they are exempt from
claims..." be changed to the simpler, more concise "Assets of a trust exempt from
claims..."?

13 SECTION 47. 701.0504 of the statutes is created to read:

V

14 701.0504 Article 5, Section 504 - Discretionary trusts; effect of

15 standard. (1) For purposes of this chapter, and except as provided in sub. (3), a
16 beneficiary's interest in a trust that is subject to the trustee's discretion does not
17 constitute an interest in property or an enforceable right even if the discretion is
18 expressed in the form of a standard of distribution or the beneficiary is then serving
19 as sole trustee or ^{co}trustee.

***NOTE: Please confirm that "this chapter," as used in this subsection, refers to
the entirety of Chapter 701.

20 (2) Except as provided in this chapter, a creditor or other claimant may not
21 attach present or future distributions from such an interest or right, obtain an order

1 from a court forcing the judicial sale of the interest or compelling the trustee to make
2 distributions, or reach the interest or right by any other means, even if the trustee
3 has abused the trustee's discretion.

****NOTE: Please confirm that "this chapter," as used in this subsection, refers to the entirety of Chapter 701.

****NOTE: Does the phrase "distributions from such an interest or right..." refer back to the "interest in property or an enforceable right" described in sub. (1)? If so, because this is a new and separate subsection, the word "such right" doesn't really work. I need to either use the phrase "interest in property or an enforceable right" again or refer to "the interest or right described in sub. (1)." Your preference? If not, what interest or right is being addressed in this subsection?

4 (3) Subsections (1) and (2) shall not apply if a beneficiary is acting as sole
5 trustee of a trust for his or her benefit and his or her discretion to make distributions
6 to such beneficiary is not limited by an ascertainable standard or the consent of a
7 party holding an adverse interest to the beneficiary.

****NOTE: I'm not sure why the phrase "distributions to such beneficiary" is used here. Can I substitute "distributions to himself or herself" in its place?

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

11 (b) The right of a beneficiary described in par. (a) may not be exercised by a
12 creditor for the beneficiary.

****NOTE: Should this read "creditor of the beneficiary" (rather than "creditor for the beneficiary")?

13 SECTION 48. 701.0505 of the statutes is created to read:

14 701.0505 Article 5, Section 505 - Creditor's claim against settlor. (1)

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

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

Insert 54-10

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

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

17 (b) The rules under par. (a) do not apply to assets of a trust exempt from claims
 18 of creditors under other statutes.

****NOTE: The language proposed for this section read: "Assets of a trust, to the extent they are exempt from claims of creditors under other statutes, shall not be subject to this [sub. (1)]" Because sub. (1) establishes certain rules, I have revised this paragraph (b) to provide that the rules outlined in par. (a) do not apply to the identified assets; please review this paragraph carefully to ensure that this transposition works.

****NOTE: Are there certain identifiable statutes that make assets of a trust exempt from claims of creditors that should be cross-referenced here?

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

****NOTE: I'm not sure what "for purposes of this section" means with respect to the listed items that follow. That is, the list of scenarios doesn't really seem to have any connection to the rights of a creditor and, it would seem, could occur regardless of whether a creditor has a claim against a trust. Am I missing something?

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

manner
For that matter, what does "to the extent of the property" mean? And

****NOTE: What does "treated in the same matter" mean here? Would it be appropriate to say "the holder of a power of withdrawal has the same power as the settlor of a revocable trust to the extent of the property subject to the power"? Do I need to specify what it is that limits the time during which a power of withdrawal may be exercised?

period

4 (b) A beneficiary of a trust shall not be considered a settlor solely because of a
5 lapse, waiver, or release of any of the following:

- 6 1. A power described under par. (c).
- 7 2. The beneficiary's right to withdraw part of the trust property, provided the
- 8 value of the property affected by the lapse, waiver, or release in any year does not
- 9 exceed the greater of the following:

****NOTE: I replaced "to the extent that" with "provided". Okay?

10 a. The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal
11 Revenue Code of 1986.

12 b. The amount referenced in section 2503 (b) of the Internal Revenue Code of
13 1986 for each individual other than the beneficiary who makes a transfer to the trust
14 or who is deemed to make a transfer to the trust pursuant to an election to split gifts
15 under Section 2513 (a) of the Internal Revenue Code of 1986.

16 (c) A beneficiary of a trust is not a settlor, has not made a voluntary or
17 involuntary transfer of the beneficiary's interest in the trust, or does not have the
18 power to make a voluntary or involuntary transfer of the beneficiary's interest in the
19 trust solely because the beneficiary holds, exercises, or allows in any capacity, any
20 of the following:

****NOTE: Should the occurrence of the word "or" that precedes "does not have the power. . ." be replaced with "and"?

in this sub 2. a. and 12 other sections of the act

Insert 10-12

*****NOTE: I eliminated "of 1986" because that followed "Internal Revenue Code" the definition for Internal Revenue Code in Section 2011 makes reference to "of 1986" Okay?*

1 1. A presently exercisable power to consume, invade, appropriate, or distribute
2 property to or for the benefit of the beneficiary if the power is any of the following:

3 a. Exercisable only with the consent of another person holding an interest
4 adverse to the beneficiary's interest.

5 b. Limited by an ascertainable standard, such as health, education, support,
6 or maintenance of the beneficiary.

7 2. A presently exercisable power to appoint any property of the trust to or for
8 the benefit of a person other than the beneficiary, a creditor of the beneficiary, the
9 beneficiary's estate, or a creditor of the beneficiary's estate.

10 3. A testamentary power of appointment.

11 4. A presently exercisable right described in sub. (2) (b).

12 (d) A beneficiary of a trust is not a settlor solely because the beneficiary is
13 entitled to nondiscretionary distributions from the trust.

14 (e) Any order entered by a court under this section is subject to modification
15 upon application of an interested person.

16 **SECTION 49.** 701.0506 of the statutes is created to read:

17 **701.0506 Article V, Section 506 - Overdue distribution.** (1) In this
18 section, "mandatory distribution" means a distribution of income or principal which
19 the trustee is required to make to a beneficiary under the terms of the trust, including
20 a distribution upon termination of the trust. "Mandatory distribution" does not
21 include a distribution subject to the exercise of the trustee's discretion even if any of
22 the following apply:

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

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

Insert 57-10

1 (2) Whether or not a trust contains a spendthrift provision, a creditor or
2 assignee of a beneficiary may reach a mandatory distribution of income or principal,
3 including a distribution upon termination of the trust, if the trustee has not made
4 the distribution to the beneficiary within a reasonable time after the designated
5 distribution date.

6 SECTION 50. 701.0507 of the statutes is created to read:

7 **701.0507 Article V, Section 507 - Personal obligations of trustee.** Trust
8 property is not subject to personal obligations of the trustee, even if the trustee
9 becomes insolvent or bankrupt.

10 SECTION 51. Subchapter VI of chapter 701 [precedes 701.0601] of the statutes
11 is created to read:

(title)
B all caps
CHAPTER 701
ARTICLE VI

use
title: text: chapter

12 SUBCHAPTER

REVOCABLE TRUSTS

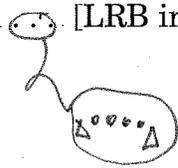
13 SECTION 52. 701.0601 of the statutes is created to read:

14 **701.0601 Article VI, Section 601 - Capacity of settlor of revocable trust.**

15 The capacity required to create, amend, revoke, or add property to a revocable trust,
16 or to direct the actions of the trustee of a revocable trust, is the same as that required
17 to make a will.
18

19 SECTION 53. 701.0602 of the statutes is created to read:

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



INVEST 58-3

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

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

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

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

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

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

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

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

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

(4) Upon revocation of a revocable trust, the trustee shall transfer the trust property as the settlor directs. However, with respect to marital or community property, the trustee shall transfer the property to both spouses as marital or community property unless the governing instrument specifically states otherwise.

INVEST 59-4

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

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

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

11 SECTION 54. 701.0603 of the statutes is created to read:

12 **701.0603 Article VI, Section 603 - Settlor's powers; powers of**
13 **withdrawal.** (1) While a trust is revocable, rights of the beneficiaries are subject
14 to the control of, and the duties of the trustee are owed exclusively to, the settlor.

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

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

20 SECTION 55. 701.0604 of the statutes is created to read:

21 **701.0604 Article VI, Section 604 - Limitation on action contesting**
22 **validity of revocable trust; distribution of trust property.** (1) A person must
23 commence a judicial proceeding to contest the validity of a trust that was revocable
24 immediately before the settlor's death within the earlier of the following:

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

1 (b) Four months after the trustee sent the person a copy of the trust instrument
2 and a notice informing the person of the trust's existence, of the trustee's name and
3 address, and of the time allowed for commencing a proceeding.

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

8 (a) The trustee knows of a pending judicial proceeding contesting the validity
9 of the trust.

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

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

****NOTE: Does the phrase "determined to have been invalid" refer to the trust or
the beneficiary? If the latter, I'm not sure this makes sense. That is, I can understand
how a particular distribution to a particular beneficiary could be invalid, but I'm not sure
how a beneficiary can be "invalid". Please advise.

15 (4) This section does not impose a duty upon the trustee to give notice under
16 this section.

****NOTE: If there is no requirement to give notice, how does a beneficiary know that
he or she needs to act within the time period provided under sub. (1)? Perhaps notice is
required elsewhere that I have forgotten?

17 SECTION 56. Subchapter VII^(title) of chapter 701 [precedes 701.0701] of the statutes
18 is created to read: CHAPTER 701^(all caps) ← use text: title: Chapter
19 ARTICLE VII
20 OFFICE OF TRUSTEE

21 SECTION 57. 701.0701 of the statutes is created to read:

SUBCHAPTER

1 is needed to protect the interests of the beneficiaries or is required by the terms of
2 the trust and the court has not dispensed with the requirement.

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

5 (3) No bond shall be required of a trust company bank, state bank, or national
6 banking association which is authorized to exercise trust powers and which has
7 complied with s. 220.09 or 223.02 nor shall a bond be required of a religious,
8 charitable, or educational corporation or society.

****NOTE: Section 220.09 refers to a "national bank", not a national banking
association. Is there a difference between these two entities? If not, I think the draft
should use the term "national bank" to be consistent with s. 220.09. If there is a difference
between these two entities, perhaps there is another more appropriate section to refer to?

9 SECTION 59. 701.0703 of the statutes is created to read:

10 701.0703 Article VII, Section 703 - ~~Co~~trustees. (1) ~~Co~~trustees shall act
11 by majority decision.

12 ~~Co~~trustees. (2) If a vacancy occurs in a ~~co~~trusteeship as provided under s. 701.0704, the
13 remaining ~~co~~trustees may act for the trust.

****NOTE: This subsection assumes that there will be multiple ~~co~~trustees. Will
that always be the case? Also, this subsection refers to all remaining ~~co~~trustees, but sub.
(4) refers to "a majority of the remaining ~~co~~trustees." Is there a reason for this
difference?

****NOTE: I added a cross-reference to s. 701.0704, dealing with vacancy. Okay?

14 (3) A ~~co~~trustee must participate in the performance of a trustee's function
15 unless the ~~co~~trustee is unavailable to perform the function because of absence,
16 illness, disqualification under other law, or other temporary incapacity or the
17 ~~co~~trustee has properly delegated the performance of the function to another trustee.

18 (4) If a ~~co~~trustee is unavailable to perform duties because of absence, illness,
19 disqualification under other law, or other temporary incapacity, and prompt action
20 is necessary to achieve the purposes of the trust or to avoid injury to the trust

***NOTE: CS What if there are only two ~~co~~trustees?

1 property, the remaining co-trustee or a majority of the remaining co-trustees may
2 act for the trust.

***NOTE: Why would a majority of the remaining trustees be sufficient to act for the trust under this subsection when sub. (3) requires the participation of a (each) co-trustee?

3 (5) A trustee may delegate to a co-trustee a function unless the delegation is
4 expressly prohibited by the trust terms. Unless a delegation is irrevocable, a trustee
5 may revoke a delegation previously made.

***NOTE: Why does this subsection refer to a "trustee" rather than a "co-trustee"? *the power of to delegate*

***NOTE: Because the last sentence of this subsection refers to "a delegation previously made," I changed the tense of the irrevocable delegation from "was irrevocable" to "is irrevocable." Okay? *at a*

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

***NOTE: Why does this subsection refer to a "trustee" rather than a "co-trustee"?

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

***NOTE: Why does this subsection refer to a "trustee" rather than a "co-trustee"?

- 9 (a) Prevent a co-trustee from committing a material breach of trust.
- 10 (b) Compel a co-trustee to redress a material breach of trust.

11 (8) A dissenting trustee who joins in an action at the direction of the majority
12 of the trustees and who notified all co-trustees of the dissent at or before the time
13 of the action is not liable for the action unless the action is a material breach of trust.

***NOTE: Why does this subsection refer to a "trustee" rather than a "co-trustee"?

14 SECTION 60. 701.0704 of the statutes is created to read:

15 **701.0704 Article VII, Section 704 - Vacancy in trusteeship;**
16 **appointment of successor. (1) A vacancy in a trusteeship exists if any of the**
17 **following occurs:**

- 18 (a) A person designated as trustee declines the trusteeship.
- 19 (b) A person designated as trustee cannot be identified or does not exist.

- 1 (c) A trustee resigns.
- 2 (d) A trustee is disqualified or removed.
- 3 (e) A trustee dies.
- 4 (f) A guardian or conservator is appointed for an individual serving as trustee.

5 (2) If one or more ^eco-trustees remain in office, a vacancy in a trusteeship need
 6 not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining
 7 trustee.

trust instrument requires a vacancy to be filled?
What if the trust instrument requires a vacancy to be filled?
 NOTE:

8 (3) A vacancy in a trusteeship that is required to be filled must be filled in the
 9 following order of priority:

- 10 (a) By a person designated in the terms of the trust to act as successor trustee.
- 11 (b) By a person appointed by unanimous agreement of the qualified
- 12 beneficiaries, other than a person who is a disabled individual and a beneficiary of
- 13 a trust for a disabled individual or the spouse of the disabled individual.

****NOTE: This paragraph originally read "beneficiaries other than a disabled individual who is a beneficiary of a trust for a disabled individual or his or her spouse." It was not clear whether "his or her spouse" referred to the spouse of the disabled individual or back to the original "person appointed by unanimous agreement of the qualified beneficiaries." I modified the structure of this paragraph to make connections between the terms beneficiary, disabled individual, and spouse. Please review the paragraph carefully and confirm both that I interpreted the provision correctly and that it accomplishes your intent.

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

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

****NOTE: The term "special fiduciary" is used in several places in the bill, and in each place the powers seem to be a bit different. Is this a term of art? Or should this term or the fiduciary's powers or limitations be defined?

18 SECTION 61. 701.0705 of the statutes is created to read:

1 **701.0705 Article VII, Section 705 - Resignation of trustee.** (1) A trustee
2 may resign in any of the following manners:

3 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
4 living, and all co-trustees.

5 (b) With the approval of the court.

 ****NOTE: Are these the only circumstances upon which a trustee may resign? If
so, is it okay to say "a trustee may resign only..."?

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

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

11 **SECTION 62.** 701.0706 of the statutes is created to read:

12 **701.0706 Article VII, Section 706 - Removal of trustee.** (1) The settlor,
13 a co-trustee, or a qualified beneficiary may request the court to remove a trustee, or
14 a trustee may be removed by the court on its own initiative.

15 (2) The court may remove a trustee if any of the following apply:

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

17 (b) A lack of cooperation among co-trustees substantially impairs the
18 administration of the trust.

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

 ****NOTE: I inverted this paragraph. Okay?

22 (d) There has been a substantial change of circumstances or removal is
23 requested by all of the qualified beneficiaries, the court finds that removal of the

1 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
2 a material purpose of the trust, and a suitable co-trustee or successor trustee is
3 available.

4 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in
5 addition to removing a trustee, the court may order such appropriate relief under s.
6 701.1001 (2) as may be necessary to protect the trust property or the interests of the
7 beneficiaries.

8 SECTION 63. 701.0707 of the statutes is created to read:

9 **701.0707 Article VII, Section 707 - Delivery of property by former**
10 **trustee.** (1) Unless a co-trustee remains in office or the court otherwise orders, and
11 until the trust property is delivered to a successor trustee or other person entitled
12 to it, a trustee who has resigned or been removed has the duties of a trustee and the
13 powers necessary to protect the trust property.

14 (2) A trustee who has resigned or been removed shall proceed expeditiously to
15 deliver the trust property within the trustee's possession to the co-trustee, successor
16 trustee, or other person entitled to it.

17 SECTION 64. 701.0708 of the statutes is created to read:

18 **701.0708 Article VII, Section 708 - Compensation of trustee.** (1) If the
19 terms of a trust do not specify the trustee's compensation, a trustee is entitled to
20 compensation that is reasonable under the circumstances.

21 (2) If the terms of a trust specify the trustee's compensation or refer to another
22 ascertainable source for determining that compensation, the trustee is entitled to be
23 compensated as specified, but the court may allow more or less compensation if any
24 of the following apply:

1 (a) The duties of the trustee are substantially different from those
2 contemplated when the trust was created.

3 (b) The compensation specified by the terms of the trust would be unreasonably
4 low or high.

5 (3) If the trustee has rendered other services in connection with the
6 administration of the trust, the trustee shall be allowed reasonable compensation for
7 the other services rendered, in addition to reasonable compensation as trustee.

****NOTE: This subsection provides that the trustee "shall be allowed reasonable compensation for the other services. . .". It is not clear whether the word shall is used in a mandatory, rather than a discretionary, sense. That is, is it your intent that a trustee who provides additional services is entitled to be paid an additional amount? If so, I think the use of the word "allowed" (rather than a word like entitled) weakens such an argument.

8 SECTION 65. 701.0709 of the statutes is created to read:

9 701.0709 Article VII, Section 709 - Reimbursement of expenses. (1) A
10 trustee is entitled to be reimbursed out of the trust property, with interest as
11 appropriate, for all of the following:

****NOTE: Is there a reason that this subsection does not say "a trustee shall be reimbursed out of the trust property. . ."? I think "shall be reimbursed" is clearer than "is entitled to be," in part because "is entitled to be" implies that there is another alternative for reimbursing a trustee. Is that the case?

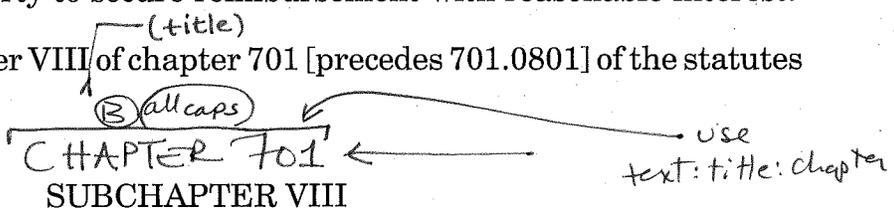
Insert 67-15

12 (a) Expenses that were properly incurred in the administration of the trust.

13 (b) To the extent necessary to prevent unjust enrichment of the trust, expenses
14 that were not properly incurred in the administration of the trust.

15 (2) An advance by the trustee of money for the protection of the trust gives rise
16 to a lien against trust property to secure reimbursement with reasonable interest.

17 SECTION 66. Subchapter VIII of chapter 701 [precedes 701.0801] of the statutes
18 is created to read:



19

****NOTE: No title was provided for this subchapter VIII. If other subchapters have titles, each subchapter must have a title.

1 SECTION 67. 701.0801 of the statutes is created to read:

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

6 SECTION 68. 701.0802 of the statutes is created to read:

7 701.0802 Article VIII, Section 802 - Duty of loyalty.

8 (1) A trustee shall administer the trust solely in the interests of the
9 beneficiaries.

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

- 16 (a) The transaction was authorized by the terms of the trust.
- 17 (b) The transaction was approved by the court.
- 18 (c) The beneficiary did not commence a judicial proceeding within the time
19 allowed by s. 701.1005. ✓
- 20 (d) The beneficiary consented to the trustee's conduct, ratified the transaction,
21 or released the trustee in compliance with s. 701.1009. ✓
- 22 (e) The transaction involves a contract entered into or claim acquired by the
23 trustee before the person became trustee.

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

5 (a) The trustee's spouse.

6 (b) The trustee's descendants, siblings, parents, or their spouses.

7 (c) An agent or attorney of the trustee.

8 (d) A corporation or other person or enterprise in which the trustee, or a person
9 that owns a significant interest in the trustee, has an interest that might affect the
10 trustee's best judgment.

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

14 (5) An investment by a trustee in securities of an investment company or
15 investment trust to which the trustee, or its affiliate, provides services in a capacity
16 other than as trustee is not presumed to be affected by a conflict between personal
17 and fiduciary interests if the investment otherwise complies with the prudent
18 investor rule of ^{s. 881.01} (ch. 88). In addition to receiving compensation for acting as trustee,
19 the trustee may be compensated by the investment company or investment trust for
20 providing those services out of fees charged to the trust. If the trustee receives
21 compensation from the investment company or investment trust for providing
22 investment advisory or investment management services, the trustee must at least
23 annually notify the persons entitled under s. 701.0813 to receive a copy of the
24 trustee's annual report of the rate and method by which that compensation was
25 determined.

SECTION 68

Must the services provided for the investment company also be services provided for the trust? If so, I don't think that is clear.

****NOTE: Just to be clear, (is) the second sentence in this subsection (that begins with "In addition. . .") providing that the trustee may be paid twice from the trust: first for acting as trustee and second for acting in some capacity for the investment company or investment trust? permit permit does to

1 (6) In voting shares of stock or in exercising powers of control over similar
2 interests in other forms of enterprise, the trustee shall act in the best interests of
3 the beneficiaries. If the trust is the sole owner of a corporation or other form of
4 enterprise, the trustee shall elect or appoint directors or other managers who will
5 manage the corporation or enterprise in the best interests of the beneficiaries.

****NOTE: Is the word, "enterprise" a term or art or does it have a recognized meaning? Would it, for example, encompass a partnership or association that may not be a corporation?

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

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

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

11 (c) A transaction between a trust and another trust, decedent's estate, or
12 conservatorship of which the trustee is a fiduciary or in which a beneficiary has an
13 interest.

****NOTE: The drafting instructions had the word "conservatorship" in brackets (which I eliminated in this draft). Was the use of brackets intentional?

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

****NOTE: What is a "regulated financial-service institution"? Should it be defined?

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

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

****NOTE: The term "special fiduciary" is used in several places in the bill, and in each place the powers seem to be a bit different. Is this a term of art? Or should this term or the fiduciary's powers or limitations be defined?



1 **SECTION 69.** 701.0803 of the statutes is created to read:

2 **701.0803 Article VIII, Section 803 - Impartiality.** If a trust has two or more
3 beneficiaries, the trustee shall act impartially in investing, managing, and
4 distributing the trust property, giving due regard to the beneficiaries' respective
5 interests and the purposes and terms of the trust.

6 **SECTION 70.** 701.0804 of the statutes is created to read:

7 **701.0804 Article VIII, Section 804 - Prudent administration.** A trustee
8 shall administer the trust as a prudent person would, by considering the purposes,
9 terms, distributional requirements, and other circumstances of the trust. In
10 satisfying this standard, the trustee shall exercise reasonable care, skill, and
11 caution.

12 **SECTION 71.** 701.0805 of the statutes is created to read:

13 **701.0805 Article VIII, Section 805 - Costs of administration.** In
14 administering a trust, the trustee may incur only costs that are reasonable in
15 relation to the trust property, the purposes of the trust, the skills of the trustee, and
16 the complexity of the trust administration.

17 **SECTION 72.** 701.0806 of the statutes is created to read:

18 **701.0806 Article VIII, Section 806 - Trustee's skills.** A trustee who has
19 special skills or expertise, or is named trustee in reliance upon the trustee's
20 representation that the trustee has special skills or expertise, shall use those special
21 skills or expertise.

22 **SECTION 73.** 701.0807 of the statutes is created to read:

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

5 (a) Selecting an agent.

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

8 (c) Periodically reviewing the agent's actions in order to monitor the agent's
9 performance and compliance with the terms of the delegation.

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

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

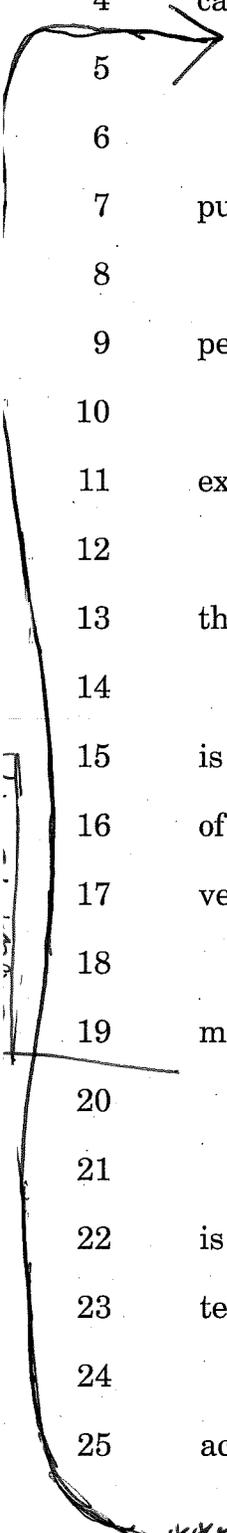
14 **(4)** By accepting a delegation of powers or duties from the trustee of a trust that
15 is subject to the law of this state, an agent submits to the jurisdiction of the courts
16 of this state even if the terms of the delegation provide for a different jurisdiction or
17 venue.

18 **(5)** This section shall not apply to the delegation of investment and
19 management functions which are governed by s. 881.01 (10).

20 **SECTION 74.** 701.0808 of the statutes is created to read:

21 **701.0808 Article VIII, Section 808 - Powers to direct.** (1) While a trust
22 is revocable, the trustee may follow a direction of the settlor that is contrary to the
23 terms of the trust.

24 **(2)** The trust instrument may appoint a directing party to direct specified
25 actions of the trustee. If the excluded trustee acts in accordance with the direction



CS
NOTE: *Is a "prudent trustee" different than a "prudent person"? That is, are there separate standards applied? If not, would it be okay to say "a prudent person"?*

1 of the directing party or fails to act due to lack of direction, then, except for acts or
2 omissions as a result of willful misconduct, the excluded trustee shall not be liable
3 for any loss resulting directly or indirectly from any action taken or omitted with
4 respect to the specified action.

3rd

5 (3) An excluded trustee shall have no duty to communicate with or warn or
6 apprise any beneficiary or (third) party concerning instances in which the excluded
7 trustee would or might have exercised the excluded trustee's own discretion in a
8 manner different than the directing party. In addition, an excluded trustee shall
9 have no duty to provide advice to, consult with, monitor, or evaluate the propriety of
10 the conduct of the directing party.

***NOTE: Can the words "shall have no" be replaced with "has no"?

11 (4) Administrative actions of an excluded trustee pertaining to matters within
12 the scope of a directing party's authority, such as confirming the directing party's
13 directions have been carried out and recording and reporting actions taken at the
14 directing party's direction, shall be deemed to be actions taken by the excluded
15 trustee solely to allow the excluded trustee to perform those duties assigned to the
16 excluded trustee under the trust instrument and shall not be deemed to constitute
17 an undertaking by the excluded trustee to monitor the directing party or otherwise
18 participate in actions within the scope of the directing party's authority.

***NOTE: Can "shall not be deemed to constitute" be replaced with "shall not constitute"?

19 (5) A directing party is a fiduciary with respect to its powers to direct specified
20 actions. As a fiduciary, the directing party is subject to the same duties and
21 standards that are applicable to a trustee of a trust, except to the extent the
22 governing instrument provides otherwise. A directing party may not exonerate itself

1 from its fiduciary duties and will be subject to the provisions of subch. X in the event
2 of a breach of its duties.

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

7 (7) (8) A directing party with respect to directed trust property is subject to the
8 provisions of s. 701.0902. A trust protector is not considered a directing party and
9 is subject to the provisions of s. 701.0818.

****NOTE: What does "with respect to directed trust property" mean in the first sentence of this subsection? Would it be acceptable to replace this phrase with "having responsibility over" or "having power over" or "having control of" or something similar?

****NOTE: The most recent e-mail from Victor Schultz, dated 12/5/2012, eliminated subsections (5) and (9). Sub. (5) read: "The trust instrument may confer upon a trustee or other person a power to direct the modification or termination of the trust." Sub. (9) read: "This section does not protect the excluded trustee from liabilities for acts or omissions taken in bad faith or as a result of willful misconduct." Okay?

Insert 74-10

10 SECTION 75. 701.0809 of the statutes is created to read:
11 701.0809 Article VIII, Section 809 - Control and protection of trust
12 property. A trustee shall take reasonable steps to take control of and protect the
13 trust property.

14 SECTION 76. 701.0810 of the statutes is created to read:
15 701.0810 Article VIII, Section 810 - Record-keeping and identification
16 of trust property. (1) A trustee shall keep adequate records of the administration
17 of the trust.

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

2

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

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

6 **SECTION 77.** 701.0811 of the statutes is created to read:

7 **701.0811 Article VIII, Section 811 - Enforcement and defense of claims.**

8 A trustee shall take reasonable steps to enforce claims of the trust known to the
9 trustee and to defend claims against the trust known to the trustee.

10 **SECTION 78.** 701.0812 of the statutes is created to read:

11 **701.0812 Article VIII, Section 812 - Collecting trust property; duties**

12 **and liabilities of successor trustees. (1)** Subject to sub. (2), a trustee shall take
13 reasonable steps to compel a former trustee or other person to deliver trust property
14 to the trustee, and to redress a breach of trust known to the trustee to have been
15 committed by a former trustee or other fiduciary of the trust.

****NOTE: I added "Subject to sub. (2)" to this subsection, as sub. (2) appears to limit
the responsibilities under this subsection. Okay?

16 (2) A successor trustee shall not have a duty to examine the accounts of a
17 former trustee and shall not be liable for the acts and omissions of a former trustee
18 or other fiduciary of the trust.

19 **SECTION 79.** 701.0813 of the statutes is created to read:

20 **701.0813 Article VIII, Section 813 - Duty to inform and report.**

21 (1) A trustee shall keep the distributees or permissible distributees of trust
22 income or principal, and other qualified beneficiaries who so request, reasonably
23 informed about the administration of the trust. Unless unreasonable under the

1 circumstances, a trustee shall promptly respond to a qualified beneficiary's request
2 for information related to the administration of the trust.

****NOTE: What is the difference between a distributee and a permissible distributee? Is one a subset of the other? That is, is it necessary to refer to both?

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

4 (a) Upon request of a qualified beneficiary, promptly furnish to the qualified
5 beneficiary either a copy of the portions of the trust instrument relating to the
6 interest of the qualified beneficiary or a copy of the trust instrument, in the discretion
7 of the trustee.

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

11 (c) Within a reasonable period of time after the date the trustee acquires
12 knowledge of the creation of an irrevocable trust, or the date the trustee acquires
13 knowledge that a formerly revocable trust has become irrevocable, whether by the
14 death of the settlor or otherwise, notify the qualified beneficiaries of all of the
15 following:

- 16 1. The trust's existence.
- 17 2. The identity of the settlor or settlors.
- 18 3. The right to request a copy of the documentation referred to in par. (a).
- 19 4. The right to request information under sub. (1).
- 20 5. The right to a trustee's report as provided in sub. (3).

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

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

4 1. A report of the trust property, liabilities, receipts, and disbursements,
5 including the source and amount of the trustee's compensation.

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

7 (b) Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a
8 report containing the information described under par. (a) 1. must be sent to the
9 qualified beneficiaries by the former trustee. A personal representative or guardian
10 may send the qualified beneficiaries a report containing the information described
11 in par. (a) 1. on behalf of a deceased or incapacitated trustee.

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

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

21 **SECTION 80.** 701.0814 of the statutes is created to read:

22 **701.0814 Article VIII, Section 814 - Discretionary powers; tax savings.**

23 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of
24 the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the
25 trustee shall exercise a discretionary power in good faith and in accordance with the

1 terms and purposes of the trust and the interests of the beneficiaries. A court shall
2 not determine that a trustee abused its discretion merely because the court would
3 have exercised the discretion in a different manner or would not have exercised the
4 discretion.

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

7 (a) A person other than a settlor who is a beneficiary and trustee of a trust that
8 confers on the trustee a power to make discretionary distributions to or for the
9 trustee's personal benefit may exercise the power only in accordance with an
10 ascertainable standard.

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

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

****NOTE: The term "special fiduciary" is used in several places in the bill, and in
each place the powers seem to be a bit different. Is this a term of art? Or should this term
or the fiduciary's powers or limitations be defined?

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

18 (a) A power held by the settlor's spouse who is the trustee of a trust for which
19 a marital deduction, as defined in section 2056 (b) (5) or 2523 (e) of the Internal
20 Revenue Code of 1986, as in effect on the effective date of this paragraph [LRB
21 inserts date], or as later amended, was previously allowed.

****NOTE: I'm not sure I understand why this paragraph references sections of the
Internal Revenue Code (IRC) "as in effect on the date of this paragraph or as later
amended." It is possible that the provisions of the IRC at those two separate time periods
could be inconsistent with one another. If subsequent changes to the provisions of the IRC

will not affect the operability of this subsection, is it necessary to make any reference at all to the time at which the provision of the IRC is in effect? Also, doesn't the definition of Internal Revenue Code at s. 701.0103 cover the concept being addressed here?

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

3 (c) A trust if contributions to the trust qualify for the annual exclusion under
4 section 2503 (c) of the Internal Revenue Code of 1986, as in effect on the effective date
5 of this paragraph [LRB inserts date], or as later amended.

****NOTE: Please refer to the ****NOTE under par. (a).

6 SECTION 81. 701.0815 of the statutes is created to read:

7 701.0815 Article VIII, Section 815 - General powers of trustee. (1)

8 Subject to sub. (2), a trustee, without authorization by the court, may exercise the
9 following powers:

****NOTE: I added "Subject to sub. (2)" to the introduction to sub. (1), as sub. (2) seems to impose a limitation on the extent of the powers described in sub. (1). Okay?

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

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

12 1. All powers over the trust property which an unmarried, competent owner has
13 over individually owned property.

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

16 3. Any other powers conferred by this chapter.

17 (2) A trustee's exercise of the trustee's power is subject to the fiduciary duties
18 prescribed by this chapter.

****NOTE: Because this s. 701.0815 relates to the powers of a trustee, I changed "The exercise of a power" to "A trustee's exercise of the trustee's power." Okay?

19 SECTION 82. 701.0816 of the statutes is created to read: