

CHAPTER 701**SUBCHAPTER IX****INVESTMENT MANAGEMENT OF TRUSTS**

SECTION 105. 701.0901 of the statutes is created to read:

701.0901 Article IX, Section 901 — Application of the Wisconsin Prudent Investor Act. Except as provided in this subchapter, the investment management of the property of a trust is governed by ch. 881.

SECTION 106. 701.0902 of the statutes is created to read:

701.0902 Article IX, Section 902 — Directed trust property. (1) A directing party who has power over directed trust property shall do all of the following:

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

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

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

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

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

1 (a) Prepare or review investment policy statements.

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

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

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

6 **SECTION 107.** 701.0903 of the statutes is created to read:

7 **701.0903 Article IX, Section 903 — Nonapplication of prudent investor**
8 **rule to life insurance contracts owned by trusts.** (1) Notwithstanding s.
9 881.01, if a principal purpose of a trust is to hold a life insurance contract or to
10 purchase a life insurance contract from contributions made to the trust, a trustee of
11 the trust does not have a duty to do any of the following with respect to the
12 acquisition, retention, and ownership of a life insurance contract owned by the trust:

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

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

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

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

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

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

12 **SECTION 108.** 701.10 of the statutes is repealed.

13 **SECTION 109.** Subchapter X (title) of chapter 701 [precedes 701.1001] of the
14 statutes is created to read:

15 **CHAPTER 701**

16 **SUBCHAPTER X**

17 **LIABILITY OF TRUSTEES AND RIGHTS**

18 **OF PERSONS DEALING WITH TRUSTEE**

19 **SECTION 110.** 701.1001 of the statutes is created to read:

20 **701.1001 Article X, Section 1001 — Remedies for breach of trust.** (1) A
21 violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

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

- 1 (a) Compel the trustee to perform the trustee's duties.
- 2 (b) Enjoin the trustee from committing a breach of trust.
- 3 (c) Compel the trustee to redress a breach of trust by paying money, restoring
- 4 property, or other means.
- 5 (d) Order a trustee to account.
- 6 (e) Appoint a special fiduciary having duties and authority ordered by the court
- 7 to take possession of the trust property and administer the trust.
- 8 (f) Suspend the trustee.
- 9 (g) Remove the trustee as provided in s. 701.0706.
- 10 (h) Reduce the compensation of or deny compensation to the trustee.
- 11 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
- 12 constructive trust on trust property, or trace trust property wrongfully disposed of
- 13 and recover the property or its proceeds.
- 14 (j) Order any other appropriate relief, whether provided elsewhere in this
- 15 chapter, available at common law, or under equity principles.

16 **SECTION 111.** 701.1002 of the statutes is created to read:

17 **701.1002 Article X, Section 1002 — Damages for breach of trust;**

18 **liability of successor trustee.** (1) A trustee who commits a breach of trust is liable

19 to an affected beneficiary for the greater of the following:

20 (a) The amount required to restore the value of the trust property and trust

21 distributions to what they would have been had the breach not occurred.

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

23 **(2)** Except as otherwise provided in this subsection, if more than one trustee

24 is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from

25 the other trustee or trustees. A trustee is not entitled to contribution if the trustee

1 was substantially more at fault than another trustee or if the trustee committed the
2 breach of trust in bad faith or with reckless indifference to the purposes of the trust
3 or the interests of the beneficiary. A trustee who received a benefit from the breach
4 of trust is not entitled to contribution from another trustee to the extent of the benefit
5 received.

6 (3) A successor trustee is not liable for the acts and omissions of a former
7 trustee or other fiduciary of the trust.

8 SECTION 112. 701.1003 of the statutes is created to read:

9 **701.1003 Article X, Section 1003 — Damages in absence of breach.**

10 Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or
11 depreciation in the value of trust property or for not having made a profit.

12 SECTION 113. 701.1004 of the statutes is created to read:

13 **701.1004 Article X, Section 1004^{Om=} — Attorneys fees and costs.** (1) In a
14 judicial proceeding involving the administration of a trust, the court, as justice and
15 equity may require, may award costs and expenses, including reasonable attorney
16 fees, to any party, to be paid by another party or from the trust that is the subject of
17 the controversy.

18 (2) Subject to sub. (3), if a trustee defends or prosecutes any proceeding in good
19 faith, whether successful or not, the trustee is entitled to receive from the trust the
20 necessary expenses and disbursements, including reasonable attorney fees,
21 incurred. This subsection may not preclude a court from ordering reimbursement
22 of the trust for such expenses and disbursements from another party as provided in
23 sub. (1).

24 (3) (a) Payment of costs or attorney fees incurred in any proceeding from the
25 assets of the trust may be made by the trustee without the approval of any person

1 and without court authorization, unless the court orders otherwise as provided in
2 par. (c).

3 (b) If a claim or defense based upon a breach of trust is made against a trustee
4 in a proceeding, the trustee shall provide notice to each qualified beneficiary of the
5 trust whose share of the trust may be affected by the payment of attorney fees and
6 costs of the intention to pay costs or attorney fees incurred in the proceeding from the
7 trust prior to making payment. The notice shall inform each such qualified
8 beneficiary of the right to apply to the court for an order prohibiting the trustee from
9 paying attorney fees or costs from trust assets. If a trustee is served with a motion
10 for an order prohibiting the trustee from paying from the trust attorney fees or costs
11 in the proceeding and the trustee pays attorney fees or costs from the trust before an
12 order is entered on the motion, the trustee and the trustee's attorney who have been
13 paid attorney fees or costs from trust assets are subject to the remedies in pars. (c)
14 and (d).

15 (c) If a claim or defense based upon breach of trust is made against a trustee
16 in a proceeding, a party must obtain a court order to prohibit the trustee from paying
17 costs or attorney fees from trust assets. To obtain an order prohibiting payment of
18 costs or attorney fees from trust assets, a party must make a reasonable showing by
19 evidence in the record or by proffering evidence that provides a reasonable basis for
20 a court to conclude that there has been a breach of trust. The trustee may proffer
21 evidence to rebut the evidence submitted by a party. The court in its discretion may
22 defer ruling on the motion, pending discovery to be taken by the parties. If the court
23 finds that there is a reasonable basis to conclude that there has been a breach of
24 trust, unless the court finds good cause to allow attorney fees and costs to be paid
25 from the trust, the court shall enter an order prohibiting the payment of further

1 attorney fees and costs from the assets of the trust and shall order attorney fees or
2 costs previously paid from assets of the trust in such proceeding to be refunded. An
3 order entered under this paragraph may not limit a trustee's right to seek an order
4 permitting the payment of some or all of the attorneys fees or costs incurred in the
5 proceeding from trust assets, including any fees required to be refunded, after the
6 claim or defense is finally determined by the court. If a claim or defense based upon
7 a breach of trust is withdrawn, dismissed, or resolved without a determination by the
8 court that the trustee committed a breach of trust, after the entry of an order
9 prohibiting payment of attorney fees and costs pursuant to this paragraph, the
10 trustee may pay costs or attorney fees incurred in the proceeding from the assets of
11 the trust without further court authorization.

12 (d) If the court orders a refund under par. (c), the court may enter such
13 sanctions as are appropriate if a refund is not made as directed by the court,
14 including striking defenses or pleadings filed by the trustee. Nothing in this
15 paragraph limits other remedies and sanctions the court may employ for the failure
16 to refund the trust in a timely manner.

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

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

24 (4) A provision of a trust instrument drafted or caused to be drafted by a trustee
25 that modifies the application of this section in a manner favorable to the trustee and

1 potentially detrimental to a beneficiary is invalid with respect to the trustee unless
2 the trustee proves that the provision was fair under the circumstances existing at the
3 time the trust instrument was signed and that the existence and contents of the
4 provision were adequately communicated to the settlor.

5 **SECTION 114.** 701.1005 of the statutes is created to read:

6 **701.1005 Article X, Section 1005 — Limitation of action against trustee.**

7 (1) A beneficiary may not commence a proceeding against a trustee for breach of
8 trust more than one year after the date on which the beneficiary or a representative
9 of the beneficiary was sent a report that adequately disclosed the existence of a
10 potential claim for breach of trust.

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

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

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

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

19 (c) The termination of the trust.

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

22 **SECTION 115.** 701.1006 of the statutes is created to read:

23 **701.1006 Article X, Section 1006 — Reliance on trust instrument.** A

24 trustee who acts in reasonable reliance on the terms of the trust as expressed in the

1 trust instrument is not liable to a beneficiary for a breach of trust to the extent the
2 breach resulted from the reliance.

3 **SECTION 116.** 701.1007 of the statutes is created to read:

4 **701.1007 Article X, Section 1007 — Event affecting administration or**
5 **distribution.** If the happening of an event, including marriage, divorce,
6 performance of educational requirements, or death, affects the administration or
7 distribution of a trust, a trustee who has exercised reasonable care to ascertain the
8 happening of the event is not liable for a loss resulting from the trustee's lack of
9 knowledge.

10 **SECTION 117.** 701.1008 of the statutes is created to read:

11 **701.1008 Article X, Section 1008 — Exculpation of trustee.** (1) A term
12 of a trust relieving a trustee of liability for breach of trust is unenforceable to the
13 extent that it does any of the following:

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

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

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

24 **SECTION 118.** 701.1009 of the statutes is created to read:

1 **701.1009 Article X, Section 1009 — Beneficiary’s consent, release, or**
2 **ratification.** A trustee is not liable to a beneficiary for breach of trust if the
3 beneficiary consented to the conduct constituting the breach, released the trustee
4 from liability for the breach, or ratified the transaction constituting the breach,
5 unless one of the following applies:

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

8 (2) At the time of the consent, release, or ratification, the beneficiary did not
9 have knowledge of the beneficiary’s rights or of the material facts relating to the
10 breach.

11 **SECTION 119.** 701.1010 of the statutes is created to read:

12 **701.1010 Article X, Section 1010 — Limitation on personal liability of**
13 **trustee.** (1) Except as otherwise provided in the contract, a trustee is not personally
14 liable on a contract properly entered into in the trustee’s fiduciary capacity in the
15 course of administering the trust if the trustee in the contract disclosed the fiduciary
16 capacity.

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

21 **SECTION 120.** 701.1011 of the statutes is created to read:

22 **701.1011 Article X, Section 1011 — Interest as general partner.** (1)
23 Unless personal liability is imposed in the contract, a trustee who holds an interest
24 as a general partner in a general or limited partnership is not personally liable on

1 a contract entered into by the partnership after the trust's acquisition of the interest
2 if the fiduciary capacity was disclosed in the contract.

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

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

9 **SECTION 121.** 701.1012 of the statutes is created to read:

10 **701.1012 Article X, Section 1012 — Protection of person dealing with**
11 **trustee.** (1) A person other than a beneficiary who in good faith assists a trustee,
12 or who in good faith and for value deals with a trustee, without knowledge that the
13 trustee is exceeding or improperly exercising the trustee's powers is protected from
14 liability as if the trustee properly exercised the power.

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

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

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

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

4 SECTION 122. 701.1013 of the statutes is created to read:

5 701.1013 Article X, Section 1013 — Certification of trust. (1) Instead of
6 furnishing a copy of the trust instrument to a person other than a beneficiary, the
7 trustee may furnish to the person a certification of trust containing the following
8 information:

9 (a) That the trust exists and the date on which the trust instrument was
10 executed.

11 (b) The identity of the settlor.

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

13 (d) The powers of the trustee.

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

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

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

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

22 (3) A certification of trust *trustee shall include in a* must state that the trust has not been revoked,
23 modified, or amended in any manner that would cause the representations contained
24 in the certification of trust to be incorrect.

**** Note: I altered sub. (3) to avoid the passive voice. (circled)*

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

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

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

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

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

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

23 **SECTION 123.** 701.105 of the statutes is renumbered 701.1201, and 701.1201
24 (title), (1) and (2), as renumbered, are amended to read:

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

2 **(1) (a)** In the administration of any trust which is a private foundation, as defined
3 in section 509 of the ~~internal revenue code~~ Internal Revenue Code, a charitable trust,
4 as defined in section 4947 (a) (1) of the ~~internal revenue code~~ Internal Revenue Code,
5 or a split-interest trust as defined in section 4947 (a) (2) of the ~~internal revenue code~~
6 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).

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

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

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

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

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

5 (2) In the administration of any trust which is a private foundation as defined
6 in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or which is a
7 charitable trust as defined in section 4947 (a) (1) of the ~~internal revenue code~~
8 Internal Revenue Code, there shall be distributed, for the purposes specified in the
9 trust instrument, for each taxable year, amounts at least sufficient to avoid liability
10 for the tax imposed by section 4942 (a) of the ~~internal revenue code~~ Internal Revenue
11 Code.

12 **SECTION 124.** 701.11 of the statutes is repealed.

13 **SECTION 125.** 701.115 of the statutes is repealed.

14 **SECTION 126.** 701.12 of the statutes is repealed.

15 **SECTION 127.** Subchapter XII (title) of chapter 701 [precedes 701.1201] of the
16 statutes is created to read:

17 **CHAPTER 701**

18 **SUBCHAPTER XII**

19 **MISCELLANEOUS PROVISIONS**

20 **SECTION 128.** 701.1203 of the statutes is created to read:

21 **701.1203 Article XII, Section 1203 — Electronic records and signatures.**

22 The provisions of this chapter governing the legal effect, validity, or enforceability
23 of electronic records or signatures, and of contracts formed or performed with the use
24 of such records or signatures conform to the requirements of section 102 of the federal
25 Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and

1 supersede, modify, and limit the federal Electronic Signatures in Global and
2 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.

3 **SECTION 129.** 701.1204 of the statutes is created to read:

4 **701.1204 Article XII, Section 1204 — Uniformity of application and**
5 **construction.** This chapter shall be applied and construed to effectuate its general
6 purpose to make uniform the law with respect to the subject of this chapter among
7 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.]

8 **SECTION 130.** 701.1206 (3) of the statutes is created to read:

9 **701.1206 (3)** (a) Except as provided in par. (b), this chapter applies to a judicial
10 proceeding concerning a trust commenced before, on, or after the effective date of this
11 paragraph [LRB inserts date].

12 (b) If a court finds that application of a particular provision of this chapter to
13 a judicial proceeding commenced before the effective date of this paragraph [LRB
14 inserts date], will substantially interfere with the effective conduct of the judicial
15 proceedings or prejudice the rights of the parties, the particular provision of this
16 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,
17 2011 stats., as the court finds to be necessary to prevent interference with the

1 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the
2 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?

3 **SECTION 131.** 701.13 of the statutes is repealed.

4 **SECTION 132.** 701.14 (title) and (1) of the statutes are repealed.

5 **SECTION 133.** 701.14 (2) of the statutes is renumbered 701.0205 and amended
6 to read:

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

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

1 **SECTION 134.** 701.14 (3) of the statutes is renumbered 701.0206 and amended
2 to read:

3 **701.0206 Article II, Section 206 — Attorney for person in military**
4 **service.** At the time of filing a petition for a trust judicial proceeding, involving a
5 trust, the petitioner shall file an affidavit ~~shall be filed~~ setting forth the name of any
6 person interested in the proceeding who is actively engaged in the military service
7 of the United States. Whenever it appears by the affidavit or otherwise that any
8 person in the active military service of the United States is interested in any trust
9 judicial proceeding involving a trust and is not represented by an attorney, or by an
10 attorney-in-fact who is duly authorized to act on the person's behalf in the matter,
11 the court shall appoint an attorney to represent the person and protect the person's
12 interest.

****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."

13 **SECTION 135.** 701.14 (4) of the statutes is repealed.

14 **SECTION 136.** 701.15 of the statutes is repealed.

15 **SECTION 137.** 701.16 of the statutes is repealed.

16 **SECTION 138.** 701.17 of the statutes is repealed.

17 **SECTION 139.** 701.18 of the statutes is repealed.

18 **SECTION 140.** 701.19 of the statutes is repealed.

19 **SECTION 141.** 701.22 of the statutes is renumbered 701.1202 and amended to
20 read:

1 **701.1202 Distributions Article XII, Section 1202 — Distributions in**
2 **kind by trustees; marital bequests.** In case of a division of trust assets into 2 or
3 more trusts or shares, any distribution or allocation of assets as an equivalent of a
4 dollar amount fixed by formula or otherwise shall be made at current fair market
5 values unless the governing trust instrument expressly provided that another value
6 may be used. If the governing trust instrument requires or permits a different value
7 to be used, all assets available for distribution, including cash, shall, unless
8 otherwise expressly provided, be so distributed that the assets, including cash,
9 distributed as such an equivalent will be fairly representative of the net appreciation
10 or depreciation in the value of the available property on the date or dates of
11 distribution. A provision in the governing trust instrument that the trustee may fix
12 values for purposes of distribution or allocation does not of itself constitute
13 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.

14 **SECTION 142.** 701.23 of the statutes is repealed.

15 **SECTION 143.** 701.24 (title) of the statutes is renumbered 701.1206 (title) and
16 amended to read:

17 **701.1206 (title) Applicability Article XII, Section 1206 — Applicability.**

18 **SECTION 144.** 701.24 (1) of the statutes is renumbered 701.1206 (1) and
19 amended to read:

20 701.1206 (1) Except as otherwise provided in sub. (3) (2) and s. 701.19 (9) (a),
21 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23 are~~ ss. 701.0602 and 701.0813, this
22 chapter is applicable to a trust existing on July 1, 1971 the effective date of this

1 subsection [LRB inserts date], as well as a trust created after such date, and shall
2 govern trustees acting under such trusts. If application of any provision of ss. ~~701.01~~
3 ~~to 701.19, 701.21, 701.22, and 701.23~~ this chapter to a trust in existence on August
4 ~~1, 1971~~ the effective date of this subsection [LRB inserts date], is unconstitutional,
5 it shall not affect application of the provision to a trust created after that date.

****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 is 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?

6 **SECTION 145.** 701.24 (2) of the statutes is renumbered 701.1206 (2) and
7 amended to read:

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

1 701.1125 (2) (a), that begins on or after May 17, 2005 the effective date of this
2 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.

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

3 **SECTION 146.** 701.24 (3) of the statutes is repealed.

4 **SECTION 147.** 701.25 of the statutes is renumbered 701.1205 and amended to
5 read:

6 **701.1205 Applicability Article XII, Section 1205 — Applicability of**
7 **general transfers at death provisions.** Chapter 854 applies to transfers at death
8 under trust instruments.

9 **SECTION 148.** 701.26 of the statutes is repealed.

10 **SECTION 149.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

11 **SECTION 150.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
12 to read:

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

15 **SECTION 151.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
16 to read:

17 702.02 (4) “Donor” means the person who creates or reserves the power;
18 “donee” means the person in whom the power is created or reserved; and “appointee”
19 means the person to whom an interest is appointed of appointment.

20 **SECTION 152.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
21 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.

8 **SECTION 153.** 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~~
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.

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

18 **SECTION 154.** 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, 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 **SECTION 155.** 702.01 (6) of the statutes is repealed.

4 **SECTION 156.** 702.02 (1) of the statutes is created to read:

5 702.02 (1) "Appointee" means the person to whom an interest is appointed.

6 **SECTION 157.** 702.02 (3) of the statutes is created to read:

7 702.02 (3) "Donee" means the person in whom the power of appointment is
8 created or reserved.

9 **SECTION 158.** 702.03 of the statutes is amended to read:

10 **702.03 Manifestation of intent to exercise powers a power of**
11 **appointment.** (1) Unless the person who executed it had a contrary intention, if
12 a governing instrument, as defined in s. 854.01 (2), or an inter vivos governing
13 instrument, as defined in s. 700.27 (1) (c), creates a power of appointment that
14 expressly requires that the power be exercised by any type of reference to the power
15 or its source, the donor's intention in requiring the reference is presumed to be to
16 prevent an inadvertent exercise of the power of appointment. Extrinsic evidence, as
17 defined in s. 854.01 (1), may be used to construe the intent.

18 (2) In the case of other powers of appointment, an instrument manifests an
19 intent to exercise the power of appointment if the instrument purports to transfer
20 an interest in the appointive property which the donee would have no power to
21 transfer except by virtue of the power of appointment, even though the power of
22 appointment is not recited or referred to in the instrument, or if the instrument
23 either expressly or by necessary implication from its wording interpreted in light of
24 the circumstances surrounding its drafting and execution manifests an intent to
25 exercise the power of appointment. If there is a general power of appointment

1 exercisable by will with no gift in default in the creating instrument, a residuary
2 clause or other general language in the donee's will purporting to dispose of all of the
3 donee's estate or property operates to exercise the power of appointment in favor of
4 the donee's estate, but in all other cases such a clause or language does not in itself
5 manifest an intent to exercise a power exercisable by will.

6 **SECTION 159.** 702.05 of the statutes is amended to read:

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

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

19 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
20 person is required by the donor for the exercise of a power of appointment, such
21 consent must be expressed in the instrument exercising the power of appointment
22 or in a separate written instrument, signed in either case by the persons whose
23 consent is required. If any person whose consent is required dies or becomes legally
24 incapable of consenting, the power of appointment may be exercised by the donee

1 without the consent of that person unless the donor has manifested a contrary intent
2 in the instrument creating the power of appointment.

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

9 **SECTION 160.** 702.05 (5) of the statutes is created to read:

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

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

18 (b) Some other documentation of the donee purporting to exercise the power of
19 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.

20 **SECTION 161.** 702.07 of the statutes is amended to read:

21 **702.07 Powers Power of appointment to be construed as exclusive.** The
22 donee of any power of appointment may appoint the whole or any part of the
23 appointive assets to any one or more of the permissible appointees and exclude

1 others, except to the extent that the donor specifies either a minimum share or
2 amount to be appointed to each permissible appointee or to designated appointees,
3 or a maximum share or amount appointable to any one or more appointees.

4 **SECTION 162.** 702.08 of the statutes is amended to read:

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

8 **SECTION 163.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
9 amended to read:

10 **702.09 (title) Release of powers a power of appointment.** (1) ~~Except as~~
11 Unless the creating instrument expressly provides that the power of appointment
12 cannot be released or expressly restricts the time, manner, or scope of release, the
13 donee of any power of appointment may do any of the following:

14 (a) At any time completely release the donee's power; of appointment.

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

17 1. As to the whole or any part of the property which is subject thereto;.

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

20 3. So as to limit in any other respect the extent to or manner in which ~~it~~ the
21 power of appointment may be exercised.

22 **(3)** (a) Delivery to any person specified in the creating instrument;.

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

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

3 **SECTION 164.** 702.11 of the statutes is amended to read:

4 **702.11 Irrevocability of creation, exercise and release of powers a**
5 **power of appointment.** The creation, exercise or release of a power of appointment
6 is irrevocable unless the power to revoke is reserved in the creation, exercise or
7 release of the power of appointment.

8 **SECTION 165.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
9 are amended to read:

10 **702.13 (title) Recording instruments relating to powers a power of**
11 **appointment.** (1) (intro.) Any of the following instruments relating to powers a
12 power of appointment is entitled to be recorded as a conveyance upon compliance
13 with s. 706.05 (1):

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

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

16 (c) A disclaimer;.

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

19 **SECTION 166.** 702.15 (intro.), (1) and (2) of the statutes are amended to read:

20 **702.15 Disposition when a special power of appointment is**
21 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise
22 effectively the special power of appointment, the interests which might have been
23 appointed under the special power of appointment pass in one of the following ways:

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

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

7 **SECTION 167.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
8 amended to read:

9 702.15 (3) (a) If Except as provided in par. (b), if the creating instrument
10 contains no express gift in default and clearly indicates that the permissible
11 appointees are to take only if the donee exercises the special power of appointment,
12 then by reversion to the donor or the donor’s estate. ~~But if~~

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

18 **SECTION 168.** 702.17 (1), (2), (3) and (5) of the statutes are amended to read:

19 702.17 (1) GENERAL POLICY. If the donee has ~~either a general power or an~~
20 ~~unclassified power which is unlimited as to permissible appointees except for~~
21 ~~exclusion of the donee, the donee’s estate, the donee’s creditors and the creditors of~~
22 ~~the donee’s estate, or a substantially similar exclusion of appointment~~, any interest
23 which the donee has power to appoint or has appointed is to be treated as property
24 of the donee for purposes of satisfying claims of the donee’s creditors, as provided in
25 this section.

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

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

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

22 **SECTION 169.** 702.21 of the statutes is amended to read:

23 **702.21 Applicability of chapter.** The provisions of this chapter are
24 applicable to any power of appointment existing on May 16, 1965, as well as a power
25 of appointment created after such date.

1 **SECTION 170.** 766.575 (1) (e) of the statutes is amended to read:

2 766.575 (1) (e) “Trustee” has the meaning given under s. ~~701.01(8)~~ 701.0103
3 (25).

 ****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?

4 **SECTION 171.** 840.01 (1) of the statutes is amended to read:

5 840.01 (1) Except as provided in sub. (2), “interest in real property” includes
6 estates in, powers of appointment under ch. 702 over, present and future rights to,
7 title to, and interests in real property, including, without limitation by enumeration,
8 security interests and liens on land, easements, profits, rights of appointees under
9 powers of appointment, rights under covenants running with the land, powers of
10 termination, and homestead rights. The interest may be an interest that was
11 formerly designated legal or equitable. The interest may be surface, subsurface,
12 suprasurface, riparian, or littoral.

13 **SECTION 172.** 853.17 (2) of the statutes is amended to read:

14 853.17 (2) This section does not prevent the court from requiring the contract
15 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
16 it apply to naming a testamentary trustee as designated by a life insurance policy
17 ~~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?

18 **SECTION 173.** 853.32 (3) of the statutes is amended to read:

19 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
20 will provision that purports to transfer or appoint property to a living trust are
21 governed by s. ~~701.08~~ 701.0606.

22 **SECTION 174.** 853.34 (3) of the statutes is created to read:

1 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
2 created by a testator's will is designated as the beneficiary of a transfer under
3 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
4 or at the death of a 3rd party, transfer of those assets to the trustee may not cause
5 the transferred assets to be included in the property administered as part of the
6 testator's estate. The transferred assets may not be subject to taxes, debts, or
7 charges enforceable against the testator's estate to any greater extent than if the
8 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...?"

9 **SECTION 175.** 853.61 (2) (a) of the statutes is amended to read:

10 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
11 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?

12 **SECTION 176.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
13 of the statutes are amended to read:

14 854.13 (1) (c) "Power of appointment" has the meaning given in s. 702.01 (4)
15 702.02 (6).

16 (2) (a) 2. A person who is an heir, recipient of property, or beneficiary under a
17 governing instrument, donee of a power of appointment created by a governing
18 instrument, appointee under a power of appointment exercised by a governing
19 instrument, taker in default under a power of appointment created by a governing
20 instrument, or person succeeding to disclaimed property may disclaim any property,

1 including contingent or future interests or the right to receive discretionary
2 distributions, by delivering a written instrument of disclaimer under this section.

3 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
4 that a partial disclaimer of property passing by a governing instrument or by the
5 exercise of a power of appointment may not be made if partial disclaimer is expressly
6 prohibited by the governing instrument or by the instrument exercising the power
7 of appointment.

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

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

16 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
17 the governing instrument provides otherwise, either expressly or as construed from
18 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
19 before the decedent. If the disclaimed interest is a remainder contingent on
20 surviving to the time of distribution, the disclaimed interest passes as if the
21 disclaimant had died immediately before the time for distribution. If the disclaimant
22 is an appointee under a power of appointment exercised by a governing instrument,
23 the disclaimed property devolves as if the disclaimant had died before the effective
24 date of the exercise of the power of appointment. If the disclaimant is a taker in
25 default under a power of appointment created by a governing instrument, the

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

3 (10) (a) *Subsequent interest not held by disclaimant.* Unless the governing
4 instrument provides otherwise, either expressly or as construed from extrinsic
5 evidence, upon the disclaimer of a preceding interest, a subsequent interest not held
6 by the disclaimant and limited to take effect in possession or enjoyment after the
7 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 at the end of this sentence for accuracy.

13 SECTION 177. 854.23 (5) (b) of the statutes is amended to read:

14 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
15 a financial institution under ss. ~~701.19 (11)~~ **[missing x-ref.]** and 710.05 and chs. 112
16 and 705 a financial institution is not liable for having transferred an account to a
17 beneficiary designated in a governing instrument who, under this chapter, is not
18 entitled to the account, or for having taken any other action in reliance on the
19 beneficiary's apparent entitlement under the terms of a governing instrument,
20 regardless of whether the financial institution received written notice of a claimed
21 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..."?

22 SECTION 178. 859.18 (5) (a) of the statutes is amended to read:

1 859.18 (5) (a) The availability of a trust described under s. ~~701.07(3)~~ **[missing**
2 **x-ref.]** is subject to s. ~~701.07(3)~~ **[missing x-ref.]**.

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

3 **SECTION 179.** 859.18 (5) (b) of the statutes is amended to read:

4 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
5 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

6 **SECTION 180.** 861.11 (5) (b) of the statutes is amended to read:

7 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
8 a financial institution under ss. ~~701.19(11)~~ **[missing x-ref.]** and 710.05 and chs. 112
9 and 705 a financial institution is not liable for having transferred an account
10 included in the augmented deferred marital property estate under s. 861.03 to a
11 beneficiary designated in a governing instrument, or for having taken any other
12 action in reliance on the beneficiary's apparent entitlement under the terms of a
13 governing instrument, regardless of whether the financial institution received
14 written notice of an intent to file, or the filing of, a petition for the deferred marital
15 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..."?

16 **SECTION 181.** 865.08 (6) of the statutes is amended to read:

17 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
18 of trust shall be issued by the probate registrar to the trustee upon admission of the
19 will to informal probate at the same time that letters are granted to the personal
20 representative. The probate registrar shall determine if bond shall be required and,
21 if so, the amount thereof, and for such purpose the probate registrar shall have the
22 authority granted to the court by, and shall proceed pursuant to s. ~~701.16(2)~~

1 **[missing x-ref.]**. Thereafter, the trustee shall continue to be interested in the
2 estate, and beneficiaries of the testamentary trust shall cease to be interested in the
3 estate except under s. 851.21 (3). The trust shall be administered under supervision
4 of the court under ch. 701.

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

5 **SECTION 182.** 867.03 (2g) of the statutes is amended to read:

6 **867.03 (2g) OBLIGATION OF AFFIANT.** By accepting the decedent's property under
7 this section the heir, trustee, or guardian assumes a duty to apply the property
8 transferred for the payment of obligations according to priorities established under
9 s. 859.25 and to distribute any balance to those persons designated in the
10 appropriate governing instrument, as defined in s. 854.01, of the decedent or if there
11 is no governing instrument, according to the rules of intestate succession under ch.
12 852. An heir or guardian may publish a notice to creditors in the same manner and
13 with the same effect as a trustee under s. ~~701.065~~ 701.0605. This subsection does
14 not prohibit any appropriate person from requesting administration of the
15 decedent's estate under s. 856.07 or ch. 865.

16 **SECTION 183.** 879.03 (2) (c) of the statutes is amended to read:

17 **879.03 (2) (c)** The attorney general where a charitable trust, as defined in s.
18 ~~701.01 (2)~~ 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

19 **SECTION 184.** 879.47 of the statutes is amended to read:

20 **879.47 Papers, preparation and filing.** The attorney for any person
21 desiring to file any paper in court is responsible for the preparation of the paper.
22 Except as provided in s. ~~701.16 (4) (d)~~ **[missing x-ref.]**, all papers shall be legibly
23 written on substantial paper and shall state the title of the proceeding in which they
24 are filed and the character of the paper. Either uniform forms or

1 computer-generated forms, if the forms exactly recreate the original forms in
2 wording, format and substance, shall be used. If papers are not so written or if
3 uniform forms or computer-generated forms that exactly recreate the original forms
4 in wording, format and substance are not used, the court may refuse to receive and
5 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?

6 **SECTION 185. Effective date.**

7 (1) 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.

8

(END)

d-note
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/P1dn
FFK:jld:ph

October 9, 2012

To Senator Risser:

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 part of the Uniform Trust Code. Finally, this draft does not include subch. XI of ch. 701, or changes to ch. 881, both of which were drafted as separate bills. Those bills will be incorporated into this bill at a later date.

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

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