

LPS-
Inserts may be
out of order

1 **Insert 2-8**

2 **SECTION 1.** 223.07 (3) ^x of the statutes is amended to read:

3 223.07 (3) If the depository institution at which a trust service office is to be
4 established has exercised trust powers, the trust company bank and the depository
5 institution shall enter into an agreement respecting those fiduciary powers to which
6 the trust company bank shall succeed and shall file the agreement with the division.
7 The trust company bank shall cause a notice of the filing, in a form prescribed by the
8 division, to be published as a class 1 notice, under ch. 985, in the city, village or town
9 where the depository institution is located. After filing and publication, the trust
10 company bank establishing the office shall, as of the date the office first opens for
11 business, without further authorization of any kind, succeed to and be substituted
12 for the depository institution as to all fiduciary powers, rights, duties, privileges, and
13 liabilities of the depository institution in its capacity as fiduciary for all estates,
14 trusts, guardianships, and other fiduciary relationships of which the depository
15 institution is then serving as fiduciary, except as may be otherwise specified in the
16 agreement between the trust company bank and the depository institution. The
17 trust company bank shall also be deemed named as fiduciary in all writings,
18 including, ~~but not limited to,~~ wills, trusts, court orders, and similar documents and
19 instruments naming the depository institution as fiduciary, signed before the date
20 the trust office first opens for business, unless expressly negated by the writing or
21 otherwise specified in the agreement between the trust company bank and the
22 depository institution. On the effective date of the substitution, the depository
23 institution shall be released and absolved from all fiduciary duties and obligations



1 under such writings and shall discontinue its exercise of trust powers on all matters
 2 not specifically retained by the agreement. This subsection does not effect a
 3 discharge in the manner of s. 701.16 (6) [missing cross-reference] or other
 4 applicable statutes and does not absolve a depository institution exercising trust
 5 powers from liabilities arising out of any breach of fiduciary duty or obligation
 6 occurring prior to the date the trust service office first opens for business at the
 7 depository institution. This subsection does not affect the authority, duties, or
 8 obligations of a depository institution with respect to relationships which may be
 9 established without trust powers, including escrow arrangements, whether the
 10 relationships arise before or after the establishment of the trust service office.

****NOTE: Section 701.16 (6) is repealed in this bill; should some other provision of the trust code replace it?

History: 1977 c. 307; 1995 a. 27, 336; 2005 a. 158.

11 **SECTION 2.** 223.105 (1) (c) of the statutes is amended to read:

12 223.105 (1) (c) "Trustee" has the meaning designated in s. 701.01 (8) 701.0103
 13 (28).

cc c Trustee
 ↑ ↑ =
 Trustee
 Keep

****NOTE: Did you intend the new definition for trustee under s. 701.0103 (28) to replace the old definition in chapter 223, or should I insert the old definition, "Trustee means a person holding in trust title to or holding in trust a power over property" here?

History: 1975 c. 65; 1977 c. 187 s. 135; Sup. Ct. Order, eff. 1-1-80; 1983 a. 189 s. 329 (26); 1989 a. 56; 1991 a. 221, 243, 315; 1993 a. 112; 1995 a. 27, 273, 417; 1997 a. 35; 1999 a. 9; 2003 a. 33; 2005 a. 441.

14 **SECTION 3.** 445.125 (1) (a) 2. of the statutes is amended to read:

15 445.125 (1) (a) 2. Notwithstanding s. 701.12 (1), such Such agreements may be
 16 made irrevocable as to the first \$3,000 of the funds paid under the agreement by each
 17 depositor.

History: 1973 c. 227; 1977 c. 40; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.125; 1981 c. 64; 1983 a. 448, 485, 538; 1985 a. 29; 1989 a. 307; 1991 a. 39, 221; 1995 a. 295; 1999 a. 9; 2001 a. 16; 2003 a. 167; 2005 a. 134.

18 **SECTION 4.** 700.16 (1) (c) of the statutes is amended to read:

19 700.16 (1) (c) If a future interest or trust is created by exercise of a power of
 20 appointment, the permissible period is computed from the time the power is

1 exercised if the power is a general power of appointment as defined in s. 702.01 (3)
 2 702.02 (5) even if the general power of appointment is exercisable only by will; in,
 3 In the case of other powers of appointment the permissible period is computed from
 4 the time the power of appointment is created but facts at the time the power of
 5 appointment is exercised are considered in determining whether the power of
 6 alienation is suspended beyond a life or lives in being at the time of creation of the
 7 power of appointment plus 30 years.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1983 a. 189 s. 329 (26); 1989 a. 278; 1995 a. 406.

8 **SECTION 5.** 700.27 (1) (d), (2) (a) 2. ^{and} (b), (4) (e), (5) (b), (7) (a) and (8) (a) of the
 9 statutes are amended to read:

10 700.27 (1) (d) "Power of appointment" has the meaning given in s. 702.01 (4)
 11 702.02 (6).

History: 2005 a. 216; 2009 a. 180.

12 (2) (a) 2. A person who is a recipient of property or beneficiary under an inter
 13 vivos governing instrument, donee of a power of appointment created by an inter
 14 vivos governing instrument, appointee under a power of appointment exercised by
 15 an inter vivos governing instrument, taker in default under a power of appointment
 16 created by an inter vivos governing instrument, or person succeeding to disclaimed
 17 property created by an inter vivos governing instrument may disclaim any property,
 18 including contingent or future interests or the right to receive discretionary
 19 distributions, by delivering a written instrument of disclaimer under this section.

History: 2005 a. 216; 2009 a. 180.

20 (b) *Partial disclaimer.* Property transferred under an inter vivos governing
 21 instrument may be disclaimed in whole or in part, except that a partial disclaimer
 22 of property passing by an inter vivos governing instrument or by the exercise of a
 23 power of appointment may not be made if partial disclaimer is expressly prohibited



1 by the inter vivos governing instrument or by the instrument exercising the power
2 of appointment.

3 *History:* 2005 a. 216; 2009 a. 180.

3 (4) (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a
4 person whose interest in property arises by disclaimer or by default of exercise of a
5 power of appointment created by an inter vivos governing instrument may disclaim
6 at any time not later than 9 months after the day on which the prior instrument of
7 disclaimer is delivered, or the date on which the donee's power of appointment lapses.

8 *History:* 2005 a. 216; 2009 a. 180.

8 (5) (b) *Delivery to trustee.* If the trustee of any trust to which the interest or
9 power of appointment relates does not receive the instrument of disclaimer under
10 par. (a), a copy shall also be delivered to the trustee. Failure to deliver a copy of the
11 instrument of disclaimer to the trustee within the time specified under sub. (4) does
12 not affect the validity of any disclaimer.

13 *History:* 2005 a. 216; 2009 a. 180.

13 (7) (a) *In general.* Subject to sub. (8), unless the inter vivos governing
14 instrument provides otherwise, either expressly or as construed from extrinsic
15 evidence, the disclaimed property devolves as if the disclaimant had died before the
16 effective date of the transfer under the inter vivos governing instrument. If the
17 disclaimed interest is a remainder contingent on surviving to the time of
18 distribution, the disclaimed interest passes as if the disclaimant had died
19 immediately before the time for distribution. If the disclaimant is an appointee
20 under a power of appointment exercised by an inter vivos governing instrument, the
21 disclaimed property devolves as if the disclaimant had died before the effective date
22 of the exercise of the power of appointment. If the disclaimant is a taker in default
23 under a power of appointment created by an inter vivos governing instrument, the



1 disclaimed property devolves as if the disclaimant had predeceased the donee of the
2 power of appointment. ✓

3 History: 2005 a. 216; 2009 a. 180.

3 (8) (a) *Subsequent interest not held by disclaimant.* Unless the inter vivos
4 governing instrument provides otherwise, either expressly or as construed from
5 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest
6 not held by the disclaimant and limited to take effect in possession or enjoyment after
7 the termination of the interest that is disclaimed accelerates to take effect as if the
8 disclaimant had died immediately before the time when the disclaimed interest
9 would have taken effect in possession or enjoyment or, if the disclaimant is an
10 appointee under a power of appointment and that power of appointment has been
11 ~~exercised by a power of appointment~~, as if the disclaimant had died before the
12 effective date of the exercise of the power of appointment. ✓

✓
****NOTE: Please review the changes to the end of this sentence for accuracy.

13 History: 2005 a. 216; 2009 a. 180.

13 **INSERT 2-14**

14 **SECTION 6.** 701.01 of the statutes is repealed. ✗

15 **INSERT 3-11**

16 (7) A trust made in connection with a business transaction, including a trust
17 created under a bond indenture or collateral trust agreement or in connection with
18 a structured finance transaction, a common law trust under s. 226.14, ✓ or a business
19 trust. ✓

20 **INSERT 5-13**

****NOTE: I remain concerned that this definition will not include a law imposing
liability or responsibility upon a party to pay for or undertake actions to address
environmental destruction that has already harmed the environment. Protection means
to prevent from injury or harm, not to correct an injury or harm that has already occurred. ✓

21 **INSERT 6-13**



***NOTE: The drafting instructions directed me to confirm that this definition is "consistent with" the definitions for IRC used elsewhere in the statutes. I'm not sure what you mean by "consistent with". The statutes contain a variety of definitions for the IRC. See, for example, ss. 16.25 (1) (b), 19.42 (7s), 40.02 (39m), 71.01 (6), and 551.103. Would you like me to substitute one of these other definitions? *

1 **INSERT 20-20**

2 **SECTION 7.** 701.02 of the statutes is repealed.

3 **INSERT 24-13**

4 **SECTION 8.** 701.03 of the statutes is repealed.

5 **INSERT 29-6**

6 **SECTION 9.** 701.04 of the statutes is repealed.

7 **INSERT 52-14**

8 **SECTION 10.** 701.05 of the statutes is repealed.

9 **INSERT 61-22**

10 **SECTION 11.** 701.06 of the statutes is repealed.

11 **INSERT 65-8**

12 **SECTION 12.** 701.065 of the statutes is renumbered 701.0605³ and 701.0605[✓]

13 (title), as renumbered, is amended to read:

14 **701.0605 (title) Article VI, Section 605 - Debts of decedents.**

History: 1997 a. 188; 1999 a. 9.

15 **SECTION 13.** 701.07 of the statutes is repealed.

16 **INSERT 72-15**

17 **SECTION 14.** 701.0710 of the statutes is created to read:

18 **701.0710 Article VII, Section 710 - Title of Trust Property.** A settlor or

19 transferor may effectively transfer property to a trust by placing legal title of the

20 property in the name of the trustee, which shall be deemed to include any successor

21 trustee regardless of whether a successor trustee is referenced in the transfer



1 document. A transfer ^{e that} which places legal title in the name of the trust itself shall ^e be
2 deemed to place legal title in the name of the trustee.

3 SECTION 15. 701.08 ^X of the statutes is renumbered 701.0606 ^J and 701.0606
4 (title), as renumbered, is amended to read:

5 701.0606 (title) Article VI, Section 606 ^m ~~Transfers to living trusts.~~ ✓

History: 1971 c. 66; 1991 a. 316.

6 **INSERT 91-6**

7 SECTION 16. 701.09 ^X (title) of the statutes is renumbered 853.34 (title). ✓

8 SECTION 17. ^X 701.09 (1) of the statutes is renumbered 853.34 (1) ✓ and amended
9 to read:

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

History: 1971 c. 66; Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1975 c. 218; 1987 a. 27; 1989 a. 278; 1991 a. 316.

20 SECTION 18. 701.09 (2) of the statutes is renumbered 853.34 (2). ✓

21 SECTION 19. 701.09 (3), (4) and (5) of the statutes is repealed. ✓

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

22 **INSERT 98-1**

23 SECTION 20. ^X 701.10 of the statutes is repealed.

(end ins)

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FFK:.....

INS. 10-1

- 1 (27) "Trust instrument" means an instrument executed by a settlor or created
- 2 by an order of the court that contains terms of a trust, including any amendments
- 3 to the trust or modifications to the trust under s. 701.0111 or subch. IV.
- 4 (28) "Trust protector" means a person or committee of persons, other than the
- 5 settlor, who is expressly granted in the trust instrument one or more powers over the
- 6 trust other than a power to direct the trustee's investment decisions, distribution
- 7 decisions, or other decisions that are required to be made by the trustee in carrying
- 8 out the trustee's duties in administering the trust.

you
1

***NOTE: This definition is broad enough that it seems to overlap the definitions of directing party, and trustee. Is every trustee a trust protector? Is a person who has a power to direct the discretionary decisions of a trustee a trust protector and a directing party? To what extent do intend for the definition of a directing party and a trust protector to overlap? Also s. 701.0808 (7) states that a trust protector is not a directing party and is subject to s. 701.0818. This statement is inconsistent with the definitions and with s. 701.0818 (16) which subjects a trust protector to 701.0808. If it is your intention that a trust protector cannot be a directing party, I recommend putting that in the definition. I think it would be useful if you would provide me with a narrative of each title (a trust protector, a directing party, and a trustee) and how each does or does not overlap with the other.

***NOTE: Based on s. 701.0818 (15), it appears that it is your intent that a trust protector may be granted the powers to direct the trustee's investment decisions, distributions decisions, or other decisions related to the trustee's duties but that for purposes of exercising those powers he or she is not acting as a trust protector. Is this correct? If so, I think this definition is somewhat confusing as it could be interpreted to mean that if a person has one of those powers, he or she is not a trust protector.

END INS 10-1

INS. 11-5

*
***NOTE: I altered the introductory phrase to avoid any ambiguity between subs. (1) and (2). (Sub) (2) states that the terms of the trust prevail over the chapter, including sub. (1).

Subsection
END INS. 11-5

INS 13-8



(NO #)

1

(1) The principal place of administration of a trust is determined by any of the following:

2

3

(a) The designation in the trust instrument if one of the following applies: ✓

4

1. A trustee's usual place of business is located in the jurisdiction designated in the trust instrument. ✓

5

6

2. A trustee is a resident of the jurisdiction designated in the trust instrument. ✓

7

3. All or part of the administration of the trust occurs in the jurisdiction designated in the trust instrument. ✓

8

9

4. The trust instrument designates the jurisdiction where the settlor is domiciled at the time the trust instrument is executed. ✓

10

11

(b) If the principal place of administration is not validly designated in the trust instrument, the trustee's usual place of business or, if the trustee has no place of business, the trustee's residence. ✓

12

13

****NOTE: To be consistent with par. (a), is the principal place of administration the jurisdiction where the trustee's usual place of business is located or the jurisdiction where the trustee's residence is located?

14

(c) If a corporate trustee is designated as the trustee of a trust and the corporate trustee has offices in multiple states and performs administrative functions for the trust in multiple states, the corporate trustee may designate the principal place of administration of the trust by providing notice to the qualified beneficiaries. ✓ The notice is valid and controlling if the corporate trustee has a connection to the jurisdiction designated in the notice, including an office where trustee services are performed and the actual performance of some administrative functions for that particular trust in that particular jurisdiction. The subsequent transfer of some of the administrative functions of the corporate trustee to another state or states does not transfer the principal place of administration as long as the corporate trustee

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1 continues to maintain an office and perform some administrative functions in the
2 jurisdiction designated in the notice and the corporate trustee does not transfer the
3 principal place of administration pursuant to subsection (3).

4 (d) If there are cotrustees, one of the following:

5 1. If there is only one corporate trustee, the usual place of business of the
6 corporate trustee.

***NOTE: Again, should this include a reference to the jurisdiction where the usual place of business is located?

7 2. The usual place of business or the residence of any of the cotrustees as agreed
8 to by all of the cotrustees with notice to the qualified beneficiaries.

* ***NOTE: What happens if there are cotrustees and neither subd. 1 or 2 apply, i.e. the cotrustees can't agree?

END INS 13-8

INS. 21-8

***NOTE: Is the purpose of adding the language "upon petition of a settlor, trustee, or qualified beneficiary," to prevent a court from sua sponte ordering continuing judicial supervision of a trust? In other words, in addition to following the UTC position that judicial supervision is not required, is it your intention to narrow the circumstances under which a court may order judicial supervision, i.e. require a petition?

END INS. 21-8

INS. 22-15

***NOTE: In accordance with LRB drafting conventions, I converted the plurals in this paragraph to singulars and replaced "such a trust" with "a trust having its principal place of administration in this state." Okay?

END INS. 22-15

INS 24-12

***NOTE: I replaced "shall be further" with "is also," which I believe reflects your intent and removes the false imperative. This section is stating the law rather than directing an actor to do something.

***NOTE: Another way to achieve your intent is to eliminate this subsection and add a subsection to s. 801.50 that provides that the venue for an action involving a trust



is in any county specified in s. 701.0204. This approach would incorporate the specific requirements provided under s. 701.0204 into the general venue statutes. This approach also has the advantage of providing notice to a person looking at the general venue statutes that actions involving trusts have slightly different venue rules.

END INS 24-12

INS 25-6

***NOTE: Rather than add the word "shall" which would create a false imperative, I replaced "serve as" with "is." Please let me know if this is not consistent with your intent.

END INS 25-6

INS 26-17

***NOTE: Under s. 54.20 there are certain powers that a guardian of the estate may not exercise without court approval. Is this subdivision intended to allow a guardian of the estate to represent a ward on an issue that would otherwise require court approval or is it intended to only allow a guardian of the estate to represent a ward for matters which the guardian is authorized to act? If the answer is the latter, I recommend adding similar language to sub. (3), i.e. "having authority to act." If the answer is that the intent is to override the restrictions in ch. 54, I recommend adding "notwithstanding s. 54.20" phrase. A similar issue exists for guardians of the person. Specifically, please see s. 54.24

(2) d. 1

54.25(2)(d) 2. L.

END INS 26-17

INS. 27-24

***NOTE: By adding language that allows the trustee to appoint a representative to act if the trustee determines that the otherwise available representation might be inadequate, you are basically giving the trustee the discretion to trump the remainder of the section if the trustee believes the representation "might be inadequate." Is this consistent with your intent?

INS. 27-24

INS. 28-17

***NOTE: I added "a person's" before interest in the first sentence of this subsection to be consistent with the directive that the court may appoint a representative or GAL for a person who is not represented or whose representation is adequate. Please confirm that this is consistent with your intent.

INS. 28-17

INS 42-10



1 SECTION 1. 701.0418 of the statutes is created to read:

2 701.0418 Article IV, Section 418—Trustee's power to appoint assets to

3 new trust. (1) DEFINITIONS. In this section:

4 (a) "Absolute power" means a power to invade trust assets for the benefit of
5 beneficiary that is not limited by a specific or ascertainable standard, whether or not
6 the term "absolute" is used in the trust instrument. "Absolute power" includes a
7 power to invade trust assets for the best interests, welfare, comfort, or happiness of
8 a beneficiary.

***NOTE: I replaced ascertainable purpose with ascertainable standard to
incorporate the definition in s. 701.0103. Please let me know if this is not consistent with
your intent.

9 (b) "First trust" means the trust from which assets are appointed under sub.
10 (2).

11 (c) "Second trust" means the trust or trusts to which assets are appointed under
12 sub. (2).

* ***NOTE: "Standard" was only used twice in the draft and in those instances the
usage seemed somewhat ambiguous because it was not clear that the term was being used
"with reference to the basis upon which a decision is made by a trustee." I attempted to
incorporate the meaning of "standard" into the two provisions that used the term. Please
review subs. (2) and (4) (a) and confirm that I have retained the intended meaning of
"standard" and that those subsections are consistent with your intent.

13 (2) POWER TO APPOINT. (a) Except as otherwise provided in subs. (3) and (5), a
14 trustee who has the power to invade the principal of the trust for the benefit of a
15 beneficiary who is eligible for or entitled to the income of the trust or entitled to an
16 annuity or unitrust payment from the trust, may exercise the power by appointing
17 part or all of the assets of the trust in favor of a trustee of a different trust if all of
18 the following apply:

***NOTE: I removed the terms "first trust" and "second trust" from this paragraph
because the definitions, both which include "appointed under sub. (2)" do not work when
inserted in place of the terms. Also, it is LRB policy to be as specific as possible when using



the phrase, "except as otherwise provided." Please let me know if additional provisions should be added to the list.

1 1. The appointment of assets does not reduce any fixed income, annuity, or
2 unitrust interest of a beneficiary. ✓

3 2. If the trustee's power to invade income or principal of the first trust is limited
4 by a specific or ascertainable standard, ✓ the appointment of assets does not result in
5 the trustee of the second trust having a power to invade the income or principal of
6 the second trust that is broader than the trustee's power to invade income or
7 principal of the first trust. This paragraph ✓ does not apply if the second trust is a trust
8 for an individual with a disability. ✓

***NOTE: The definition of "standard" as a "power" did not work in this paragraph. Because par. (a) applies to a trustee, I modified the exception to also apply to a trustee. Please let me know if my modifications are not consistent with your intent.

9 3. One of the following applies:

- 10 a. All of the beneficiaries of the first trust are beneficiaries of the second trust. ✓
- 11 b. If the first trust grants the trustee the absolute power to invade principal,
- 12 some of the beneficiaries of the second trust are beneficiaries of the second trust. ✓

* ***NOTE: This paragraph doesn't address whether the second trust may include additional beneficiaries. Under subd. 3. a., is it your intent that the trust could include additional beneficiaries as long as it is also in favor of the beneficiaries of the first trust?

13 (b) Paragraph (a) ✓ applies to a trustee whether or not the trustee has absolute
14 power to invade principal and whether or not there is a current need to invade
15 principal under the terms of the first trust.

16 (c) This subsection ✓ does not apply to a trustee of a trust described in s. 445.125 ✓

***NOTE: How is this supposed to interact with s. 701.0410 (5), which says s. 701.0418 is subject to s. 445.125 (1) (a) 2. and 4. ✓

17 (3) LIMITATIONS ON EXERCISE OF POWER. ✓ A trustee may not appoint assets to a
18 second trust, as described in sub. (2), if any of the following apply: ✓ *applies*

***NOTE: Throughout this section, I replaced the phrase "exercise the power under sub. (2)" with "appoint assets to a second trust, as described in sub. (2)" because the power under sub. (2) is really the power to invade the principal of the first trust. * *



* assumption that when you used the phrase "the power under sub. (2)," you are generally referring to the trustee's ability to exercise that power by appointing assets to a ~~second~~ ^{2nd} trust. There may be other ways to achieve the same goal, for example you could consider creating a defined term for the power or ability to appoint assets to a ~~second~~ trust. Another option would be to rewrite sub. (2) so that it actually grants a trustee the power to appoint assets, as opposed to the current language which allows the trustee to exercise the power to invade principal by appointing assets to a ~~second~~ trust.

1 (a) The trust instrument creating the first trust expressly prohibits the trustee
 2 from appointing assets of the first trust to a ~~second~~ ^{2nd} trust by reference to this section
 3 or by using the term "decanting."

4 (b) A contribution to the first trust qualified for a marital or charitable
 5 deduction for federal income, gift, or estate tax purposes under the Internal Revenue
 6 Code and one of the following applies: ✓

7 1. The ~~second~~ ^{2nd} trust contains a provision that, if included in the first trust, would
 8 have prevented the first trust from qualifying for the deduction or would have
 9 reduced the amount of the deduction. ✓

10 2. The ~~second~~ ^{2nd} trust does not contain a provision that was contained in the first
 11 trust that, if omitted from the first trust, would have prevented the first trust from
 12 qualifying for the deduction or would have reduced the amount of the deduction. ✓

13 (c) The trustee has a beneficial interest in the first trust unless the ~~second~~ ^{2nd} trust
 14 is a trust for an individual with a disability ✓ and the trustee's only beneficial interest
 15 in the first trust is as a remainder beneficiary.

****NOTE: Subdivision 1. b. did not follow the introductory language for this paragraph. I moved the substance to the miscellaneous provisions.

16 (d) The appointment of assets to a ~~second~~ ^{2nd} trust would impair currently
 17 exercisable withdrawal rights of a beneficiary of the first trust and one of the
 18 following ^{applies} apply:



1 1. The withdrawal rights were granted to the beneficiary in a manner designed
2 to allow contributions subject to the withdrawal rights to qualify for the federal gift
3 tax annual exclusion. ✓

4 2. The terms of the second trust would impair gifts previously made to the first
5 trust from qualifying for the federal gift tax annual exclusion. ✓

***NOTE: I think it would add clarity to add a federal citation to the gift tax reference. Even if the meaning is clear today, federal tax law could change making the description ambiguous. Also, what is intended by "impair"? Are trying to get at more than "prevent"? I think the word "impair" could be ambiguous in this context.

6 (e) The appointment of assets to the second trust would violate a rule against
7 perpetuities applicable to the first trust or suspends a trustee's power of alienation
8 over assets of the first trust in a manner that would cause all or a portion of the
9 second trust to be void.

10 (f) The appointment of assets to the second trust, as described in sub. (2),
11 impairs the essential purpose of a trust for an individual with a disability.

12 (4) PERMISSIBLE TERMS OF SECOND TRUST. (a) Subject to the limitations of this
13 section, the second trust instrument may include terms that are intended to achieve
14 any purpose, including to do any of the following: ✓

***NOTE: What is "Subject to the limitation of the section" intended to refer to? ✓
Again, it is preferable to be as specific as possible. Also, it would be preferable to structure the introductory language to identify the actor who creates the trust instrument. ✓ For example, "the settlor of the second trust may provide terms in the trust instrument of the second trust that are intended to achieve any purpose..."

***NOTE: Your proposed language included purposes that were subject to certain conditions. For example, "If the trustee of the first trust has the absolute power to invade income and principal, modify the terms governing invasion." This is problematic because this is an illustrative list of the general statement that the second trust can include terms intended to achieve any purpose. For purposes of this draft, I moved purposes that included conditions into separate paragraphs. See paragraphs (b), (c), and (d). Please let me know if this structure is not consistent with your intent? ✓

- 15 1. Correct a drafting error in the first trust. ✓
- 16 2. Clarify potentially ambiguous terms contained in the first trust. ✓
- 17 3. Change the age of distribution to a beneficiary of the first trust. ✓



1 4. Extend the duration of the first trust. ✓

 ***NOTE: I assumed that "the trust" meant the first trust. Please let me know if this is not correct.

2 5. Protect the interests of a beneficiary of the first trust, ✓ including protecting
3 the beneficiary from self-destructive behavior. ✓

4 6. Allow the trustee of the second ^{e 2nd} trust to transfer trust assets to a community
5 trust. In this ^(NY) subdivision, ^(NY) "community trust" means a master trust that is
6 established and managed by a nonprofit organization that maintains sub-accounts
7 for individual beneficiaries that satisfy the definition of a trust for an individual with
8 a disability.

X ***NOTE: Is there a reason to use the term "community trust?" If not, ~~You~~ could just insert the definition into the first sentence.

9 7. Add or remove a spendthrift [✓] trust provision to the first trust.

10 8. Modify investment provisions contained in the first trust, including those
11 relating to permissible investments, use of investment advisors, directed trust
12 property, or self-dealing transactions. ✓

13 9. Change a present or future trustee of the first trust, ✓ including by defining
14 the method by which a trustee ^e or cotrustee may be appointed or removed and
15 replaced.

16 10. Appoint a trust protector of the second ^{e 2nd} trust and define the powers of the
17 trust protector. ✓

18 11. Appoint a directing party of the second ^{e 2nd} trust and define the powers of the
19 directing party. ✓

20 12. Change the principal place of administration of the first trust. ✓

21 13. Change the governing law of the first trust. ✓

22 14. Allow for the division of the first trust into two ^{e 2} or more trusts. ✓



- 1 15. Allow for the merger of the first trust with one or more trusts. ✓
- 2 16. Add or modify an exculpatory provision for a trustee, trust protector, or
- 3 directing party. ✓
- 4 17. Obtain desirable tax treatment, as determined by the trustee of the first
- 5 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
- 6 trust, including provisions relating to grantor trust status under sections 671 to 679
- 7 of the Internal Revenue Code. ✓

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

8 (b) Notwithstanding par. (a), ✓ the trust instrument of the ^{2nd} second trust may
9 include terms that are intended to do any of the following only if the trustee of the
10 first trust has the absolute power to invade income and principal:

11 1. § Modify the terms of the first trust governing the invasion of income and
12 principal.

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

13 2 Grant, eliminate, or modify a general or special powers of appointment.
14 (c) 1. Notwithstanding par. (a), ✓ the trust instrument of the ^{2nd} second trust may
15 include terms that are intended to change terms of the first trust that are applicable
16 to a beneficiary who is an individual with a disability ✓ only if the purpose of the change
17 is to allow the beneficiary to qualify or continue to be qualified to receive benefits
18 under a government program. ?

* ✓ ****NOTE: Did you intentionally use "government program" here to refer to more than Medical Assistance? The definition of a "trust for an individual with a disability" is limited to a trust ^{the} that's assets are not counted for purposes of Medical Assistance. ✓ As ^{of which}



you can see, I modified standards with "specific or ascertainable." This change incorporates the definition of ascertainable standard from s. 701.0301.

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

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

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

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

(5) PROCEDURAL MATTERS. (a) The trustee shall appoint assets to a second trust, as described in sub. (2), by an instrument in writing that is signed and acknowledged by the trustee and shall include the written instrument with the records of the first trust. A trustee may appoint assets to a second trust, as described in sub. (2), upon notice, without court approval, under the procedure described in par. (b) below or with court approval, under the procedure described in par. (c) below.

keep comma



1 (b) 1. If the trustee chooses to proceed without a court order, the trustee shall
2 give notice of the manner in which the trustee intends to appoint assets to a second ^{e 2nd}
3 trust, as described in sub. (2),[✓] to all of the following:

- 4 a. The qualified beneficiaries of the first trust.[✓]
- 5 b. Any trust protector appointed under the terms of the first[✓] trust.
- 6 c. Any directing party appointed under the terms of the first trust.
- 7 d. The settlor of the first trust, if living.[✓]

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

10 a. A copy of the proposed written instrument under which the trustee will
11 appoint assets to a second ^{e 2nd} trust.

12 b. The proposed effective date of the appointment.

13 c. A copy of the trust instrument of the first trust.

14 d. A copy of the trust instrument of the second ^{e 2nd} trust.

15 3. A trustee may not appoint assets to the second ^{e 2nd} trust until 30 days after the
16 trustee provides notice as required under this paragraph unless every person who
17 is entitled to receive notice under subd. 1.[✓] waives the 30-day notice period by
18 delivering a signed written instrument to the trustee. A person's waiver of the
19 30-day[✓] notice period does not constitute that person's consent to the trustee's
20 appointment of assets to a second ^{e 2nd} trust.

21 4. If a person entitled to receive notice under subd. 1.[✓] delivers a written
22 objection to the trustee before the effective date of the appointment of assets to a
23 second ^{e 2nd} trust, the trustee may not appoint the assets to a second ^{e 2nd} trust, as specified
24 in the trustee's notice, without obtaining court approval under par. (c).[✓]



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

* (circled)

(circled)

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

* (circled)

2nd

****NOTE: Does "the manner in which the trustee intends to appoint the assets to a second trust" make sense in this context?

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2. If a person who is entitled to receive notice under subd. 1. files an objection with the court, in determining whether to grant or deny a petition under subd. 1., the court shall consider all of the following:
a. The purpose of the proposed appointment of assets under sub. (2).
b. The reasons for any objection made by a beneficiary.

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



1 c. Changes in circumstances that have occurred since the creation of the first
2 trust.

3 d. Whether the appointment of assets under sub. (2) [✓] complies with the
4 requirements of this section.

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

9 (6) SUBSEQUENTLY DISCOVERED ASSETS. [✓] (a) The appointment of all of the assets
10 comprising the first trust in favor of the trustee of the second ^{e 2nd} trust includes
11 subsequently discovered assets otherwise belonging to the first trust and assets paid
12 to or acquired by the first trust subsequent to the appointment in favor of the second ^{e 2nd}
13 trust. [✓]

14 (b) Except as otherwise provided by the trustee of the first trust, the
15 appointment of part but not all of the assets of the first trust in favor of the second ^{e 2nd}
16 trust does not include subsequently discovered assets belonging to the first trust and
17 assets paid to or acquired by the first trust subsequent to the appointment in favor
18 of the second ^{e 2nd} trust. Subsequently discovered assets belonging to the first trust and
19 assets paid to or acquired by the first trust subsequent to the appointment in favor
20 of the second ^{e 2nd} trust remain the assets of the first trust. [✓]

21 (7) LIABILITY. [✓] (a) This section [✓] does not create or imply a duty on a trustee to
22 appoint assets to a second ^{e 2nd} trust, as described in sub. (2) [✓], and a trustee that does not
23 appoint assets to a second ^{e 2nd} trust, as described in sub. (2) [✓], is not liable for the failure
24 to do so.



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(b) A trustee who appoints assets to a ^{e 2nd} second trust, as described in sub. (2), is not liable to any beneficiary for any loss related to the appointment unless the trustee

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did not appoint the assets to a ^{2nd} second trust, as described in sub. (2), in good faith.

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(8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a ^{e 2nd} second trust, as described in sub. (2), is considered to be the exercise of a special power of appointment.

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

*

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

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

10

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

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

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(d) The restriction relating to a trustee under sub. (3) (c) does not preclude a cotrustee who does not have a beneficial interest in the first trust from appointing

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assets to a ^{e 2nd} second trust, as described in sub. (2), even if the terms of the first trust, applicable law, or other circumstances would otherwise require the majority or unanimous action of the trustees of the first trust.

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

END INS 42-10

INS. 54-4

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

END INS. 54-4

INS 55-13

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

END INS 55-13

INS. 59-8

****NOTE: It appears that you have moved existing s. 701.06 (6) (b) and (c) to this
paragraph. Under current law, s. 701.06 (6) applies to the entire section, including
whether a beneficiary is a settlor for purposes of s. 701.06 (1) and (2). Please note that
because these paragraphs follow the introductory language of s. 701.0505 (2), this
language only applies to s. 701.0505 and will not apply to s. 701.0502 (1) (b) 1. Is this
consistent with your intent?

END INS. 59-8

INS 61-1

4 (e) 1. Amounts and property contributed to the following trusts are not
5 considered to have been contributed by the settlor:



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

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

1 a. An irrevocable living marital trust that is treated as qualified terminable
2 interest property under section 2523 (f) of the Internal Revenue Code if after the
3 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
4 trust that receives property from the trust.

5 b. An irrevocable living marital trust that is treated as a general power of
6 appointment trust under section 2523 (e) of the Internal Revenue Code if after the
7 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
8 trust that receives property from the trust.

9 c. An irrevocable living trust for the settlor's spouse if after the death of the
10 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
11 receives property from the trust.

12 d. An irrevocable trust for the benefit of a person, the settlor of which is the
13 person's spouse, regardless of whether or when the person was the settlor of an
14 irrevocable trust for the benefit of that spouse.

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

17 2. A person who would otherwise be treated as a settlor of a trust described in
18 subds. a. to e. is not treated as a settlor of the trust.

number
18



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

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

END INS 61-1

INS 78-10

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

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

7 (b) Provide information to the directing party, except for reasonable
 8 information related to the directing party's power that is requested by the directing
 9 party.

10 (c) Inform or warn a beneficiary, a ^{3rd} third party, or the directing party that the
 11 excluded trustee disagrees with any of the directing party's actions or directions.

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

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

15 (4) The administrative actions of an excluded trustee related to matters within
 16 the scope of a directing party's power, including confirming that the directing party's
 17 directions have been carried out and recording and reporting actions taken pursuant

1 to the directing party's direction, do not constitute either monitoring the directing
2 party's actions or participating in the actions of the directing party. ✓

END INS 78-10

INS. 91-5

3 SECTION 2. ✓ 701.0818 of the statutes is created to read:

4 701.0818 Article VIII, Section 818 ^{← = m} - Trust protectors. (1) A settlor or a
5 court may appoint a trust protector in a trust instrument, whether referred to as a
6 trust protector, another title, or no title. ✓ A trust protector has the powers specified
7 in the trust instrument.

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

8 (2) (a) A settlor or a court may specify, in a trust instrument, whether a
9 particular power granted to a trust protector is required to be exercised in a fiduciary
10 or non-fiduciary capacity. ✓

11 (b) Except as provided in par. (c) ✓ and sub. (3) ✓, if a trust instrument does not
12 specify whether a particular power granted to a trust protector is required to be
13 exercised in a fiduciary or non-fiduciary capacity, the power is to be exercised in the
14 trust protector's non-fiduciary capacity, including the power to do any of the
15 following:

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

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

****NOTE: How does this interact with par. (c) 1., ✓ which says a power to modify or amend a trust instrument to respond to opportunities related to, or changes in, other state laws restricting the terms of a trust is to be exercised in a fiduciary capacity? It seems that * *



the same power described in par. (c) 1. could be non-fiduciary under this subdivision, as a modification or amendment to a trust instrument made to respond to a change in state law.

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

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

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

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

5 5. Terminate the trust.

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

7 7. Appoint appoint a successor trust protector, trustee, directing party, or other
8 special fiduciary.

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

10 9. Consent to, veto, or advise the trustee on the exercise of a trustee duty or
11 power, including the duty to provide notification to qualified beneficiaries under s.
12 701.0813.

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

14 (c) If a trust instrument grants a trust protector the power to do any of the
15 following actions and the trust instrument does not specify whether the power is
16 required to be exercised in the trust protector's fiduciary or non-fiduciary capacity,
17 the power is to be exercised in the trust protector's fiduciary capacity.

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



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

4 2. Change the principal place of administration, the tax situs of the trust, or
5 the governing law of the trust. ✓

6 3. Interpret terms of the trust instrument at the request of the trustee. ✓

7 4. Correct errors or ambiguities that might otherwise require court
8 construction or defeat the settlor's intent. ✓

9 5. Review and approve a trustee's reports or accounting. ✓

10 6. Resolve disputes between the trustee and a beneficiary. ✓

11 (3) A trust protector who is also serving as a trustee is required to exercise any
12 power granted to a trust protector in a fiduciary capacity. ✓

13 (4) A trust protector may resign or release any power granted to the trust
14 protector by giving written notice to the trustee and to any successor trust protector. ✓

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

15 (5) A trust protector is not liable for any of the following: ✓

16 (a) The exercise or non-exercise of non-fiduciary powers unless the exercise
17 or non-exercise of the non-fiduciary power is determined to be in bad faith.

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

21 (6) Unless otherwise provided in the trust instrument, a trust protector does
22 not have a fiduciary responsibility to elect to exercise its non-fiduciary or fiduciary



1 powers and has no duty to monitor the conduct of the trustee or any other fiduciary
2 or changes in the law or the circumstances of the beneficiaries. ✓

****NOTE: Is there a difference between a "fiduciary responsibility to elect to exercise" and a "fiduciary responsibility to exercise"? If not, I recommend removing "to elect."

3 (7) A trust protector may not modify any of the following: ✓

4 (a) A beneficial interest of a trust that qualified for a marital deduction or
5 charitable deduction from federal or state estate tax in a manner that would have
6 caused the trust not to qualify for the deduction. ✓

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

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

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

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

14 (a) The trust protector, the trust protector's estate, the trust protector's
15 creditors, or creditors of the trust protector's estate. ✓

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

16 (b) An ancestor or descendant of the trust protector who is not also related to
17 the settlor or the settlor's spouse. ✓

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



1 (c) A person related to the trust protector by blood or marriage who is not also
2 related to a descendant of the settlor or the settlor's spouse. ✓

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

3 (d) Any officer, employee, or director of any corporate trust protector or
4 corporate trustee. ✓

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

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

9 (10) A trustee or other fiduciary is not liable for any loss or injury that results
10 from the trustee or other fiduciary taking actions that are consistent with a
11 modification of the trustee's or other fiduciary's powers, authority, or discretion as
12 a result of the action of a trust protector unless the trustee or other fiduciary breaches
13 a duty owed for the exercise of the power, authority, or discretion, ✓ as modified by the
14 trust protector. A trustee or other fiduciary may refuse to act consistently with a
15 trust protector's modification if the trustee or other fiduciary knows that the
16 modification is manifestly contrary to the terms of the trust or would constitute a
17 serious breach of any fiduciary duty owed by the trust protector. ✓ A trustee has no
18 duty to monitor the conduct of the trust protector, provide advice to or consult with
19 the trust protector, or communicate with, warn, or apprise any beneficiary
20 concerning instances in which the trustee would or might have exercised the



1 trustee's own discretion in a manner different from the manner exercised by the trust
2 protector.

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

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

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

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

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

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



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

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

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

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

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

21 (16) If a trust instrument grants a trust protector the power to direct a
22 trustee's or directing party's investment decisions, distribution decisions, or other
23 decisions of the trustee required in carrying out the duties of the trustee or the
24 directing party in administering the trust, the person's exercise or non^eexercise of
25 such power is subject to the provisions of s. 701.0808. ✓



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

END INS 91-5

INS 92-15

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701.0903 Article IX, Section 903-Nonapplication of prudent investor rule to life insurance contracts owned by trusts (1) Notwithstanding s. 881.01, if a principal purpose of a trust is to hold a life insurance contract or to purchase a life insurance contract from contributions made to the trust, a trustee of the trust does not have a duty to do any of the following with respect to the acquisition, retention, and ownership of a life insurance contract owned by the trust:

(a) Determine whether the life insurance contract is, or remains a proper investment.

(b) Investigate the financial strength or changes in the financial strength of the life insurance company maintaining the life insurance contract.

(c) Determine whether to exercise any policy option, right, or privilege available under the life insurance contract.

(d) Diversify the life insurance contract relative to any other life insurance contracts or any other assets of the trust.

(e) Inquire about or investigate the health or financial condition of an insured.

(f) Prevent the lapse of an underfunded life insurance contract if the trust does not receive contributions or hold other readily marketable trust assets to pay the life insurance contract premiums.



1 (2) A trustee is not liable to a beneficiary or to any other person for a loss that
2 arises because the trustee did not take an action specified in ^{the sub.} par. (1).

****NOTE: This subsection provides protection to a trustee who does not undertake any of the actions listed in sub. (1). It does not provide any protection for a trustee who attempts to undertake an action listed in sub. (1). Is this consistent with your intent?

3 (3) This section does not apply to a life insurance contract that is purchased
4 from an affiliate of the trustee, or with respect to any life insurance contract from
5 which the trustee or an affiliate receives a commission, unless the power to purchase
6 the life insurance contract has been delegated to another person and that other
7 person made the decision to purchase the life insurance contract from or through the
8 trustee or an affiliate.

9 (4) This section applies to a life insurance contract acquired, retained, or owned
10 by a trustee before, on, or after the effective date of this subsection [LRB inserts
11 date].

END INS 92-15

INS 109-3

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

14 701.1201 ^(title) Private Article XII, Section 1201 — Private foundations. (1)

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

****NOTE: Please review the definitions of charitable trust and split-interest trust in this section. It is not clear to me that the cross references to the Internal Revenue Code provide definitions. Additionally, s. 701.0103 (4) provides a different definition of

“charitable trust“ for the chapter. If it is your intention to override that definition for purposes of this section, I recommend adding a “notwithstanding s. 701.0103 (4)” to this section or “Except as provided in s. 701.1201,” to s. 701.0103 (4).

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

5 2. Retaining any excess business holdings as defined in section 4943 (c) of the
6 ~~internal revenue code~~ Internal Revenue Code, which would give rise to any liability
7 for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal Revenue
8 Code.

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

13 4. Making any taxable expenditures as defined in section 4945 (d) of the
14 ~~internal revenue code~~ Internal Revenue Code, which would give rise to any liability
15 for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal Revenue
16 Code.

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

21 (2) In the administration of any trust which is a private foundation as defined
22 in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or which is a
23 charitable trust as defined in section 4947 (a) (1) of the ~~internal revenue code~~



1 Internal Revenue Code, there shall be distributed, for the purposes specified in the
 2 trust instrument, for each taxable year, amounts at least sufficient to avoid liability
 3 for the tax imposed by section 4942 (a) of the ^{plain} ~~internal revenue code~~ Internal Revenue
 4 Code.

History: 1971 c. 66; 1991 a. 39.

5 **SECTION 4.** 701.11 of the statutes is repealed.

6 **SECTION 5.** 701.115 of the statutes is repealed.

7 **SECTION 6.** 701.12 of the statutes is repealed.

8 **SECTION 7.** Subchapter XII (title) of chapter 701 [precedes 701.1201] of the
 9 statutes is created to read:

CHAPTER 701

SUBCHAPTER XII

MISCELLANEOUS PROVISIONS

13 **SECTION 8.** 701.1203 of the statutes is created to read:

14 **701.1203 Article XII, Section 1203 — Electronic records and signatures.**

15 The provisions of this chapter governing the legal effect, validity, or enforceability
 16 of electronic records or signatures, and of contracts formed or performed with the use
 17 of such records or signatures conform to the requirements of section 102 of the federal
 18 Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and
 19 supersede, modify, and limit the federal Electronic Signatures in Global and
 20 National Commerce Act, 15 USC 7001 to 7031.

****NOTE: This draft does not include Section 1103 of article 12 . Section 990.001
 (11) of the statutes provides that the provisions of the statutes are severable. The
 unconstitutionality of any provision of the statutes does not affect other provisions that
 can be given effect independently of the unconstitutional provision if severing the
 unconstitutional portion does not foil the legislature's manifest intent. Thus, it is the
 policy of the LRB not to insert a separate severability provision.

21 **SECTION 9.** 701.1204 of the statutes is created to read:



1 **701.1204 Article XII, Section 1204** — **Uniformity of application and**
 2 **construction.** This chapter shall be applied and construed to effectuate its general
 3 purpose to make uniform the law with respect to the subject of this chapter among
 4 states enacting it.

***NOTE: I altered the uniformity language slightly to conform with other uniform laws in our statutes. See s. 881.01, the uniform prudent investor act, [This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among the states that have enacted this uniform legislation.]; s. 706.10, the uniform law on notarial acts, [This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.]; and s. 766.96, marital property, [This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.]

5 **SECTION 10.** 701.1206 (3) of the statutes is created to read:

6 701.1206 (3) (a) Except as provided in par. (b), this chapter applies to a judicial
 7 proceeding concerning a trust commenced before, on, or after the effective date of this
 8 subsection ^{e paragraph}.... [LRB inserts date].

9 (b) If a court finds that application of a particular provision of this chapter to
 10 a judicial proceeding commenced before the effective date of this subsection ^{e paragraph}.... [LRB
 11 inserts date] ^{e 3} will substantially interfere with the effective conduct of the judicial
 12 proceedings or prejudice the rights of the parties, the particular provision of this
 13 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,
 14 2011 stats., as the court finds to be necessary to prevent interference with the
 15 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the
 16 parties.

***NOTE: This provision seems to allow the courts to decide, on a case by case basis, what law applies to each judicial proceeding that was commenced before the effective date of this bill. Is this consistent with your intent?

17 **SECTION 11.** 701.13 of the statutes is repealed.

18 **SECTION 12.** 701.14 (title) and (1) of the statutes are repealed.



1 SECTION 13. 701.14 (2) of the statutes is renumbered 701.0205 and amended
2 to read:

3 **701.0205 Article II, Section 205** - NOTICE. If notice of a judicial proceeding
4 involving a trust proceeding to ~~a~~ an interested person interested in the trust, to the
5 person's representative or guardian ad litem as provided in s. ~~701.15~~, or to other
6 persons, is required by law or deemed necessary by the court, the court shall order
7 such notice to be given as prescribed in s. 879.05 except that service by publication
8 shall not be required unless ordered by the court. The court may order both personal
9 service and service by publication on designated persons. Proof of service shall be
10 made as provided in s. 879.07. ~~Persons interested in the trust~~ Interested persons,
11 on behalf of themselves, or their representatives or guardians ad litem as provided
12 in s. ~~701.15~~, on behalf of themselves the representative and those whom they
13 represent the interested person the representative represents, may in writing waive
14 service of notice and consent to the hearing of any matter without notice. Waiver of
15 notice or an appearance by any interested person interested in the trust or the
16 interested person's representative or guardian ad litem as provided in s. ~~701.15~~ is
17 equivalent to timely service of notice.

History: 1971 c. 66; Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1977 c. 449 s. 497; 1991 a. 220, 316.

****NOTE: I attempted to conform this language to the language used throughout
the UTC. Please confirm that this section reflects your intent.

18 SECTION 14. 701.14 (3) of the statutes is renumbered 701.0206 and amended
19 to read:

20 **701.0206 Article II, Section 206** - Attorney for person in military
21 service. At the time of filing a petition for a trust judicial proceeding involving a
22 trust, the petitioner shall file an affidavit shall be filed setting forth the name of any
23 person interested in the proceeding who is actively engaged in the military service

strike comma



1 of the United States. Whenever it appears by the affidavit or otherwise that any
 2 person in the active military service of the United States is interested in any trust
 3 judicial proceeding involving a trust and is not represented by an attorney, or by an
 4 attorney-in-fact who is duly authorized to act on the person's behalf in the matter,
 5 the court shall appoint an attorney to represent the person and protect the person's
 6 interest.

History: 1971 c. 66; Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1977 c. 449 s. 497; 1991 a. 220, 316.

****NOTE: Your instructions suggested that this language be included in Article 3 as section 306. Because the substance of the provision pertains to judicial proceedings and specifically to what a person bringing an action involving a trust must file as part of the proceeding, I renumbered s. 701.14 (3) to Article 2. If this is not consistent with your intent, please let me know. I also assumed that there could be persons interested in the proceeding who are not "interested persons" as that term is used throughout the chapter. If this assumption is incorrect, I recommend replacing the phrase "any person interested in the proceeding" with an "interested person."

- 7 SECTION 15. 701.14 (4) of the statutes is repealed.
- 8 SECTION 16. 701.15 of the statutes is repealed.
- 9 SECTION 17. 701.16 of the statutes is repealed.
- 10 SECTION 18. 701.17 of the statutes is repealed.
- 11 SECTION 19. 701.18 of the statutes is repealed.
- 12 SECTION 20. 701.19 of the statutes is repealed.
- 13 SECTION 21. 701.22 of the statutes is renumbered 701.1202 and amended to
 14 read:

15 **701.1202 Distributions Article XII, Section 1202 — Distributions in**
 16 **kind by trustees; marital bequests.** In case of a division of trust assets into 2 or
 17 more trusts or shares, any distribution or allocation of assets as an equivalent of a
 18 dollar amount fixed by formula or otherwise shall be made at current fair market
 19 values unless the governing trust instrument expressly provided that another value
 20 may be used. If the governing trust instrument requires or permits a different value

20



1 to be used, all assets available for distribution, including cash, shall, unless
 2 otherwise expressly provided, be so distributed that the assets, including cash,
 3 distributed as such an equivalent will be fairly representative of the net appreciation
 4 or depreciation in the value of the available property on the date or dates of
 5 distribution. A provision in the governing trust instrument that the trustee may fix
 6 values for purposes of distribution or allocation does not of itself constitute
 7 authorization to fix a value other than current fair market value.

****NOTE: I changed "governing instrument" to "trust instrument" to be consistent with the remainder of the bill. If this is not consistent with your intent, please let me know. I also removed "marital bequest" from the title. There doesn't seem to be anything specific about marital bequests in this section. However, under s. 990.001 (6), titles are not part of the statute so if you would like to keep "marital bequest" in the title it isn't a problem.

8 **SECTION 22.** 701.23 of the statutes is repealed.

9 **SECTION 23.** 701.24 (title) of the statutes is renumbered 701.1206 (title) and
 10 amended to read:

11 **701.1206 (title) Applicability Article XII, Section 1206 — Applicability.**

History: 1971 c. 66; 1977 c. 309; 2005 a. 10, 216.

12 **SECTION 24.** 701.24 (1) of the statutes is renumbered 701.1206 (1) and amended
 13 to read:

14 701.1206 (1) Except as otherwise provided in sub. (3) (2) and ~~ss. 701.19 (9) (a),~~
 15 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ ss. 701.0602 and 701.0813, this
 16 chapter ~~are~~ is applicable to a trust existing on July 1, 1971 the effective date of this
 17 subsection [LRB inserts date], as well as a trust created after such date, and shall
 18 govern trustees acting under such trusts. If application of any provision of ss. 701.01
 19 to 701.19, 701.21, 701.22, and 701.23 this chapter to a trust in existence on August
 20 1, 1971 the effective date of this subsection [LRB inserts date], is unconstitutional,
 21 it shall not affect application of the provision to a trust created after that date.

History: 1971 c. 66; 1977 c. 309; 2005 a. 10, 216.



****NOTE: This provision is based on section 1206 (a) and (c) of the language you provided me. It is LRB policy, to be as specific as possible when using the phrase "except as otherwise provided in." Sections 701.0602 (1) and 701.0813, as created by this bill, include in-text applicability provisions that provide that the respective provisions do not apply to trusts created before the effective date of the bill. Please let me know if there are any other sections that should be added to the "except as otherwise provided" clause.

I did not include section 1206 (a)(4) or (5) in this draft. First, to draft subsection (4), I will need a list of the sections that you consider to include "rules of construction" or "presumptions." Without citations to specific sections, it will be up to the reader and eventually a court to determine what is a presumption or rule of construction. I did not include section 1206 (5) because it seems to overlap with the other sections and create conflicts. Section 1206 (5) says that an act done before the effective date of the act is not affected by the chapter. "An act" is such a general term that seems to overlap with the execution of a trust, the act of commencing a judicial proceeding, and any act taken by a trustee. Please let me know the intent of section 1206 (5) and how it should be reconciled with the other applicability paragraphs.

Finally, I did not include section 1206 (b). Are there a specific statutes that are being repealed or superseded that this paragraph is meant to address? What is this paragraph intended to preserve?

1 **SECTION 25.** 701.24 (2) of the statutes is renumbered 701.1206 (2) and amended
2 to read:

3 701.1206 (2) Section 701.20 Subchapter XI of this chapter applies to every a
4 trust or decedent's estate existing on May 17, 2005 the effective date of this
5 subsection ... [LRB inserts date], and to every a trust or decedent's estate created or
6 coming into existence after that date, except as otherwise expressly provided in s.
7 701.20 Subchapter XI of this chapter or by the decedent's will or the terms of the
8 trust. With respect to a trust or decedent's estate existing on May 17, 2005 the
9 effective date of this subsection ... [LRB inserts date], s. 701.20 (5) to (30) 701.1110
10 to 701.1135 shall apply at the beginning of the trust's or estate's first accounting
11 period, as defined in s. 701.20 701.1125 (2) (a), that begins on or after May 17, 2005
12 the effective date of this subsection ... [LRB inserts date].

****NOTE: In light of s. 701.20 being restructured as a subchapter, please confirm that the cross-references in the last sentence reflect your intent.

13 **SECTION 26.** 701.24 (3) of the statutes is repealed.

History: 1971 c. 66; 1977 c. 309; 2005 a. 10, 216.

→ **CS** **NOTE:** Sections 701.1110 to 701.1135 are created in a separate draft that will be incorporated at a later time.

7/3/05

1 SECTION 27. 701.25 of the statutes is renumbered 701.1205 and amended to
2 read:

3 **701.1205 Applicability Article XII, Section 1203 — Applicability of**
4 **general transfers at death provisions.** Chapter 854 applies to transfers at death
5 under trust instruments.

History: 1997 a. 188.

6 SECTION 28. 701.26 of the statutes is repealed.

7 SECTION 29. 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

8 SECTION 30. 702.02 (1) of the statutes is created to read:

9 702.02 (1) "Appointee" means the person to whom an interest is appointed.

10 SECTION 31. 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
11 to read:

12 702.02 (2) "Creating instrument" means the will, trust agreement, or other
13 document which creates or reserves the power of appointment.

History: 1971 c. 66; 1983 a. 189; 1993 a. 486.

14 SECTION 32. 702.02 (3) of the statutes is created to read:

15 702.02 (3) "Donee" means the person in whom the power of appointment is
16 created or reserved.

17 SECTION 33. 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
18 to read:

19 702.02 (4) "Donor" means the person who creates or reserves the power;
20 "donee" means the person in whom the power is created or reserved; and "appointee"
21 means the person to whom an interest is appointed of appointment.

History: 1971 c. 66; 1983 a. 189; 1993 a. 486.

22 SECTION 34. 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
23 to read:



1 702.02 (5) "General power of appointment" means a power exercisable in favor
 2 of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's
 3 estate, whether or not it is exercisable in favor of others. A power to appoint to any
 4 person or a power of appointment which is not expressly restricted as to appointees
 5 may be exercised in favor of the donee or the donee's creditors if exercisable during
 6 lifetime, and in favor of the donee's estate or the creditors of the donee's estate if
 7 exercisable by will.

History: 1971 c. 66; 1983 a. 189; 1993 a. 486.

8 **SECTION 35.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
 9 to read:

10 702.02 (6) "Power of appointment" means a power of ~~appointment over or~~ or
 11 authority to appoint legal or equitable interests in real or personal property. A power
 12 of appointment is ~~a~~ power created or reserved by a person having property subject
 13 to his or her disposition which enables the donee of the power of appointment to
 14 designate, within such limits as may be prescribed, the transferees of the property
 15 or the shares or the interests in which it shall be received; ~~it~~. A power of appointment
 16 does not include a power of sale, a power of attorney, a power of revocation, or a power
 17 exercisable by a trustee or other fiduciary in his or her fiduciary capacity.

History: 1971 c. 66; 1983 a. 189; 1993 a. 486.

****NOTE: Is the addition of "or authority" in the first sentence of this definition necessary? How does power differ, legally, from authority?

18 **SECTION 36.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
 19 to read:

20 702.02 (7) "Special power of appointment" means a power of appointment
 21 exercisable only in favor of one or more persons not including the donee, the donee's
 22 estate, the donee's creditors, or the creditors of the donee's estate ~~and~~ ^{plain} ~~and~~, when
 23 exercisable in favor of a class, so limited in size by description of the class that in the



1 ~~event of nonexercise of the power a court can make distribution to persons within the~~
2 ~~class if the donor has failed to provide for this contingency.~~

3 History: 1971 c. 66; 1983 a. 189; 1993 a. 486.

3 ~~X~~
SECTION 37. 702.01 (6) of the statutes is repealed.

4 SECTION 38. 702.03 of the statutes is amended to read:

5 702.03 **Manifestation of intent to exercise powers** ✓ a power of

6 appointment. (1) Unless the person who executed it had a contrary intention, if
7 a governing instrument, as defined in s. 854.01 (2), or an inter vivos governing
8 instrument, as defined in s. 700.27 (1) (c), creates a power of appointment that
9 expressly requires that the power be exercised by any type of reference to the power
10 or its source, the donor's intention in requiring the reference is presumed to be to
11 prevent an inadvertent exercise of the power of appointment. ✓ Extrinsic evidence, as
12 defined in s. 854.01 (1), may be used to construe the intent.

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



1 the donee's estate, but in all other cases such a clause or language does not in itself
2 manifest an intent to exercise a power exercisable by will.

3 History: 1997 a. 188; 2005 a. 216.

3 **SECTION 39.** 702.05 of the statutes is amended to read:

4 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO
5 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by
6 a person who would have the capacity to transfer the property covered by the power
7 of appointment.

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

16 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
17 person is required by the donor for the exercise of a power of appointment, such
18 consent must be expressed in the instrument exercising the power of appointment
19 or in a separate written instrument, signed in either case by the persons whose
20 consent is required. If any person whose consent is required dies or becomes legally
21 incapable of consenting, the power of appointment may be exercised by the donee
22 without the consent of that person unless the donor has manifested a contrary intent
23 in the instrument creating the power of appointment.



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

History: 1971 c. 66; 1977 c. 309; 2005 a. 253.

7 **SECTION 40.** 702.05 (5) of the statutes is created to read:

8 **702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT.** A
 9 personal representative, trustee, or other fiduciary who holds property subject to a
 10 power of appointment may administer that property as if the power of appointment
 11 was not exercised if the personal representative, trustee, or other fiduciary has no
 12 notice of the existence of any of the following within ⁶six months after the death of the
 13 donee of the power of appointment:

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

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

****NOTE: The drafting instructions proposed that this subsection be written as one sentence. I divided the subsection into an introduction and two paragraphs. Please review the subsection carefully to ensure that I did not alter the meaning.

18 **SECTION 41.** 702.07 of the statutes is amended to read:

19 **702.07 Powers Power of appointment to be construed as exclusive.** The
 20 donee of any power of appointment may appoint the whole or any part of the
 21 appointive assets to any one or more of the permissible appointees and exclude
 22 others, except to the extent that the donor specifies either a minimum share or

1 amount to be appointed to each permissible appointee or to designated appointees,
2 or a maximum share or amount appointable to any one or more appointees.

3 **SECTION 42.** 702.08^{lx} of the statutes is amended to read:

4 **702.08 Disclaimer of powers a power of appointment.**[✓] The donee of any
5 power of appointment may disclaim all or part of the power of appointment[✓] as
6 provided under s. 700.27 or 854.13.

History: 1977 c. 309; 1997 a. 188; 2005 a. 216.

7 **SECTION 43.** 702.09 (title), (1)^{lx} (3) (a), (b) and (c) of the statutes are amended

8 to read:

9 **702.09**^(title) **Release of powers a power of appointment.**[✓] (1) ~~Except as~~ Unless

10 the creating instrument expressly provides that the power of appointment cannot be
11 released or expressly restricts the time, manner, or scope of release, the donee of any
12 power of appointment may do any of the following:[✓]

13 (a) At any time completely release the donee's power; of appointment.[✓]

14 (b) At any time or times release the donee's power of appointment[✓] in any one
15 or more of the following respects:

16 1. As to the whole or any part of the property which is subject thereto;[✓]

17 2. As to any one or more persons or objects, or classes of persons or objects, in
18 whose favor such power of appointment is exercisable;[✓]

19 3. So as to limit in any other respect the extent to or manner in which it the
20 power of appointment may be exercised.[✓]

21 (3) (a) Delivery to any person specified in the creating instrument;[✓]

22 (b) Delivery to a trustee or to one of several trustees of the property to which
23 the power of appointment[✓] relates, or filing with the court having jurisdiction over the
24 trust;[✓]



(c) Delivery to any person, other than the donee, who could be adversely affected by an exercise of the power; or of appointment. ✓

History: 1993 a. 301, 486. ✓

SECTION 44. 702.11 of the statutes is amended to read:

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

SECTION 45. 702.13 (1) (intro.), (a), (b) and (c) and (2) of the statutes are amended to read:

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

- (a) An instrument, other than a will, exercising a power; of appointment. ✓
- (b) An instrument expressing consent to exercise; ✓
- (c) A disclaimer; ✓

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

History: 1971 c. 41 s. 11; 1977 c. 309. ✓

SECTION 46. 702.15 (intro.), (1) and (2) of the statutes are amended to read:

702.15 Disposition when a special power of appointment is unexercised. If the donee of a special power of appointment fails to exercise effectively the special power of appointment, the interests which might have been appointed under the special power of appointment pass in one of the following ways: ✓



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

3 (2) If the creating instrument contains no express gift in default and does not
4 clearly indicate that the permissible appointees are to take only if the donee exercises
5 the special power of appointment, ✓ then to the permissible appointees equally, but if
6 the power is to appoint among a class such as "relatives," "issue," ✓ or "heirs," then to
7 those persons who would have taken had there been an express gift to the described
8 class; ~~or~~. ✓

9 History: 1993 a. 486.

9 **SECTION 47.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
10 amended to read:

11 702.15 (3) (a) If Except as provided in par. (b), ✓ if the creating instrument
12 contains no express gift in default and clearly indicates that the permissible
13 appointees are to take only if the donee exercises the special power of appointment, ✓
14 then by reversion to the donor or the donor's estate. ~~But if~~

15 (b) If the creating instrument expressly states that there is no reversion in the
16 donor, then any language in the creating instrument indicating or stating that the
17 permissible appointees are to take only if the donee exercises the special power of
18 appointment is to be disregarded and the interests shall pass in accordance with sub.
19 (2).

20 History: 1993 a. 486.

20 **SECTION 48.** 702.17 (1), (2), (3) and (5) of the statutes are amended to read:

21 ~~NO~~ (B) ~~702.17~~ (1) GENERAL POLICY. If the donee has either a general power ~~or an~~
22 ~~unclassified power which is unlimited as to permissible appointees except for~~
23 ~~exclusion of the donee, the donee's estate, the donee's creditors and the creditors of~~
24 ~~the donee's estate, or a substantially similar exclusion of appointment~~, ✓ any interest



1 which the donee has power to appoint or has appointed is to be treated as property
2 of the donee for purposes of satisfying claims of the donee's creditors, as provided in
3 this section.

4 (2) DURING LIFETIME OF THE DONEE. If the donee has an unexercised general
5 power of the kinds specified in sub. (1) appointment,[✓] and can presently exercise such
6 ~~a~~ the general power of appointment,[↓] any creditor of the donee may by appropriate
7 proceedings reach any interest which the donee could appoint, to the extent that the
8 donee's individual assets are insufficient to satisfy the creditor's claim. Such an
9 interest is to be treated as property of the donee within ch. 816. If the donee has
10 exercised such a general power of appointment,[✓] the creditor can reach the appointed
11 interests to the same extent that under the law relating to fraudulent conveyances
12 the creditor could reach property which the donee has owned and transferred.

13 (3) AT DEATH OF THE DONEE. If the donee has at the time of his or her death a
14 general power of the kinds specified in sub. (1) appointment,[✓] whether or not the
15 donee exercises the general power of appointment,[✓] any creditor of the donee may
16 reach any interest which the donee could have appointed or has appointed, to the
17 extent that the claim of the creditor has been filed and allowed in the donee's estate
18 but not paid because the assets of the estate are insufficient.

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1975 c. 218; 1993 a. 486.



1 **SECTION 49.** 702.21 of the statutes is amended to read:

2 **702.21 Applicability of chapter.** The provisions of this chapter are
3 applicable to any power of appointment existing on May 16, 1965, as well as a power
4 of appointment created after such date.

5 **SECTION 50.** 766.575 (1) (e) of the statutes is amended to read:

6 766.575 (1) (e) "Trustee" has the meaning given under s. 701.01 (8) 701.0103

7

25
25
X

****NOTE: Did you intend the new definition for trustee under s. 701.0103 (25) to
replace the old definition in this section, or should I insert the old definition, "Trustee"
means a person holding in trust title to or holding in trust a power over property," here?

25
Trustee

History: 1987 a. 393; 1997 a. 188.

8 **SECTION 51.** 840.01 (1) of the statutes is amended to read:

9 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
10 estates in, powers of appointment under ch. 702 over, present and future rights to,
11 title to, and interests in real property, including, without limitation by enumeration,
12 security interests and liens on land, easements, profits, rights of appointees under
13 powers of appointment, rights under covenants running with the land, powers of
14 termination, and homestead rights. The interest may be an interest that was
15 formerly designated legal or equitable. The interest may be surface, subsurface,
16 suprasurface, riparian, or littoral.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975), 782; Stats. 1975 s. 840.01; 1983 a. 186; 1999 a. 85.

17 **SECTION 52.** 853.17 (2) of the statutes is amended to read:

18 853.17 (2) This section does not prevent the court from requiring the contract
19 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
20 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
21 ~~under s. 701.09.~~

****NOTE: I removed the cross-reference to s. 701.09 in this subsection; should it
be replaced with s. 853.34, as created in this bill? Or some other provision?



1 **SECTION 53.** 853.32 (3) of the statutes is amended to read:

2 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
3 will provision that purports to transfer or appoint property to a living trust are
4 governed by s. ~~701.08~~ 701.0606.

History: 1995 a. 234; 1997 a. 188 ss. 144, 145, 153; 2005 a. 236.

5 **SECTION 54.** 853.34 (3) of the statutes is created to read:

6 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
7 created by a testator's will is designated as the beneficiary of a transfer under
8 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
9 or at the death of a ^{3rd} third party, transfer of those assets to the trustee ~~shall~~ ^{may} not cause
10 the transferred assets to be included in the property administered as part of the
11 testator's estate. The transferred assets ~~shall~~ ^{may} not be subject to taxes, debts, or
12 charges enforceable against the testator's estate to any greater extent than if the
13 proceeds were payable to a beneficiary other than the testator's estate.

****NOTE: The first sentence of this subsection refers to "transfer of those assets," but there are no assets explicitly identified before this phrase. What are "those assets" referred to in this sentence? Would it be appropriate for that portion of the first sentence to read "transfer of any assets under that other governing instrument?"

14 **SECTION 55.** 853.61 (2) (a) of the statutes is amended to read:

15 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
16 trustee shall have all the powers listed in s. 701.16 [missing x-ref.].

****NOTE: Section 701.16 is repealed; should I also repeal this s. 853.61 (2) (a), or should I substitute some other section of the revised trust code in place of s. 701.16?

History: 1983 a. 376; 1987 a. 191.

17 **SECTION 56.** 854.13 (1) (c), (2) (a) 2. ^{and} (d), (4) (e), (5) (b), (7) (a) and (10) (a) of the
18 statutes are amended to read:

19 854.13 (1) (c) "Power of appointment" has the meaning given in s. 702.01 (4)
20 702.02 (6).



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

8 **History:** 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

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

13 **History:** 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

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

18 **History:** 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

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

21 **History:** 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

21 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
 22 the governing instrument provides otherwise, either expressly or as construed from
 23 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died



1 before the decedent. If the disclaimed interest is a remainder contingent on
 2 surviving to the time of distribution, the disclaimed interest passes as if the
 3 disclaimant had died immediately before the time for distribution. If the disclaimant
 4 is an appointee under a power of appointment exercised by a governing instrument,
 5 the disclaimed property devolves as if the disclaimant had died before the effective
 6 date of the exercise of the power of appointment. If the disclaimant is a taker in
 7 default under a power of appointment created by a governing instrument, the
 8 disclaimed property devolves as if the disclaimant had predeceased the donee of the
 9 power of appointment.

History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

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

****NOTE: Please review the changes at the end of this sentence for accuracy.

History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13; 2005 a. 216, 387.

20 **SECTION 57.** 854.23 (5) (b) of the statutes is amended to read:

21 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
 22 a financial institution under ss. 701.19 (11) [missing x-ref.] and 710.05 and chs. 112
 23 and 705 a financial institution is not liable for having transferred an account to a



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

***NOTE: This bill repeals s. 701.19 (11); should some other cross-reference appear
here, or should I amend the first sentence to read: "in addition to the protections afforded
a financial institution under ~~ss. 701.19 (11) and s. 710.05~~ and chs. 112 and 705.?"

History: 1997 a. 188; 2005 a. 216.

6 **SECTION 58.** 859.18 (5) (a) of the statutes is amended to read:

7 859.18 (5) (a) The availability of a trust described under s. ^{plain}701.07 (3) **[missing**
8 **x-ref.]** is subject to s. ~~701.07 (3)~~ **[missing x-ref.]**.

***NOTE: This bill repeals s. 701.07 (3); should anything replace it?

History: 1985 a. 37; 1989 a. 331; 1991 a. 301.

9 **SECTION 59.** 859.18 (5) (b) of the statutes is amended to read:

10 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
11 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

History: 1985 a. 37; 1989 a. 331; 1991 a. 301.

12 **SECTION 60.** 861.11 (5) (b) of the statutes is amended to read:

13 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
14 a financial institution under ss. ~~701.19 (11)~~ **[missing x-ref.]** and 710.05 and chs.
15 112 and 705 a financial institution is not liable for having transferred an account
16 included in the augmented deferred marital property estate under s. 861.03 to a
17 beneficiary designated in a governing instrument, or for having taken any other
18 action in reliance on the beneficiary's apparent entitlement under the terms of a
19 governing instrument, regardless of whether the financial institution received
20 written notice of an intent to file, or the filing of, a petition for the deferred marital
21 property elective share amount.



****NOTE: This bill repeals s. 701.19 (11); should some other cross-reference appear here, or should I amend the first sentence to read: "in addition to the protections afforded a financial institution under ~~ss. 701.19 (11) and s. 710.05~~ and chs. 112 and 705."? *

History: 1985 a. 37; 1987 a. 393 s. 53; 1997 a. 188; 2005 a. 26.

SECTION 61. 865.08 (6) of the statutes is amended to read:

865.08 (6) If the will of the decedent provides for a testamentary trust, letters of trust shall be issued by the probate registrar to the trustee upon admission of the will to informal probate at the same time that letters are granted to the personal representative. The probate registrar shall determine if bond shall be required and, if so, the amount thereof, and for such purpose the probate registrar shall have the authority granted to the court by, and shall proceed pursuant to s. 701.16 (2) [missing x-ref.]. Thereafter, the trustee shall continue to be interested in the estate, and beneficiaries of the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). The trust shall be administered under supervision of the court under ch. 701.

****NOTE: This bill repeals s. 701.16 (2); what cross-reference should replace it?

History: 1973 c. 39; 1975 c. 331; 1993 a. 486; 2001 a. 94.

SECTION 62. 867.03 (2g) of the statutes is amended to read:

867.03 (2g) OBLIGATION OF AFFIANT. By accepting the decedent's property under this section the heir, trustee, or guardian assumes a duty to apply the property transferred for the payment of obligations according to priorities established under s. 859.25 and to distribute any balance to those persons designated in the appropriate governing instrument, as defined in s. 854.01, of the decedent or if there is no governing instrument, according to the rules of intestate succession under ch. 852. An heir or guardian may publish a notice to creditors in the same manner and with the same effect as a trustee under s. 701.065 701.0605. This subsection does



1 not prohibit any appropriate person from requesting administration of the
2 decedent's estate under s. 856.07 or ch. 865.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 26, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a).

3 **SECTION 63.** 879.03 (2) (c) of the statutes is amended to read:

4 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
5 701.01 (2) 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

History: 1973 c. 90, 233, 336; 1975 c. 198 s. 65; 1975 c. 421; 1977 c. 73, 449; 1983 a. 189 s. 329 (26); 1991 a. 220; 1993 a. 486.

6 **SECTION 64.** 879.47 of the statutes is amended to read:

7 **879.47 Papers, preparation and filing.** The attorney for any person
8 desiring to file any paper in court is responsible for the preparation of the paper.
9 Except as provided in s. 701.16 (4) (d) [missing x-ref.], all papers shall be legibly
10 written on substantial paper and shall state the title of the proceeding in which they
11 are filed and the character of the paper. Either uniform forms or
12 computer-generated forms, if the forms exactly recreate the original forms in
13 wording, format and substance, shall be used. If papers are not so written or if
14 uniform forms or computer-generated forms that exactly recreate the original forms
15 in wording, format and substance are not used, the court may refuse to receive and
16 file them. The court shall show on all papers the date of their filing.

****NOTE: This bill repeals s. 701.16 (4) (d); what cross-reference should replace it?

17

SECTION 65. Effective date. This act takes effect on January 1, 2014.

****NOTE: This date is a place holder. Keep in mind that this date will not achieve your goal of giving practitioners 6 months to absorb the new law if the bill does not pass before July 1, 2013. To avoid the issue of when the bill may pass, you could structure the effective date as the first day of the 7th month after publication. This structure would ensure 6 months between publication and the effective date.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/P1dn

FFK:.....

Handwritten initials: JLD

Date

To Senator Risser: ✓

IX
This is a redraft of 2011 LRB-2788/P1 ✓ (based on the Uniform Trust Code) ✓ that incorporates changes recommended by Victor Schultz on behalf of the study group working on the Uniform Trust Code. ✓ In addition to language based on the Uniform Trust Code, this draft includes modifications to ch. 702, which pertains to powers of appointment. This draft also includes a section on trust protectors and a section on decanting trusts, neither of which are ~~not~~ part of the Uniform Trust Code. ✓ Finally, this draft does not include subch. ~~II~~ of ch. 701, or changes to ch. 881, both of which were drafted as separate bills that will be incorporated into this bill at a later date. *

Please feel free to contact me with any questions or concerns regarding this draft. ✓
These bills

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