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1 party's, or trust protector's personal benefit may exercise the power only in
2 accordance with an ascertainable standard.

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

6 (3) A power whose exercise is limited or prohibited by sub. (2) may be exercised
7 by a majority of the remaining trustees, directing parties, or trust protectors whose
8 exercise of the power is not so limited or prohibited. If the power of all trustees,
9 directing parties, or trust protectors is so limited or prohibited, the court may appoint
10 a trustee, directing party, or trust protector with authority to exercise the power.

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

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

15 (b) A trust during a period when the trust may be revoked or amended by its
16 settlor.

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

19 **SECTION 148.** 701.0815 of the statutes is created to read:

20 **701.0815 General powers of trustee.** (1) A trustee, without authorization
21 by the court, may exercise the following powers:

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

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

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

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

3 3. Any other powers conferred by this chapter.

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

6 **SECTION 149.** 701.0816 of the statutes is created to read:

7 **701.0816 Specific powers of trustee.** Without limiting the authority
8 conferred by s. 701.0815, a trustee may do all of the following:

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

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

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

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

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

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

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

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

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

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

7 (d) Deposit the stock or other security with a depository or other regulated
8 financial–service institution.

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

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

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

21 **(11)** Insure the property of the trust against damage or loss and insure the
22 trustee, the trustee’s agents, any directing party, any trust protector, and the
23 beneficiaries against liability arising from the administration of the trust.

24 **(12)** Abandon or decline to administer property of no value or of insufficient
25 value to justify its collection or continued administration.

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1 **(13)** With respect to possible liability for violation of environmental law, do any
2 of the following:

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

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

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

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

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

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

19 **(15)** Pay taxes; assessments; compensation of the trustee, a directing party, a
20 trust protector, and employees and agents of the trust; and other expenses incurred
21 in the administration of the trust.

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

23 **(17)** Select a mode of payment under any employee benefit or retirement plan,
24 annuity, or life insurance payable to the trustee, exercise rights thereunder,

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1 including exercise of the right to indemnification for expenses and against liabilities,
2 and take appropriate action to collect the proceeds.

3 (18) Make loans out of trust property, including loans to a beneficiary on terms
4 and conditions the trustee considers to be fair and reasonable under the
5 circumstances. The trustee has a lien on future distributions for repayment of loans
6 under this subsection.

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

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

12 (21) Pay an amount distributable to a beneficiary who is under a legal
13 disability or who the trustee reasonably believes is incapacitated, by paying it
14 directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any
15 of the following:

16 (a) Paying the amount to the beneficiary's conservator or the beneficiary's
17 guardian of the estate.

18 (b) Paying the amount to the beneficiary's custodian under the Uniform
19 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
20 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
21 custodial trust.

22 (c) If the trustee does not know of a conservator, guardian of the estate,
23 custodian, or custodial trustee, paying the amount to an adult relative or other
24 person having legal or physical care or custody of the beneficiary or to the guardian
25 of the person of the beneficiary, to be expended on the beneficiary's behalf.

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

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

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

10 (24) Prosecute or defend an action, claim, or judicial proceeding in any
11 jurisdiction to protect trust property or the trustee, a directing party, or a trust
12 protector in the performance of the trustee's, directing party's or trust protector's
13 duties.

14 (25) Sign and deliver contracts and other instruments that are useful to
15 achieve or facilitate the exercise of the trustee's, directing party's or trust protector's
16 powers.

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

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

22 **SECTION 150.** 701.0817 of the statutes is created to read:

23 **701.0817 Distribution upon termination.** (1) Upon termination or partial
24 termination of a trust, the trustee may send a proposal for distribution to the
25 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent

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

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

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

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

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

14 **SECTION 151.** 701.0818 of the statutes is created to read:

15 **701.0818 Trust protectors.** (1) APPOINTMENT. A settlor in a trust instrument,
16 a court in a trust instrument or court order, or interested persons in a nonjudicial
17 settlement agreement may provide for the appointment of a trust protector, whether
18 referred to as a trust protector, another title, or no title. A trust protector has only
19 the powers granted to the trust protector in the trust instrument, court order, or
20 nonjudicial settlement agreement.

21 (2) TRUST PROTECTOR POWERS; LEGAL CAPACITY. (a) A settlor in a trust instrument,
22 a court in a trust instrument or court order, or interested persons in a nonjudicial
23 settlement agreement may specify the legal capacity in which a particular power is
24 exercisable by a trust protector and whether a power granted to the trust protector
25 in a capacity other than a fiduciary capacity must be exercised in good faith.

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1 (b) If the settlor, court, or interested persons do not specify the legal capacity
2 in which a particular power is exercisable by the trust protector, all of the following
3 apply:

4 1. The power is exercisable in a fiduciary capacity if it is a power to do any of
5 the following:

- 6 a. Interpret or enforce the terms of the trust at the request of the trustee.
- 7 b. Review and approve the trustee's reports or accounting.
- 8 c. Resolve disputes between the trustee or a directing party and a beneficiary.
- 9 d. Consent to or veto distributions to a beneficiary.
- 10 e. Consent to or veto investment actions.

11 2. If it is not a power described in subd. 1. a. to e., the power is exercisable in
12 a nonfiduciary capacity, including a power to do any of the following:

13 a. Modify or amend the trust instrument to respond to opportunities related
14 to, or changes in, restraints on alienation or other state laws restricting the terms
15 of a trust, the distribution of trust property, or the administration of the trust.

16 b. Modify or amend the trust instrument to achieve a different tax status or to
17 respond to changes in federal or state law.

18 c. Change the principal place of administration, the tax situs of the trust, or the
19 governing law of the trust.

20 d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or
21 class of beneficiaries, or select a beneficiary from an indefinite class.

22 e. Modify the terms of a power of appointment granted under the trust.

23 f. Remove, replace, or appoint a trustee, trust protector, or directing party or
24 a successor trustee, trust protector, or directing party.

25 g. Terminate the trust.

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- 1 h. Appoint assets to a new trust under s. 701.0418.
- 2 i. Advise the trustee on matters concerning a beneficiary, including whether to
3 provide information to a beneficiary under s. 701.0813.
- 4 j. Correct errors or ambiguities in the terms of the trust that might otherwise
5 require court construction or defeat the settlor's intent.
- 6 3. Notwithstanding subds. 1. and 2., a trust protector who is also the settlor
7 may exercise any power granted to the trust protector in the trust protector's
8 personal interests.
- 9 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary
10 may exercise any power granted to the trust protector that is exercisable in a
11 nonfiduciary capacity in the trust protector's personal interests.
- 12 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument
13 to the contrary, a trust protector who is also serving as the trustee or a directing party
14 shall exercise any power granted to the trust protector in a fiduciary capacity.
- 15 **(3) TRUST PROTECTOR DUTIES.** (a) If a power is exercisable in a fiduciary capacity,
16 the trust protector shall act in good faith and shall exercise the power in a manner
17 that is consistent with the terms and purposes of the trust instrument, court order,
18 or nonjudicial settlement agreement and the interests of the beneficiaries.
- 19 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall
20 act in good faith unless the trust instrument, court order, or nonjudicial settlement
21 agreement provides otherwise.
- 22 (c) A trust protector does not have a duty to exercise its powers, to monitor the
23 conduct of the trustee or a directing party, or to monitor changes in the law or
24 circumstances of the beneficiaries.

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1 (4) **LIABILITY.** A trust protector is liable for any loss that results from a breach
2 of the trust protector’s duties, except as follows:

3 (a) If the trust protector is also the settlor, the trust protector is not liable for
4 any loss that results from a breach of the trust protector’s duties.

5 (b) If the trust protector is also a qualified beneficiary, the trust protector is not
6 liable for any loss that results from a breach of the trust protector’s duties for a power
7 that is exercised in a nonfiduciary capacity.

8 (5) **RESIGNATION AND RELEASE OF POWERS.** A trust protector may resign or
9 release a power granted to the trust protector by giving written notice to the trustee
10 and to any successor trust protector.

11 (6) **PROHIBITED ACTIONS.** A trust protector may not exercise a power granted to
12 the trust protector to do any of the following:

13 (a) Except as provided in sub. (2) (b) 3. and 4., create or expand any beneficial
14 interest, power of appointment, right of withdrawal, or right to receive trust property
15 as a result of the exercise of a power of appointment if the creation or expansion
16 would benefit the trust protector, the trust protector’s estate, the trust protector’s
17 creditors, or creditors of the trust protector’s estate.

18 (b) Modify or amend a trust to do any of the following:

19 1. Remove a requirement pursuant to 42 USC 1396p (d) (4) to pay back a
20 governmental entity for benefits provided to the permissible beneficiary at the death
21 of that beneficiary.

22 2. Reduce or eliminate an income interest of an income beneficiary of any of the
23 following trusts:

24 a. A trust for which a marital deduction has been taken for federal or state
25 estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code

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1 or any comparable provision of applicable state law, during the life of the settlor's
2 spouse.

3 b. A charitable remainder trust under section 664 of the Internal Revenue
4 Code, during the life of the noncharitable beneficiary.

5 c. A trust in which the settlor has a qualified interest under section 2702 (b)
6 of the Internal Revenue Code, during any period in which the settlor is a beneficiary.

7 d. A trust for which an election as a qualified Subchapter S Trust under section
8 1361(d) of the Internal Revenue Code is in place.

9 (c) Modify any beneficial interest in a trust that qualified for a marital
10 deduction or charitable deduction from federal or state estate tax in a manner that
11 would have caused the trust not to qualify for the deduction.

12 (7) **SETTLOR RIGHTS.** A trust protector is not subject to the direction of the settlor
13 and the settlor may not bring a cause of action against the trust protector. A trust
14 protector may consider a settlor's goals, objectives, and philosophies in establishing
15 the trust and the trust's structure when exercising the powers granted to the trust
16 protector and may do so regardless of whether the settlor is deceased.

17 (8) **DUTIES OF A TRUSTEE AND A DIRECTING PARTY.** (a) A trustee and a directing
18 party shall act in accordance with a trust protector's exercise of a power granted to
19 the trust protector. A trustee and a directing party are not liable for acting in
20 accordance with the trust protector's exercise of a power granted to the trust
21 protector unless the attempted exercise is manifestly contrary to the power granted
22 to the trust protector or the trustee or the directing party knows that the attempted
23 exercise would constitute a serious breach of a duty that the trust protector owes to
24 the beneficiaries of the trust.

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1 (b) A trustee and a directing party do not have a duty to monitor the conduct
2 of the trust protector, provide advice to or consult with the trust protector, or
3 communicate with, warn, or apprise any beneficiary concerning instances in which
4 the trustee or the directing party would or might have exercised the trustee's or the
5 directing party's discretion in a manner different from the manner in which the trust
6 protector exercised its discretion.

7 (9) RIGHT TO INFORMATION. (a) A trust protector may request information about
8 the trust from the trustee and, if the requested information is related to a power
9 granted to the trust protector, the trustee shall provide the requested information to
10 the trust protector. If a trustee is bound by any confidentiality restrictions with
11 respect to information requested by a trust protector, the trustee may require that
12 the trust protector agree to be bound by the confidentiality restrictions before
13 delivering such information to the trust protector. A trustee is not liable to any
14 beneficiary for any loss or damages resulting from the trustee providing information
15 to the trust protector that is related to the power granted to the trust protector.

16 (b) Except as otherwise provided in this chapter, a trustee does not have to
17 provide any information to the trust protector that the trust protector does not
18 request.

19 (10) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. A trustee shall,
20 in accordance with s. 701.1004, pay or reimburse a trust protector for attorney fees
21 and costs to defend any claim made against the trust protector.

22 (11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS. Sections 701.0701,
23 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a trust
24 protector as if the trust protector is the trustee.

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1 **(12) JURISDICTION.** A person who accepts an appointment as a trust protector
2 of a trust submits to the jurisdiction of the courts of this state, as provided in s.
3 701.0202 (1).

4 **SECTION 152.** 701.0819 of the statutes is created to read:

5 **701.0819 Marital deduction transfers.** (1) For purposes of this section,
6 “marital deduction transfer” means a lifetime or testamentary transfer of property
7 that is intended to qualify for the marital deduction as indicated by the terms of the
8 trust.

9 (2) In interpreting, construing, or administering a trust instrument, absent a
10 clear expression of intent by the settlor to the contrary, a trustee shall apply the
11 following presumptions that may only be rebutted by clear and convincing evidence:

12 (a) The settlor intended to take advantage of tax deductions, exemptions,
13 exclusions, and credits.

14 (b) The settlor intended that any transfer made to a spouse outright and free
15 of trust qualify for the gift or estate tax marital deduction and is a marital deduction
16 transfer.

17 (c) If the trust instrument refers to a trust as a marital trust, qualified
18 terminable interest property trust, or spousal trust, or refers to qualified terminable
19 interest property, section 2044, 2056, 2056A, or 2523 of the Internal Revenue Code,
20 or a similar provision of applicable state law, the settlor intended that the trust and
21 property passing to the trust qualify for the applicable gift or estate tax marital
22 deduction and that the transfer qualifies for the marital deduction for federal and
23 state gift or estate tax purposes.

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1 (a) Direct the trustee on the retention, purchase, sale, exchange, tender,
2 encumbrance, or any other investment transaction of the directed trust property and
3 the investment and reinvestment of principal and income.

4 (b) Direct the trustee with respect to the management, control, and voting
5 powers, including voting proxies, of the directed trust property.

6 (c) Select and determine reasonable compensation of one or more outside
7 investment advisors, managers, consultants, or counselors, which may include the
8 trustee, and delegate investment authority to them pursuant to the investment
9 delegation provisions under s. 881.01 (10).

10 (d) Determine the frequency of and methodology for valuing directed trust
11 property and provide the value of property for which there is no readily available
12 daily market value.

13 (2) A trustee who has no power over directed trust property does not have a
14 duty to do any of the following with respect to the directed trust property:

15 (a) Prepare or review investment policy statements.

16 (b) Perform investment or suitability reviews, inquiries, or investigations.

17 (c) Determine or verify the value of directed trust property for which there is
18 no readily available daily market value.

19 (d) Monitor the conduct or investment performance of the directing party.

20 **SECTION 158.** 701.0903 of the statutes is created to read:

21 **701.0903 Nonapplication of prudent investor rule to life insurance**
22 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose
23 of a trust is to hold a life insurance contract or to purchase a life insurance contract
24 from contributions made to the trust, the trustee does not have a duty to determine
25 whether the life insurance contract is or remains a proper investment of the trust.

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1 For purposes of this subsection, determining whether a life insurance contract is or
2 remains a proper investment includes all of the following:

3 (a) Investigating the financial strength or changes in the financial strength of
4 the life insurance company maintaining the life insurance contract.

5 (b) Determining whether to exercise any policy option, right, or privilege
6 available under the life insurance contract.

7 (c) Diversifying the life insurance contract relative to any other life insurance
8 contracts or any other assets of the trust.

9 (d) Inquiring about or investigating the health or financial condition of an
10 insured.

11 (e) Preventing the lapse of a life insurance contract if the trust does not receive
12 contributions or hold other readily marketable assets to pay the life insurance
13 contract premiums.

14 (2) A trustee is not liable for a loss that arises because the trustee did not take
15 an action specified in sub. (1).

16 (3) This section does not apply to a life insurance contract that is purchased
17 from an affiliate of the trustee or to a life insurance contract from which the trustee
18 or an affiliate receives a commission, unless the power to purchase the life insurance
19 contract has been delegated to another person and that other person made the
20 decision to purchase the life insurance contract from or through the trustee or an
21 affiliate.

22 (4) This section does not apply to a trust that was executed before the effective
23 date of this subsection [LRB inserts date], unless the trustee notifies the qualified
24 beneficiaries that the trustee elects to be governed by this section and provides the
25 qualified beneficiaries with a copy of this section.

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1 (5) Subject to sub. (4), this section applies to a life insurance contract acquired,
2 retained, or owned by a trustee before, on, or after the effective date of this subsection
3 [LRB inserts date].

4 **SECTION 159.** 701.10 of the statutes is repealed.

5 **SECTION 160.** Subchapter X (title) of chapter 701 [precedes 701.1001] of the
6 statutes is created to read:

7 **CHAPTER 701**

8 **SUBCHAPTER X**

9 **LIABILITY OF TRUSTEES AND RIGHTS**

10 **OF PERSONS DEALING WITH TRUSTEE**

11 **SECTION 161.** 701.1001 of the statutes is created to read:

12 **701.1001 Remedies for breach of trust.** (1) A violation by a trustee of a duty
13 the trustee owes to a beneficiary is a breach of trust.

14 (2) To remedy a breach of trust that has occurred or may occur, a court may do
15 any of the following:

16 (a) Compel the trustee to perform the trustee's duties.

17 (b) Enjoin the trustee from committing a breach of trust.

18 (c) Compel the trustee to redress a breach of trust by paying money, restoring
19 property, or other means.

20 (d) Order a trustee to account.

21 (e) Appoint an additional trustee, a directing party, or a trust protector having
22 the duties and authority ordered by the court, including, in the case of an additional
23 trustee, the authority to take possession of the trust property and administer the
24 trust.

25 (f) Suspend the trustee.

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1 (g) Remove the trustee as provided in s. 701.0706.

2 (h) Reduce the compensation of or deny compensation to the trustee.

3 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
4 constructive trust on trust property, or trace trust property wrongfully disposed of
5 and order recovery of the property or its proceeds.

6 (j) Order any other appropriate relief, whether provided elsewhere in this
7 chapter, available at common law, or under equity principles.

8 **SECTION 162.** 701.1002 of the statutes is created to read:

9 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

10 A trustee who commits a breach of trust is liable to an affected beneficiary for the
11 greater of the following:

12 (a) The amount required to restore the value of the trust property and trust
13 distributions to what they would have been had the breach not occurred.

14 (b) The profit the trustee made by reason of the breach.

15 (2) Except as otherwise provided in this subsection, if more than one trustee
16 is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from
17 the other trustee or trustees. A trustee is not entitled to contribution if the trustee
18 was substantially more at fault than another trustee or if the trustee committed the
19 breach of trust in bad faith or with reckless indifference to the purposes of the trust
20 or the interests of the beneficiary. A trustee who received a benefit from the breach
21 of trust is not entitled to contribution from another trustee to the extent of the benefit
22 received.

23 (3) A successor trustee is not liable for the acts and omissions of a former
24 trustee or for the acts or omissions of any directing party or trust protector that are
25 taken before the appointment of the successor trustee.

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1 **SECTION 163.** 701.1003 of the statutes is created to read:

2 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee
3 is not liable to a beneficiary for a loss or depreciation in the value of trust property
4 or for not having made a profit.

5 **SECTION 164.** 701.1004 of the statutes is created to read:

6 **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the
7 administration of a trust, the court, as justice and equity may require, may award
8 costs and expenses, including reasonable attorney fees, to any party, to be paid by
9 another party or from the trust that is the subject of the controversy.

10 **(2)** Subject to sub. (3), if a trustee, directing party, or trust protector defends
11 or prosecutes any proceeding in good faith, whether successful or not, the trustee,
12 directing party, or trust protector is entitled to receive from the trust the necessary
13 expenses and disbursements, including reasonable attorney fees, incurred. This
14 subsection does not preclude a court from ordering another party to reimburse the
15 trust for these expenses and disbursements as provided in sub. (1).

16 **(3) (a)** A trustee may pay costs or attorney fees incurred in any proceeding from
17 the trust property without the approval of any person and without court
18 authorization, unless the court orders otherwise as provided in par. (c).

19 **(b)** If a claim or defense based upon a breach of trust is made against a trustee,
20 directing party, or trust protector in a proceeding, the trustee shall provide notice to
21 each qualified beneficiary, directing party, and trust protector of the trustee's
22 intention to pay costs or attorney fees incurred in the proceeding from the trust prior
23 to making payment. The notice shall inform each qualified beneficiary, directing
24 party, and trust protector of the right to apply to the court for an order prohibiting
25 the trustee from paying attorney fees or costs from trust property. If a trustee is

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1 served with a motion for an order prohibiting the trustee from paying from the trust
2 attorney fees or costs in the proceeding and the trustee pays attorney fees or costs
3 from the trust before an order is entered on the motion, the trustee, directing party,
4 or trust protector and their respective attorneys who have been paid attorney fees
5 or costs from trust property are subject to the remedies in pars. (c) and (d).

6 (c) 1. If a claim or defense based upon breach of trust is made against a trustee,
7 directing party, or trust protector in a proceeding, a party may move the court for an
8 order to prohibit the trustee from paying costs or attorney fees from trust property.

9 2. Except as provided in subd. 3., if the moving party demonstrates to the court
10 that there is a reasonable basis for the court to find that a breach of trust occurred,
11 the court shall enter an order prohibiting the payment of further attorney fees and
12 costs from trust property and shall order attorney fees or costs previously paid from
13 trust property in such proceeding to be refunded, unless the court finds good cause
14 to allow attorney fees and costs to be paid from the trust. A trustee, directing party,
15 or trust protector may offer evidence to rebut the evidence submitted to the court by
16 the moving party.

17 3. The court may defer ruling on a motion to prohibit a trustee from paying costs
18 or attorney fees from trust property until discovery is taken by the parties.

19 4. An order entered under this paragraph does not limit a trustee's, directing
20 party's, or trust protector's right to seek an order allowing the payment of some or
21 all of the attorneys fees or costs incurred in the proceeding from trust property,
22 including any fees required to be refunded, after the claim or defense is finally
23 determined by the court. If a claim or defense based upon a breach of trust is
24 withdrawn, dismissed, or resolved without a determination by the court that the
25 trustee committed a breach of trust, after the entry of an order prohibiting payment

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1 of attorney fees and costs pursuant to this paragraph, the trustee may pay costs or
2 attorney fees incurred in the proceeding from the trust property without further
3 court authorization.

4 (d) If the court orders a refund under par. (c), the court may enter sanctions as
5 are appropriate if a refund is not made as directed by the court, including striking
6 defenses or pleadings filed by the trustee, directing party, or trust protector. Nothing
7 in this paragraph limits other remedies and sanctions the court may employ for the
8 failure to refund the trust in a timely manner.

9 (e) Subject to s. 701.1005, nothing in this subsection limits the power of the
10 court to review fees and costs or the right of any interested persons to challenge fees
11 and costs after payment, after an accounting, or after conclusion of the litigation.

12 (f) Notice under par. (b) is not required if the action or defense is later
13 withdrawn or dismissed by the party that is alleging a breach of trust or resolved
14 without a determination by the court that the trustee has not committed a breach
15 of trust.

16 (4) A provision of a trust instrument drafted or caused to be drafted by a
17 trustee, directing party, or trust protector that modifies the application of this section
18 in a manner favorable to the trustee, directing party, or trust protector and
19 potentially detrimental to a beneficiary is invalid with respect to the trustee,
20 directing party, or trust protector unless the trustee, directing party, or trust
21 protector proves that the provision was fair under the circumstances existing at the
22 time the trust instrument was signed and that the existence and contents of the
23 provision were adequately communicated to the settlor.

24 **SECTION 165.** 701.1005 of the statutes is created to read:

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1 **701.1005 Limitation of action against trustee.** (1) A beneficiary may not
2 commence a proceeding against a trustee for breach of trust more than one year after
3 the date on which the beneficiary or a representative of the beneficiary was sent a
4 report that adequately disclosed the existence of a potential claim for breach of trust.

5 (2) A report adequately discloses the existence of a potential claim for breach
6 of trust if it provides sufficient information so that the beneficiary or representative
7 knows of the potential claim or should have inquired into its existence.

8 (3) If sub. (1) does not apply, a proceeding by a beneficiary against a trustee for
9 breach of trust must be commenced within 5 years after the first to occur of the
10 following:

11 (a) The removal, resignation, or death of the trustee.

12 (b) The termination of the beneficiary's interest in the trust.

13 (c) The termination of the trust.

14 (4) Subsections (1) and (3) do not apply to a claim for fraud. The time for
15 asserting a claim for fraud is governed by applicable law.

16 **SECTION 166.** 701.1006 of the statutes is created to read:

17 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable
18 reliance on the terms of the trust as expressed in the trust instrument is not liable
19 to a beneficiary for a breach of trust to the extent the breach resulted from the
20 reliance.

21 **SECTION 167.** 701.1007 of the statutes is created to read:

22 **701.1007 Event affecting administration or distribution.** If the
23 happening of an event, including marriage, divorce, performance of educational
24 requirements, or death, affects the administration or distribution of a trust, a trustee

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1 who has exercised reasonable care to ascertain the happening of the event is not
2 liable for a loss resulting from the trustee's lack of knowledge.

3 **SECTION 168.** 701.1008 of the statutes is created to read:

4 **701.1008 Exculpation of trustee.** (1) A term of a trust relieving a trustee
5 of liability for breach of trust is unenforceable to the extent that it does any of the
6 following:

7 (a) Relieves the trustee of liability for breach of trust committed in bad faith
8 or with reckless indifference to the purposes of the trust or the interests of a
9 beneficiary.

10 (b) Was inserted as the result of an abuse by the trustee of a fiduciary or
11 confidential relationship with the settlor.

12 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid
13 as an abuse of a fiduciary or confidential relationship unless the trustee proves that
14 the exculpatory term was fair under the circumstances existing at the time the trust
15 instrument was signed and that the existence and contents of the exculpatory term
16 were adequately communicated to the settlor.

17 **SECTION 169.** 701.1009 of the statutes is created to read:

18 **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not
19 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct
20 constituting the breach, released the trustee from liability for the breach, or ratified
21 the transaction constituting the breach, unless any of the following applies:

22 (1) The consent, release, or ratification of the beneficiary was induced by
23 improper conduct of the trustee.

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1 (2) At the time of the consent, release, or ratification, the beneficiary did not
2 have knowledge of the beneficiary's rights or of the material facts relating to the
3 breach.

4 **SECTION 170.** 701.1010 of the statutes is created to read:

5 **701.1010 Limitation on personal liability of trustee.** (1) Except as
6 otherwise provided in the contract, a trustee is not personally liable on a contract
7 properly entered into in the trustee's fiduciary capacity in the course of
8 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

9 (2) A trustee is personally liable for torts committed in the course of
10 administering a trust, or for obligations arising from ownership or control of trust
11 property, including liability for violation of environmental law, only if the trustee is
12 personally at fault.

13 **SECTION 171.** 701.1011 of the statutes is created to read:

14 **701.1011 Interest as general partner.** (1) Unless personal liability is
15 imposed in the contract, a trustee who holds an interest as a general partner in a
16 general or limited partnership is not personally liable on a contract entered into by
17 the partnership after the trust's acquisition of the interest if the fiduciary capacity
18 was disclosed in the contract.

19 (2) A trustee who holds an interest as a general partner is not personally liable
20 for torts committed by the partnership or for obligations arising from ownership or
21 control of the interest unless the trustee is personally at fault.

22 (3) If the trustee of a revocable trust holds an interest as a general partner, the
23 settlor is personally liable for contracts and other obligations of the partnership as
24 if the settlor were a general partner.

25 **SECTION 172.** 701.1012 of the statutes is created to read:

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1 **701.1012 Protection of person dealing with trustee.** (1) A person other
2 than a beneficiary who in good faith assists a trustee, or who in good faith and for
3 value deals with a trustee, without knowledge that the trustee is exceeding or
4 improperly exercising the trustee's powers is protected from liability as if the trustee
5 properly exercised the power.

6 (2) A person other than a beneficiary who in good faith deals with a trustee is
7 not required to inquire into the extent of the trustee's powers or the propriety of their
8 exercise.

9 (3) A person who in good faith delivers assets to a trustee does not need to
10 ensure their proper application.

11 (4) A person other than a beneficiary who in good faith assists a former trustee,
12 or who in good faith and for value deals with a former trustee, without knowledge
13 that the trusteeship has terminated is protected from liability as if the former trustee
14 were still a trustee.

15 (5) Comparable protective provisions of other laws relating to commercial
16 transactions or transfer of securities by fiduciaries prevail over the protection
17 provided by this section.

18 **SECTION 173.** 701.1013 of the statutes is created to read:

19 **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust
20 instrument to a person other than a beneficiary, the trustee may furnish to the
21 person a certification of trust containing the following information:

22 (a) That the trust exists and the date on which the trust instrument was
23 executed.

24 (b) The identity of the settlor.

25 (c) The identity and address of the currently acting trustee.

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1 (d) The powers of the trustee.

2 (e) The revocability or irrevocability of the trust and the identity of any person
3 holding a power to revoke the trust.

4 (f) The authority of a cotrustee to sign or otherwise authenticate and whether
5 all cotrustees or less than all cotrustees are required to sign or otherwise
6 authenticate in order to exercise powers of the trustee.

7 (g) The manner in which title to trust property may be taken.

8 (2) A certification of trust may be signed or otherwise authenticated by any
9 trustee.

10 (3) A trustee shall include in a certification of trust that the trust has not been
11 revoked, modified, or amended in any manner that would cause the representations
12 contained in the certification of trust to be incorrect.

13 (4) A certification of trust does not need to contain the dispositive terms of a
14 trust.

15 (5) A recipient of a certification of trust may require the trustee to furnish
16 copies of those excerpts from the original trust instrument and later amendments
17 that designate the trustee and confer upon the trustee the power to act in the pending
18 transaction.

19 (6) A person who acts in reliance upon a certification of trust without
20 knowledge that the representations contained therein are incorrect is not liable to
21 any person for so acting and may assume without inquiry the existence of the facts
22 contained in the certification. Knowledge of the terms of the trust may not be
23 inferred solely from the fact that a copy of all or part of the trust instrument is held
24 by the person relying upon the certification.

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1 (7) A person who in good faith enters into a transaction in reliance upon a
2 certification of trust may enforce the transaction against the trust property as if the
3 representations contained in the certification were correct.

4 (8) A person making a demand for copies of the trust instrument or excerpts
5 from the trust instrument, other than those excerpts described in sub. (5), in addition
6 to a certification of trust is liable for costs, expenses, reasonable attorney fees and
7 damages if the court determines that the person did not act in good faith in
8 demanding the copies.

9 (9) This section does not limit the right of a person to obtain a copy of the trust
10 instrument in a judicial proceeding concerning the trust.

11 **SECTION 174.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered
12 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are
13 amended to read:

14 701.1201 (1) (a) In the administration of any trust ~~which~~ that is a private
15 foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue
16 Code, a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~
17 ~~revenue code~~ Internal Revenue Code, or a split-interest trust as ~~defined~~ described
18 in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the
19 following acts shall be prohibited:

20 1. Engaging in any act of self-dealing, as defined in section 4941 (d) of the
21 ~~internal revenue code, which~~ Internal Revenue Code, ~~that~~ would give rise to any
22 liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal
23 Revenue Code.

24 2. Retaining any excess business holdings, as defined in section 4943 (c) of the
25 ~~internal revenue code, which~~ Internal Revenue Code, ~~that~~ would give rise to any

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1 liability for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal
2 Revenue Code.

3 3. Making any investments ~~which~~ that would jeopardize the carrying out of any
4 of the exempt purposes of the trust, within the meaning of section 4944 of the ~~internal~~
5 ~~revenue code~~ Internal Revenue Code, so as to give rise to any liability for the tax
6 imposed by section 4944 (a) of the ~~internal revenue code~~ Internal Revenue Code.

7 4. Making any taxable expenditures, as defined in section 4945 (d) of the
8 ~~internal revenue code~~, ~~which~~ Internal Revenue Code, ~~that~~ would give rise to any
9 liability for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal
10 Revenue Code.

11 (b) This subsection ~~shall~~ does not apply either to those split-interest trusts or
12 to amounts thereof ~~which~~ that are not subject to the prohibitions applicable to
13 private foundations by reason of the provisions of section 4947 of the ~~internal~~
14 ~~revenue code~~ Internal Revenue Code.

15 (2) In the administration of any trust ~~which~~ that is a private foundation, as
16 defined in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or ~~which~~
17 ~~that~~ is a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~
18 ~~revenue code~~ Internal Revenue Code, there shall be distributed, for the purposes
19 specified in the trust instrument, for each taxable year, amounts at least sufficient
20 to avoid liability for the tax imposed by section 4942 (a) of the ~~internal revenue code~~
21 Internal Revenue Code.

22 (3) Subsections (1) and (2) ~~shall~~ do not apply to any trust to the extent that a
23 court of competent jurisdiction ~~shall determine~~ determines that ~~such~~ the application
24 would be contrary to the terms of the ~~instrument governing such~~ trust and that the
25 same may not properly be changed to conform to such subsections.

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1 **SECTION 175.** 701.105 (4) of the statutes is repealed.

2 **SECTION 176.** 701.11 of the statutes is repealed.

3 **SECTION 177.** Subchapter XI (title) of chapter 701 [precedes 701.1101] of the
4 statutes is created to read:

5 **CHAPTER 701**

6 **SUBCHAPTER XI**

7 **UNIFORM PRINCIPAL AND INCOME ACT**

8 **SECTION 178.** 701.1101 of the statutes is created to read:

9 **701.1101 Short title and scope.** This subchapter may be cited as the
10 Wisconsin Uniform Principal and Income Act. Subject to s. 701.1206 (2), this
11 subchapter applies to a trust described in s. 701.0102 and an estate that is
12 administered in this state.

13 **SECTION 179.** 701.1102 (intro.) of the statutes is created to read:

14 **701.1102 Definitions.** (intro.) In this subchapter:

15 **SECTION 180.** 701.1102 (1g) of the statutes is created to read:

16 701.1102 (1g) “Asset” has the meaning given for property under s. 701.0103
17 (20).

18 **SECTION 181.** 701.1106 (6) of the statutes is created to read:

19 701.1106 (6) Sections 701.0410 to 701.0418 do not apply to a conversion of a
20 trust to a unitrust under this section.

21 **SECTION 182.** 701.1123 (1) of the statutes is created to read:

22 701.1123 (1) In this section:

23 (a) “Marital deduction trust” means a trust for which an election to qualify for
24 a marital deduction under section 2056 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal

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1 Revenue Code has been made or a trust that qualified for the marital deduction
2 under other provisions of section 2056 or 2523 of the Internal Revenue Code.

3 (b) "Payment" means an amount of money or property received by a trustee that
4 is any of the following:

5 1. Part of a series, or eligible to be part of a series, of distributions payable over
6 a fixed number of years or during the life of one or more individuals because of
7 services rendered or property transferred to the payer in exchange for the future
8 distributions.

9 2. Distributed from a plan, regardless of the reason for the distribution.

10 (c) "Plan" means a contractual, custodial, trust, or other arrangement that
11 provides for distributions to a trust. "Plan" includes a private or commercial annuity,
12 an individual retirement account, a Roth individual retirement account, a qualified
13 retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership
14 plan, or any nonqualified deferred compensation plan.

15 (e) "Separate account" means an account established or maintained under a
16 plan under which income, gains, and losses, whether or not realized, from assets
17 allocated to the account, are credited to or charged against the account without
18 regard to other income, gains, or losses of the plan.

19 **SECTION 183.** 701.1123 (4) of the statutes is created to read:

20 701.1123 (4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust
21 shall determine plan income for an accounting period as if the plan were a trust
22 subject to this subchapter. If the trustee of a marital deduction trust cannot
23 determine the plan income, the plan income is 4 percent of the total present value
24 of the trust's income in the plan on the first day of the accounting period, based on

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1 reasonable actuarial assumptions as determined by the trustee of the marital
2 deduction trust.

3 (b) Notwithstanding subs. (2) and (3), a trustee of a marital deduction trust
4 shall allocate a payment from a plan to income to the extent of the plan income and
5 distribute that amount to the surviving spouse. The trustee of the marital deduction
6 trust shall allocate the balance of the payment to principal. Upon the request of the
7 surviving spouse, the trustee of a marital deduction trust shall allocate principal to
8 income to the extent the plan income exceeds payments made from the plan to the
9 trust during the accounting period.

10 (c) Upon the request of the surviving spouse of the settlor, a trustee of a marital
11 deduction trust shall demand that a person administering a plan distribute the plan
12 income to the trust.

13 **SECTION 184.** 701.1126 (title) of the statutes is created to read:

14 **701.1126 (title) Timber.**

15 **SECTION 185.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

16 701.1134 (3) (c) Proportionately from principal and income to the extent that
17 receipts from the entity are allocated to both income and principal.

18 (d) From principal to the extent that the tax exceeds the total receipts from the
19 entity.

20 (4) After applying subs. (1) to (3), the trustee shall adjust income or principal
21 receipts to the extent that the trust's taxes are reduced because the trust receives a
22 deduction for payments made to a beneficiary.

23 **SECTION 186.** 701.115 of the statutes is repealed.

24 **SECTION 187.** 701.12 of the statutes is repealed.

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1 **SECTION 188.** Subchapter XII (title) of chapter 701 [precedes 701.1201] of the
2 statutes is created to read:

CHAPTER 701**SUBCHAPTER XII****MISCELLANEOUS PROVISIONS**

6 **SECTION 189.** 701.1202 of the statutes is created to read:

7 **701.1202 Electronic records and signatures.** The provisions of this
8 chapter governing the legal effect, validity, or enforceability of electronic records or
9 signatures, and of contracts formed or performed with the use of such records or
10 signatures conform to the requirements of section 102 of the federal Electronic
11 Signatures in Global and National Commerce Act, 15 USC 7002, and supersede,
12 modify, and limit the federal Electronic Signatures in Global and National
13 Commerce Act, 15 USC 7001 to 7031.

14 **SECTION 190.** 701.1203 of the statutes is created to read:

15 **701.1203 Uniformity of application and construction.** This chapter shall
16 be applied and construed to effectuate its general purpose to make uniform the law
17 with respect to the subject of this chapter among states enacting it.

18 **SECTION 191.** 701.1205 (3) of the statutes is created to read:

19 701.1205 (3) (a) Except as provided in par. (b), this chapter applies to a judicial
20 proceeding concerning a trust commenced before, on, or after the effective date of this
21 paragraph [LRB inserts date].

22 (b) If a court finds that application of a particular provision of this chapter to
23 a judicial proceeding commenced before the effective date of this paragraph [LRB
24 inserts date], will substantially interfere with the effective conduct of the judicial
25 proceedings or prejudice the rights of the parties, the particular provision of this

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1 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,
2 2011 stats., as the court finds to be necessary to prevent interference with the
3 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the
4 parties.

5 SECTION 192. 701.13 of the statutes is repealed.

6 SECTION 193. 701.14 (title) and (1) of the statutes are repealed.

7 SECTION 194. 701.14 (2) of the statutes is renumbered 701.0205 and amended
8 to read:

9 701.0205 Notice. If notice of a judicial proceeding involving a trust proceeding
10 to ~~a~~ an interested person interested in the trust, to the person's representative or
11 guardian ad litem ~~as provided in s. 701.15~~, or to other persons, is required by law or
12 deemed necessary by the court, the court shall order such notice to be given as
13 prescribed in s. 879.05 except that service by publication shall may not be required
14 unless ordered by the court. The court may order both personal service and service
15 by publication on designated persons. Proof of service shall be made as provided in
16 s. 879.07. ~~Persons interested in the trust~~ Interested persons, on behalf of
17 themselves, or their representatives or guardians ad litem ~~as provided in s. 701.15~~,
18 on behalf of ~~themselves~~ the representative or guardian ad litem and those whom they
19 represent ~~the interested person~~ the representative or guardian ad litem represents,
20 may in writing waive service of notice and consent to the hearing of any matter
21 without notice. Waiver of notice or an appearance by any interested person
22 ~~interested in the trust~~ or the interested person's representative or guardian ad litem
23 ~~as provided in s. 701.15~~ is equivalent to timely service of notice.

24 SECTION 195. 701.14 (3) of the statutes is renumbered 701.0206 and amended
25 to read:

SENATE BILL 384**SECTION 195**

1 **701.0206 Attorney for person in military service.** At the time of filing a
2 petition for a ~~trust judicial proceeding, involving a trust, the petitioner shall file an~~
3 affidavit ~~shall be filed~~ setting forth the name of any interested person ~~interested in~~
4 ~~the proceeding~~ who is actively engaged in the military service of the United States.
5 Whenever it appears by the affidavit or otherwise that any person in the active
6 military service of the United States is an interested in any trust proceeding person
7 and is not represented by an attorney, or by an attorney-in-fact who is duly
8 authorized to act on the interested person's behalf in the matter, the court shall
9 appoint an attorney to represent the interested person and protect the person's
10 interest.

11 **SECTION 196.** 701.14 (4) of the statutes is repealed.

12 **SECTION 197.** 701.15 of the statutes is repealed.

13 **SECTION 198.** 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the
14 statutes are repealed.

15 **SECTION 199.** 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and
16 amended to read:

17 879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may
18 submit to courts accounts in the format that they normally use for accounts
19 submitted to beneficiaries under this subsection, if all of the information required by
20 the court is included.

21 **SECTION 200.** 701.17 of the statutes is repealed.

22 **SECTION 201.** 701.18 of the statutes is repealed.

23 **SECTION 202.** 701.19 of the statutes is repealed.

24 **SECTION 203.** 701.20 (title) of the statutes is repealed.

25 **SECTION 204.** 701.20 (2) (intro.) of the statutes is repealed.

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1 **SECTION 205.** 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

2 **SECTION 206.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and
3 amended to read:

4 701.1102 (1m) “Beneficiary” Notwithstanding s. 701.0103 (3), “beneficiary”
5 means a person who has a beneficial interest in a trust or an estate and includes, in
6 the case of a decedent’s estate, an heir, a legatee, and a devisee and, in the case of a
7 trust, an income beneficiary and a remainder beneficiary.

8 **SECTION 207.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

9 **SECTION 208.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and
10 amended to read:

11 701.1102 (3) “Income” means money or property that a fiduciary receives as
12 current return from a principal asset. “Income” includes a portion of receipts from
13 a sale, exchange, or liquidation of a principal asset, to the extent provided in ~~subs.~~
14 (10) ss. 701.1115 to (24) 701.1129.

15 **SECTION 209.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

16 **SECTION 210.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

17 **SECTION 211.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

18 **SECTION 212.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and
19 amended to read:

20 701.1102 (7) “Net income” means the total receipts allocated to income during
21 an accounting period, minus the disbursements made from income during the period,
22 plus or minus transfers under this ~~section~~ subchapter to or from income during the
23 period.

24 **SECTION 213.** 701.20 (2) (i) of the statutes is repealed.

25 **SECTION 214.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

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1 **SECTION 215.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9) and
2 amended to read:

3 701.1102 (9) "Remainder beneficiary" means a person ~~entitled to receive~~
4 ~~principal when an income interest ends~~ who is a beneficiary under s. 701.0103 (21)
5 (b).

6 **SECTION 216.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

7 **SECTION 217.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103
8 (1) and (2), as renumbered, are amended to read:

9 701.1103 (1) In allocating receipts and disbursements to income or principal
10 or between income and principal, and with respect to any matter within the scope of
11 ~~subs. (5) ss. 701.1110 to (9) 701.1114~~, a fiduciary:

12 (a) Shall first administer a trust or estate in accordance with the terms of the
13 trust or the will, even if there is a different provision in this ~~section~~ subchapter.

14 (b) May administer a trust or estate by the exercise of a discretionary power
15 of administration given to the fiduciary by the terms of the trust or the will, even if
16 the exercise of the power produces a result different from a result required or
17 permitted by this ~~section~~ subchapter.

18 (c) Shall administer a trust or estate in accordance with this ~~section~~ subchapter
19 if the terms of the trust or the will do not contain a different provision or do not give
20 the fiduciary a discretionary power of administration.

21 (d) Shall add a receipt or charge a disbursement to principal to the extent that
22 the terms of the trust and this ~~section~~ subchapter do not provide a rule for allocating
23 the receipt or disbursement to principal or income or between principal and income.

24 (2) In exercising the power to adjust under ~~sub. (4) (a) s. 701.1104 (1)~~ or a
25 discretionary power of administration regarding a matter within the scope of this

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1 ~~section subchapter~~, whether granted by the terms of a trust, a will, or this ~~section~~
2 ~~subchapter~~, a fiduciary shall administer a trust or estate impartially, based on what
3 is fair and reasonable to all of the beneficiaries, except to the extent that the terms
4 of the trust or the will clearly manifest an intention that the fiduciary shall or may
5 favor one or more of the beneficiaries. A determination in accordance with this
6 ~~section subchapter~~ is presumed to be fair and reasonable to all of the beneficiaries.

7 **SECTION 218.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104
8 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

9 701.1104 (1) A trustee may adjust between principal and income to the extent
10 the trustee considers necessary if the trustee invests and manages trust assets as a
11 prudent investor, the terms of the trust describe the amount that may or must be
12 distributed to a beneficiary by referring to the trust's income, and the trustee
13 determines, after applying the rules in ~~sub. (3) (a) s. 701.1103 (1)~~, that the trustee
14 is unable to comply with ~~sub. (3) (b) s. 701.1103 (2)~~.

15 (2) (intro.) In deciding whether and to what extent to exercise the power
16 conferred by ~~par. (a) sub. (1)~~, a trustee shall consider all factors relevant to the trust
17 and its beneficiaries, including the following factors to the extent they are relevant:

18 (3) (h) If the trust has been converted under ~~sub. (4g) s. 701.1106~~ to a unitrust.

19 (i) If the trust is an express unitrust, as defined in ~~sub. (4j) (a) s. 701.1107 (1)~~.

20 (4) If ~~par. (c) 5., 6. sub. (3) (e), (f), or 7. (g)~~ applies to a trustee and there is more
21 than one trustee, a cotrustee to whom the provision does not apply may make the
22 adjustment unless the terms of the trust do not permit the exercise of the power by
23 that cotrustee.

24 (5) A trustee may release the entire power conferred by ~~par. (a) sub. (1)~~ or may
25 release only the power to adjust from income to principal or the power to adjust from

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1 principal to income if the trustee is uncertain about whether possessing or exercising
2 the power will cause a result described in ~~par. (e) 1. sub. (3) (a) to 6. (f)~~ or if the trustee
3 determines that possessing or exercising the power will or may deprive the trust of
4 a tax benefit or impose a tax burden not described in ~~par. (e) sub. (3)~~. The release may
5 be permanent or for a specified period, including a period measured by the life of an
6 individual.

7 (6) Terms of a trust that limit the power of a trustee to make an adjustment
8 between principal and income do not affect the application of this subsection unless
9 it is clear from the terms of the trust that the terms are intended to deny the trustee
10 the power of adjustment conferred by ~~par. (a) sub. (1)~~.

11 SECTION 219. 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

12 SECTION 220. 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
13 (intro.) and amended to read:

14 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of
15 a proposed action under ~~sub. (4) (a) s. 701.1104 (1)~~ by providing a written notice that
16 complies with all of the following:

17 SECTION 221. 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

18 SECTION 222. 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

19 SECTION 223. 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
20 (1) (c) and amended to read:

21 701.1105 (1) (c) Is given to all *sui-juris* qualified beneficiaries ~~who are any of~~
22 ~~the following:~~

23 SECTION 224. 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

24 SECTION 225. 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
25 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

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1 701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~
2 section and discloses the following information:

3 4. The effective date of the proposed action if no objection is received from any
4 beneficiary within the time specified in subd. ~~4-e. 3.~~

5 **SECTION 226.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
6 amended to read:

7 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
8 section, the trustee is not required to give notice to a sui-juris qualified beneficiary
9 who consents to the proposed action in writing at any time before or after the
10 proposed action is taken.

11 **SECTION 227.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
12 amended to read:

13 701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action
14 by giving a written objection to the trustee within the time specified in the notice
15 under ~~par. (b) 4-e. sub. (1) (d) 3.~~

16 **SECTION 228.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
17 amended to read:

18 701.1105 (4) A trustee may decide not to take a proposed action after the
19 trustee receives a written objection to the proposed action or at any other time for any
20 other reason. In that case, the trustee shall give written notice to the ~~sui-juris~~
21 qualified beneficiaries of the decision not to take the proposed action.

22 **SECTION 229.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
23 amended to read:

24 701.1105 (5) If a trustee receives a written objection to a proposed action within
25 the time specified in the notice under ~~par. (b) 4-e. sub. (1) (d) 3.~~, either the trustee

SENATE BILL 384**SECTION 229**

1 or the qualified beneficiary making the written objection may petition the court to
2 have the proposed action approved, modified, or prohibited. In the court proceeding,
3 the qualified beneficiary objecting to the proposed action has the burden of proving
4 that the proposed action should be modified or prohibited. A qualified beneficiary
5 who did not make the written objection may oppose the proposed action in the court
6 proceeding.

7 **SECTION 230.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
8 amended to read:

9 701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under
10 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
11 ~~sub. (4) s. 701.1104~~.

12 **SECTION 231.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

13 **SECTION 232.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
14 (intro.) and amended to read:

15 701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a
16 unitrust in any of the following ways:

17 **SECTION 233.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
18 (1) (a) (intro.) and amended to read:

19 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
20 request of a qualified beneficiary, if all of the following apply:

21 **SECTION 234.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)
22 (a) 1.

23 **SECTION 235.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)
24 (a) 2. and amended to read:

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1 701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided
2 in ~~sub. (4e) (b)~~ s. 701.1105 (1) of the trustee's intention to convert the trust to a
3 unitrust, and the notice advises how the unitrust will operate, including the fixed
4 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
5 ~~par. (e) 4.~~ sub. (3) (d) that the trustee intends to follow.

6 **SECTION 236.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

7 **SECTION 237.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)
8 (a) 3. and amended to read:

9 701.1106 (1) (a) 3. Every ~~sui-juris~~ qualified beneficiary consents to the
10 conversion to a unitrust in a writing delivered to the trustee.

11 **SECTION 238.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
12 4.

13 **SECTION 239.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
14 (1) (b) (intro.) and amended to read:

15 701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified
16 beneficiary, if all of the following apply:

17 **SECTION 240.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)
18 (b) 1. and amended to read:

19 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
20 under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust
21 to a unitrust, and the notice advises how the unitrust will operate, including the fixed
22 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
23 ~~par. (e) 4.~~ sub. (3) (d) that will be requested.

24 **SECTION 241.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)
25 (b) 2.

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SECTION 242

1 **SECTION 242.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
2 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
3 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
4 amended to read:

5 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
6 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1., the~~
7 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
8 ~~to (i).~~

9 (3) (a) If a trust is converted to a unitrust under this ~~subsection~~ section by the
10 trustee or a court, notwithstanding ~~sub. (3) (a) 1. s. 701.1103 (1) (a) and 4. (d) and~~
11 ~~s. 701.21~~ 701.1136 (4) the trustee shall make distributions in accordance with the
12 ~~creating trust~~ instrument, except that any reference in the ~~creating trust~~ instrument
13 to "income" means a fixed percentage of the net fair market value of the unitrust's
14 assets, whether such assets otherwise would be considered income or principal under
15 this ~~section~~ subchapter, averaged over a preceding period determined by the trustee,
16 which is at least 3 years but not more than 5 years, or the period since the original
17 trust was created, whichever is less.

18 (b) 1. Subject to subd. 2. ~~b.~~, if the trust is converted to a unitrust under ~~par. (a)~~
19 ~~1. sub. (1) (a), the trustee shall determine the fixed percentage to be applied under~~
20 ~~subd. 1. par. (a), and the notice under par. (a) 1. b. sub. (1) (a) 2. must state the fixed~~
21 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b), the~~
22 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a).~~

23 2. Any fixed percentage under ~~subd. 1. par. (a)~~ that is determined by a trustee
24 may not be less than 3 percent nor more than 5 percent.

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1 (c) After a trust is converted to a unitrust, the trustee may, subject to the notice
2 requirement under ~~sub. (4e)~~ s. 701.1105 and with the consent of every sui juris
3 qualified beneficiary, do any of the following:

4 1. Convert the unitrust back to the original trust under the ~~creating trust~~
5 instrument.

6 2. Change the fixed percentage under ~~subd. 1. par. (a)~~, subject to ~~subd. 2. b. par.~~
7 (b) 2.

8 (d) 7. The averaging under ~~subd. 1. par. (a)~~ to a different preceding period,
9 which is at least 3 years but not more than 5 years.

10 (f) (intro.) Unless otherwise provided by the ~~creating trust~~ instrument, the
11 unitrust distribution is considered to have been paid from the following sources in
12 the order of priority:

13 2. Ordinary income for federal income tax purposes that is not net income
14 under ~~subd. 6. a. 1.~~

15 (g) (intro.) A court may, on the petition of the trustee or a qualified beneficiary,
16 do any of the following:

17 1. Change the fixed percentage that was determined under ~~subd. 2. par. (b)~~ by
18 the trustee or by a prior court order.

19 3. Average the valuation of the unitrust's assets over a period other than that
20 specified in ~~subd. 1. par. (a)~~.

21 (h) Conversion to a unitrust under this ~~subsection~~ section does not affect a
22 provision in the ~~creating trust~~ instrument that directs or authorizes the trustee to
23 distribute principal or that authorizes a beneficiary to withdraw a portion or all of
24 the principal.

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1 (4) (a) (intro.) A trust may not be converted under this ~~subsection~~ section to a
2 unitrust if any of the following applies:

3 1. The ~~creating trust~~ instrument specifically prohibits the conversion.

4 (b) Notwithstanding ~~subd. 1. par. (a)~~, if a trust may not be converted to a
5 unitrust solely because ~~subd. 1. g. par. (a) 7.~~ applies to a trustee, a cotrustee, if any,
6 to whom ~~subd. 1. g. par. (a) 7.~~ does not apply may convert the trust to a unitrust under
7 ~~par. (a) 1. sub. (1) (a)~~, unless prohibited by the creating instrument, or a court may
8 convert the trust to a unitrust under ~~par. (a) 2. sub. (1) (b)~~ on the petition of a trustee
9 or qualified beneficiary.

10 (5) A trustee may release the power conferred by ~~par. (a) 1. sub. (1) (a)~~ if the
11 trustee is uncertain about whether possessing or exercising the power will cause a
12 result described in ~~par. (d) 1. b. sub. (4) (a) 2. to f. 6.~~ or if the trustee determines that
13 possessing or exercising the power will or may deprive the trust of a tax benefit or
14 impose a tax burden not described in ~~par. (d) 1. sub. (4) (a)~~. The release may be
15 permanent or for a specified period, including a period measured by the life of an
16 individual.

17 **SECTION 243.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107
18 (1) and (2) (a), (e), (f) 2., (g) and (h), as renumbered, are amended to read:

19 701.1107 (1) In this ~~subsection~~ section, “express unitrust” means any trust that
20 by its ~~governing trust~~ instrument requires the distribution at least annually of a
21 unitrust amount equal to a fixed percentage of the net fair market value of the trust’s
22 assets, valued at least annually, other than a trust solely for charitable purposes or
23 a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
24 Revenue Code.

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1 (2) (a) To the extent not otherwise provided for in the governing trust
2 instrument, the unitrust amount of not less than 3 percent nor more than 5 percent
3 may be determined by reference to the net fair market value of the trust's assets
4 averaged over a preceding period determined by the trustee, which is at least 3 years
5 but not more than 5 years.

6 (e) The governing trust instrument may grant discretion to the trustee to adopt
7 a consistent practice of treating capital gains as part of the unitrust distribution, to
8 the extent that the unitrust distribution exceeds the income determined as if the
9 trust were not a unitrust, or it may specify the ordering of such classes of income.

10 (f) 2. Ordinary income for federal income tax purposes that is not net income
11 under subd. ~~6-a.~~ 1.

12 (g) The trust ~~document~~ instrument may provide that assets used by the trust
13 beneficiary, such as a residence or tangible personal property, may be excluded from
14 the net fair market value for computing the unitrust amount. Such use may be
15 considered equivalent to the income or unitrust amount.

16 (h) In the absence of contrary provisions in the ~~governing document~~ trust
17 instrument of an express unitrust, the provisions of ~~sub. (4g) (e) 1., 4. s. 701.1106 (3)~~
18 (a), (d), and 5. (e) apply.

19 **SECTION 244.** 701.20 (4k) of the statutes is renumbered 701.1108 and amended
20 to read:

21 **701.1108 Power to treat capital gains as part of a distribution.** Unless
22 prohibited by the ~~governing instrument~~ will or trust instrument, a trustee fiduciary
23 may cause gains from the sale or exchange of estate or trust assets ~~property~~, as
24 determined for federal income tax purposes, to be taxed for federal income tax
25 purposes as part of a distribution of income that has been increased by an adjustment

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1 from principal to income under ~~sub. (4) s. 701.1104~~, of a unitrust distribution, of a
2 fixed annuity distribution, or of a principal distribution to a beneficiary.

3 **SECTION 245.** 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

4 **SECTION 246.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
5 amended to read:

6 701.1109 (1) Nothing in this ~~section~~ subchapter creates a duty to make an
7 adjustment under ~~sub. (4) s. 701.1104~~ or to convert a trust to a unitrust under ~~sub.~~
8 ~~(4g) s. 701.1106~~. Unless it determines that the decision to make an adjustment or
9 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not
10 grant relief from any decision a fiduciary makes regarding the exercise of a
11 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~.

12 **SECTION 247.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
13 amended to read:

14 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not
15 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed
16 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to
17 the notice. It is not an abuse of discretion not to exercise the power to adjust under
18 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

19 **SECTION 248.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

20 **SECTION 249.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and
21 701.1109 (4) (c), as renumbered, is amended to read:

22 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subs. 1.~~
23 ~~pars. (a) and 2. (b)~~, to place the beneficiaries, the trust, or both in the positions that
24 they would have occupied had the discretion not been abused, the court may order

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1 the fiduciary to pay an appropriate amount from its own funds to one or more of the
2 beneficiaries, the trust, or both.

3 SECTION 250. 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

4 SECTION 251. 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110
5 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

6 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall
7 determine the amount of net income and net principal receipts received from
8 property specifically given to a beneficiary under the rules in ~~subs. (7)~~ ss. 701.1112
9 ~~to (30) 701.1135~~ that apply to trustees and the rules in ~~par. (e)~~ sub. (5). The fiduciary
10 shall distribute the net income and net principal receipts to the beneficiary who is
11 to receive the specific property.

12 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's
13 estate or a terminating income interest under the rules in ~~subs. (7)~~ ss. 701.1112 to
14 ~~(30) 701.1135~~ that apply to trustees and by:

15 (3) A fiduciary shall distribute to a beneficiary, including a trustee, who
16 receives a pecuniary amount not determined by a pecuniary formula related to a
17 transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of
18 the pecuniary amount for the period commencing one year after the decedent's death
19 or after the income interest in the trust ends. The interest under this ~~paragraph~~
20 subsection shall be distributed from net income determined under ~~par. (b)~~ sub. (2) or
21 from principal to the extent that net income is insufficient. For purposes of this
22 ~~paragraph~~ subsection, the deferred marital property elective share amount elected
23 by a surviving spouse under s. 861.02 (1) is a bequest of a specific pecuniary amount
24 ~~of money~~ not determined by a pecuniary formula related to a transfer tax.

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1 (4) A fiduciary shall distribute the net income remaining after distributions
2 required by ~~par. (c) under subs. (1) to (3)~~ in the manner described in ~~sub. (6) s.~~
3 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary
4 amount determined by a pecuniary formula related to a transfer tax.

5 (5) A fiduciary may not reduce principal or income receipts from property
6 described in ~~par. (a) sub. (1)~~ because of a payment described in ~~sub. (25) s. 701.1130~~
7 or ~~(26) 701.1131~~ to the extent that the will, the terms of the trust, or applicable law
8 requires the fiduciary to make the payment from assets other than the property or
9 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd
10 party. The net income and principal receipts from the property are determined by
11 including all of the amounts the fiduciary receives or pays with respect to the
12 property, whether those amounts accrued or became due before, on, or after the date
13 of a decedent's death or an income interest's terminating event, and by making a
14 reasonable provision for amounts that the fiduciary believes the estate or
15 terminating income interest may become obligated to pay after the property is
16 distributed.

17 **SECTION 252.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111
18 (1), (2) (d) and (4), as renumbered, are amended to read:

19 701.1111 (1) Each beneficiary described in ~~sub. (5) (d) s. 701.1110 (4)~~ is entitled
20 to receive a portion of the net income equal to the beneficiary's fractional interest in
21 undistributed principal assets, using values as of the distribution date. If a fiduciary
22 makes more than one distribution of assets to beneficiaries to whom this ~~subsection~~
23 section applies, each beneficiary, including one who does not receive part of the
24 distribution, is entitled, as of each distribution date, to the net income the fiduciary

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1 has received after the date of death or terminating event or earlier distribution date
2 but has not distributed as of the current distribution date.

3 (2) (d) The distribution date for purposes of this ~~subsection~~ section may be the
4 date as of which the fiduciary calculates the value of the assets if that date is
5 reasonably near the date on which assets are actually distributed.

6 (4) A trustee may apply the rules in this ~~subsection~~ section, to the extent that
7 the trustee considers it appropriate, to net gain or loss realized after the date of death
8 or terminating event or earlier distribution date from the disposition of a principal
9 asset if this ~~subsection~~ section applies to the income from the asset.

10 **SECTION 253.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112
11 (3), as renumbered, is amended to read:

12 701.1112 (3) An asset becomes subject to a successive income interest on the
13 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),
14 even if there is an intervening period of administration to wind up the preceding
15 income interest.

16 **SECTION 254.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113
17 (1) and (3), as renumbered, are amended to read:

18 701.1113 (1) A trustee shall allocate to principal an income receipt or
19 disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due date
20 occurs before a decedent dies in the case of an estate or before an income interest
21 begins in the case of a trust or successive income interest.

22 (3) An item of income or an obligation is due on the date the payer is required
23 to make a payment. If a payment date is not stated, there is no due date for the
24 purposes of this section. Distributions to shareholders or other owners from an
25 entity, as defined in ~~sub. (10)~~ s. 701.1115, are due on the date fixed by the entity for

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SECTION 254

1 determining who is entitled to receive the distribution or, if no date is fixed, on the
2 declaration date for the distribution. A due date is periodic for receipts or
3 disbursements that must be paid at regular intervals under a lease or an obligation
4 to pay interest or if an entity customarily makes distributions at regular intervals.

5 **SECTION 255.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and
6 701.1114 (1), as renumbered, is amended to read:

7 **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net
8 income received before the date on which an income interest ends. “Undistributed
9 income” does not include an item of income or expense that is due or accrued or net
10 income that has been added or is required to be added to principal under the terms
11 of the trust.

12 **SECTION 256.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115
13 (1), (2) and (5), as renumbered, ^{are} ~~is~~ amended to read:

14 **701.1115 (1)** In this ~~subsection~~ section, “entity” means a corporation,
15 partnership, limited liability company, regulated investment company, real estate
16 investment trust, common trust fund, or any other organization in which a trustee
17 has an interest other than a trust or estate to which ~~sub. (11)~~ s. 701.1116 applies, a
18 business or activity to which ~~sub. (12)~~ s. 701.1117 applies, or an asset-backed
19 security to which ~~sub. (24)~~ s. 701.1129 applies.

20 **(2)** Except as otherwise provided in this ~~subsection~~ section, a trustee shall
21 allocate to income money received from an entity.

22 **(5)** Money is not received in partial liquidation, nor may it be taken into account
23 under ~~par. (d) 2.~~ sub. (4) (b), to the extent that it does not exceed the amount of income
24 tax that a trustee or beneficiary must pay on taxable income of the entity that
25 distributes the money.