

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

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(Request Made By: Fern Knapp) (Date: 2/12/13)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"

(exception: companion bills)


Appendix B

 Please transfer the drafting file for
2011 LRB _____ (For: Rep. / Sen. _____)

to the drafting file for
2013 LRB 1110 (For: Rep. / Sen. LRB)

Done MMB

-----OR-----

 Please copy the drafting file for
2013 LRB 1110 / PI (include the version) (For: Rep. / Sen. LRB)

and place it in the drafting file for
2013 LRB 0010 (For: Rep. / Sen. Risser)

 Are These "Companion Bills" ?? ... Yes **No**

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: _____



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1110/P1
FFK:jld:jf

Insert to - 0010/P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 701.12 (3), 701.20 (title), 701.20 (2) (intro.), 701.20 (2) (i), 701.20
2 (2) (L), (m) and (n), 701.20 (4c) (b) 3. a., b. and c., 701.20 (4g) (a) 1. c., 701.20 (18)
3 (a), 701.20 (21) (title), 701.20 (29) (c) 2. b., 701.20 (29) (d), 701.20 (31) and 701.24
4 (1) and (2); **to renumber** 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (e), 701.20 (2)
5 (f), 701.20 (2) (g), 701.20 (2) (j), 701.20 (2) (k), 701.20 (4c) (b) 1., 701.20 (4c) (b)
6 2., 701.20 (4g) (a) 1. a., 701.20 (4g) (a) 1. e., 701.20 (4g) (a) 2. b., 701.20 (4m) (b),
7 701.20 (4m) (d), 701.20 (29) (a) and 701.20 (29) (b); **to renumber and amend**
8 701.20 (2) (b), 701.20 (2) (d), 701.20 (2) (h), 701.20 (3), 701.20 (4), 701.20 (4c)
9 (title), 701.20 (4c) (b) (intro.), 701.20 (4c) (b) 3. (intro.), 701.20 (4c) (b) 4., 701.20
10 (4c) (c), 701.20 (4c) (d), 701.20 (4c) (e), 701.20 (4c) (f), 701.20 (4c) (g), 701.20 (4g)
11 (title), 701.20 (4g) (a) (intro.), 701.20 (4g) (a) 1. (intro.), 701.20 (4g) (a) 1. b.,
12 701.20 (4g) (a) 1. d., 701.20 (4g) (a) 2. (intro.), 701.20 (4g) (a) 2. a., 701.20 (4g)
13 (b), (c), (d) and (e), 701.20 (4j), 701.20 (4k), 701.20 (4m) (title), 701.20 (4m) (a),
14 701.20 (4m) (am), 701.20 (4m) (c), 701.20 (5), 701.20 (6), 701.20 (7), 701.20 (8),
15 701.20 (9) (a), 701.20 (10), 701.20 (11), 701.20 (12), 701.20 (13), 701.20 (14),

1 701.20 (15), 701.20 (16), 701.20 (17), 701.20 (18) (title), 701.20 (18) (b), 701.20
 2 (18) (c), 701.20 (18) (d), 701.20 (18) (e), 701.20 (19), 701.20 (20), 701.20 (21),
 3 701.20 (22), 701.20 (23), 701.20 (24), 701.20 (25), 701.20 (26), 701.20 (27),
 4 701.20 (28), 701.20 (29) (title), 701.20 (29) (c) (intro.), 701.20 (29) (c) 1., 701.20
 5 (30) and 701.21; **to consolidate, renumber and amend** 701.20 (29) (c) 2.
 6 (intro.) and a.; **to amend** 23.0918 (2), 25.70 and 861.015 (2); and **to create**
 7 subchapter XI (title) of chapter 701 [precedes 701.1101], 701.1101, 701.1102
 8 (intro.), 701.1102 (1g), 701.1123 (1), 701.1123 (4), 701.1126 (title) and 701.1134
 9 (3) (c) and (d) and (4) of the statutes; **relating to:** Uniform Principal and Income
 10 Act.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

11 **SECTION 1.** 23.0918 (2) of the statutes is amended to read:

12 23.0918 (2) Unless the natural resources board determines otherwise in a
 13 specific case, only the income from the gifts, grants, or bequests in the fund is
 14 available for expenditure. The natural resources board may authorize expenditures
 15 only for preserving, developing, managing, or maintaining land under the
 16 jurisdiction of the department that is used for any of the purposes specified in s. 23.09
 17 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,
 18 principal and income are determined as provided under s. ~~701.20~~ subch. XI of ch. 701.

19 **SECTION 2.** 25.70 of the statutes is amended to read:



Ins
3-3

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cont

language because in many places in the subchapter the term assets is modified to indicate whether that reference is to a trust or unitrust. For example, with the suggested definition the phrase "trust assets" translates to "trust property of a trust or estate." Please let me know if this definition is not consistent with your intent.

1 SECTION 7. 701.1123 (1) of the statutes is created to read:

2 701.1123 (1) In this section:

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

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

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

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

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

19 SECTION 8. 701.1123 (4) of the statutes is created to read:

20 701.1123 (4) (a) For purposes of this subsection, "trustee" means a trustee of
21 a trust for which an election to qualify for a marital deduction under section 2056 (b)
22 (7) or 2523 (f) of the Internal Revenue Code has been made, or a trust that qualified



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cont

1 for the marital deduction under section 2056 (b) (5) or 2523 (e) of the Internal
2 Revenue Code.

3 (b) Notwithstanding sub. (3), a trustee shall determine plan income for an
4 accounting period as if the plan were a trust subject to this subchapter. If the trustee
5 cannot determine the plan income, the plan income is 4 percent of the total present
6 value of the trust's income in the plan on the first day of the accounting period, based
7 on reasonable actuarial assumptions as determined by the trustee.

8 (c) Notwithstanding subs. (2) and (3), a trustee shall allocate a payment from
9 a plan to income to the extent of the plan income and distribute that amount to the
10 surviving spouse. The trustee shall allocate the balance of the payment to principal.
11 Upon the request of the surviving spouse, the trustee shall allocate principal to
12 income to the extent the plan income exceeds payments made from the plan to the
13 trust during the accounting period.

14 (d) Upon the request of the surviving spouse of the settlor, a trustee shall
15 demand that a person administering a plan distribute the plan income to the trust.

16 SECTION 9. 701.1126 (title) of the statutes is created to read:

17 701.1126 (title) Article XI, Section 1126 — Timber.

18 SECTION 10. 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

19 701.1134 (3) (c) Proportionately from principal and income to the extent that
20 receipts from the entity are allocated to both income and principal.

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

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

(end ins 112-24)

Ans
116-6
3
(end of p. 35)

1

~~SECTION 11. 701.12 (3) of the statutes is repealed.~~

2

SECTION 12. 701.20 (title) of the statutes is repealed.

3

SECTION 13. 701.20 (2) (intro.) of the statutes is repealed.

4

SECTION 14. 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

5

SECTION 15. 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and

6

amended to read:

7

701.1102 (1m) "Beneficiary" Notwithstanding s. 701.0103 (3), "beneficiary"

8

means a person who has a beneficial interest in a trust or an estate and includes, in

9

the case of a decedent's estate, an heir, a legatee, and a devisee and, in the case of a

10

trust, an income beneficiary and a remainder beneficiary.

11

SECTION 16. 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

12

SECTION 17. 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and

13

amended to read:

14

701.1102 (3) "Income" means money or property that a fiduciary receives as

15

current return from a principal asset. "Income" includes a portion of receipts from

16

a sale, exchange, or liquidation of a principal asset, to the extent provided in subs.

17

(10) ss. 701.1115 to (24) 701.1129.

18

SECTION 18. 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

19

SECTION 19. 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

20

SECTION 20. 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

21

SECTION 21. 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and

22

amended to read:

23

701.1102 (7) "Net income" means the total receipts allocated to income during

24

an accounting period, minus the disbursements made from income during the period,



1 plus or minus transfers under ~~this section~~ subch. XI to or from income during the
2 period.

3 SECTION 22. 701.20 (2) (i) of the statutes is repealed.

4 SECTION 23. 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

5 SECTION 24. 701.20 (2) (k) of the statutes is renumbered 701.1102 (9).

6 SECTION 25. 701.20 (2) (L), (m) and (n) of the statutes are repealed.

7 SECTION 26. 701.20 (3) of the statutes is renumbered 701.1103 and amended

8 to read:

9 NO
B

~~701.1103 Fiduciary Article XI, Section 1103 -- Fiduciary duties; general~~

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

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

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

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

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



1 (2) In exercising the power to adjust under ~~sub. (4) (a)~~ s. 701.1104 (1) or a
 2 discretionary power of administration regarding a matter within the scope of this
 3 ~~section subchapter~~, whether granted by the terms of a trust, a will, or this ~~section~~
 4 subchapter, a fiduciary shall administer a trust or estate impartially, based on what
 5 is fair and reasonable to all of the beneficiaries, except to the extent that the terms
 6 of the trust or the will clearly manifest an intention that the fiduciary shall or may
 7 favor one or more of the beneficiaries. A determination in accordance with this
 8 ~~section subchapter~~ is presumed to be fair and reasonable to all of the beneficiaries.

9 SECTION 27. 701:20 (4) of the statutes is renumbered 701.1104, and 701.1104
 10 (title), (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to
 11 read:

NO
B

12 **701.1104 (title) Trustee's Article XI, Section 1104 — Trustee's power to**

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

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

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

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

24 (4) If ~~par. (e) 5., 6.~~ sub. (3) (e), (f), or 7. (g) applies to a trustee and there is more
 25 than one trustee, a cotrustee to whom the provision does not apply may make the

1 adjustment unless the terms of the trust do not permit the exercise of the power by
2 that cotrustee.

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

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

15 ^{Fix component} SECTION 28. 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title) ^{and}
16 amended to read:

17 701.1105 (title) Notice Article XI, Section 1105 — Notice to beneficiaries
18 of proposed action.

19 SECTION 29. 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
20 (intro.) and amended to read:

21 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of
22 a proposed action under ~~sub. (4) (a)~~ s. 701.1104 (1) by providing a written notice that
23 complies with all of the following:

24 SECTION 30. 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

25 SECTION 31. 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).



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cont

1 SECTION 32. 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
2 (1) (c) and amended to read:

3 701.1105 (1) (c) Is given to all sui-juris qualified beneficiaries who are any of
4 the following:

5 SECTION 33. 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

6 SECTION 34. 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
7 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

8 701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~
9 section and discloses the following information:

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

12 SECTION 35. 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
13 amended to read:

14 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
15 section, the trustee is not required to give notice to a sui-juris qualified beneficiary
16 who consents to the proposed action in writing at any time before or after the
17 proposed action is taken.

18 SECTION 36. 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
19 amended to read:

20 701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action
21 by giving a written objection to the trustee within the time specified in the notice
22 under ~~par. (b) 4. e. sub. (1) (d) 3.~~

23 SECTION 37. 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
24 amended to read:



1 701.1105 (4) A trustee may decide not to take a proposed action after the
2 trustee receives a written objection to the proposed action or at any other time for any
3 other reason. In that case, the trustee shall give written notice to the sui-juris
4 qualified beneficiaries of the decision not to take the proposed action.

5 **SECTION 38.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
6 amended to read:

7 701.1105 (5) If a trustee receives a written objection to a proposed action within
8 the time specified in the notice under ~~par. (b) 4. e. sub. (1) (d) 3.~~, either the trustee
9 or the qualified beneficiary making the written objection may petition the court to
10 have the proposed action approved, modified, or prohibited. In the court proceeding,
11 the qualified beneficiary objecting to the proposed action has the burden of proving
12 that the proposed action should be modified or prohibited. A qualified beneficiary
13 who did not make the written objection may oppose the proposed action in the court
14 proceeding.

15 **SECTION 39.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
16 amended to read:

17 701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under
18 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
19 ~~sub. (4) s. 701.1104~~.

20 Fix → **SECTION 40.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title)
21 component and amended to read:

22 **701.1106 (title) Conversion Article XI, Section 1106 — Conversion to**
23 **unitrust.**

24 **SECTION 41.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
25 (intro.) and amended to read:



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

3 **SECTION 42.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
4 (1) (a) (intro.) and amended to read:

5 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
6 request of a qualified beneficiary, if all of the following apply:

7 **SECTION 43.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1) (a)
8 1.

9 **SECTION 44.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1) (a)
10 2. and amended to read:

11 701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided
12 in ~~sub. (4e) (b)~~ s. 701.1105 (1) of the trustee's intention to convert the trust to a
13 unitrust, and the notice advises how the unitrust will operate, including the fixed
14 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
15 ~~par. (e) 4.~~ sub. (3) (d) that the trustee intends to follow.

16 **SECTION 45.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

17 **SECTION 46.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1) (a)
18 3. and amended to read:

19 701.1106 (1) (a) 3. Every sui-juris qualified beneficiary consents to the
20 conversion to a unitrust in a writing delivered to the trustee.

21 **SECTION 47.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
22 4.

23 **SECTION 48.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
24 (1) (b) (intro.) and amended to read:



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

3 **SECTION 49.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1) (b)
4 1. and amended to read:

5 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
6 under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust
7 to a unitrust, and the notice advises how the unitrust will operate, including the fixed
8 percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under
9 ~~par. (e) 4. sub. (3) (d)~~ that will be requested.

10 **SECTION 50.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1) (b)
11 2.

12 **SECTION 51.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
13 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
14 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
15 amended to read:

16 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
17 ~~(a) 1. sub. (1) (a)~~ and in determining the fixed percentage under sub. (3) (b) 1., the
18 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
19 to (i).

20 **(3) (a)** If a trust is converted to a unitrust under this ~~subsection~~ section by the
21 trustee or a court, notwithstanding ~~sub. (3) (a) 1. s. 701.1103 (1) (a)~~ and ~~4. (d)~~ and
22 ~~s. 701.21~~ 701.1136 (4) the trustee shall make distributions in accordance with the
23 ~~creating trust~~ instrument, except that any reference in the ~~creating trust~~ instrument
24 to "income" means a fixed percentage of the net fair market value of the unitrust's
25 assets, whether such assets otherwise would be considered income or principal under



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CONT

1 this ~~section~~ subchapter, averaged over a preceding period determined by the trustee,
2 which is at least 3 years but not more than 5 years, or the period since the original
3 trust was created, whichever is less.

4 (b) 1. Subject to subd. 2. ~~b.~~, if the trust is converted to a unitrust under ~~par. (a)~~
5 ~~1. sub. (1) (a)~~, the trustee shall determine the fixed percentage to be applied under
6 ~~subd. 1. par. (a)~~, and the notice under ~~par. (a) 1. b. sub. (1) (a) 2.~~ must state the fixed
7 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b)~~, the
8 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a)~~.

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

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

14 1. Convert the unitrust back to the original trust under the creating trust
15 instrument.

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

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

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

23 2. Ordinary income for federal income tax purposes that is not net income
24 under ~~subd. 6-a. 1.~~



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cont

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

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

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

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

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

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

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

20 (5) A trustee may release the power conferred by ~~par. (a) 1.~~ sub. (1) (a) if the
21 trustee is uncertain about whether possessing or exercising the power will cause a
22 result described in ~~par. (d) 1. b.~~ sub. (4) (a) 2. to f. 6. or if the trustee determines that
23 possessing or exercising the power will or may deprive the trust of a tax benefit or
24 impose a tax burden not described in ~~par. (d) 1.~~ sub. (4) (a). The release may be



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1 permanent or for a specified period, including a period measured by the life of an
2 individual.

3 SECTION 52. 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107

4 (title), (1) and (2) (e), (f) 2., (g) and (h), as renumbered, are amended to read:

5 NO B 701.1107 (title) **Express Article XI, Section 1107 — Express unitrusts.**

6 NO A (1) In this subsection section, “express unitrust” means any trust that by its
7 governing instrument requires the distribution at least annually of a unitrust
8 amount equal to a fixed percentage of the net fair market value of the trust’s assets,
9 valued at least annually, other than a trust solely for charitable purposes or a
10 charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
11 Revenue Code.

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

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

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

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



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1 SECTION 53. 701.20 (4k) of the statutes is renumbered 701.1108 and amended
2 to read:

plain No strike

3 701.1108 ~~Power~~ Article XI, Section 1108 — Power to treat capital gains
4 as part of a distribution. Unless prohibited by the governing instrument will or
5 trust, a trustee fiduciary may cause gains from the sale or exchange of estate or trust
6 assets property, as determined for federal income tax purposes, to be taxed for federal
7 income tax purposes as part of a distribution of income that has been increased by
8 an adjustment from principal to income under sub. (4) s. 701.1104, of a unitrust
9 distribution, of a fixed annuity distribution, or of a principal distribution to a
10 beneficiary.

11 *Fix component* SECTION 54. 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title)
12 and amended to read:

13 701.1109 (title) Judicial Article XI, Section 1109 — Judicial review of
14 discretionary power.

15 SECTION 55. 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
16 amended to read:

17 701.1109 (1) Nothing in this section ~~section~~ subchapter creates a duty to make an
18 adjustment under sub. (4) s. 701.1104 or to convert a trust to a unitrust under sub.
19 (4g) s. 701.1106. Unless it determines that the decision to make an adjustment or
20 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not
21 grant relief from any decision a fiduciary makes regarding the exercise of a
22 discretionary power conferred by sub. (4) s. 701.1104 or (4g) 701.1106.

23 SECTION 56. 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
24 amended to read:



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1 701.1109 (2) An action taken under sub. (4) s. 701.1104 or (4g) 701.1106 is not
2 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed
3 action under sub. (4e) s. 701.1105 and did not receive a timely written objection to
4 the notice. It is not an abuse of discretion not to exercise the power to adjust under
5 sub. (4) s. 701.1104 or to convert under sub. (4g) s. 701.1106.

6 SECTION 57. 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

7 SECTION 58. 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and
8 701.1109 (4) (c), as renumbered, is amended to read:

9 701.1109 (4) (c) To the extent that the court is unable, after applying subds. 1.
10 pars. (a) and 2. (b), to place the beneficiaries, the trust, or both in the positions that
11 they would have occupied had the discretion not been abused, the court may order
12 the fiduciary to pay an appropriate amount from its own funds to one or more of the
13 beneficiaries, the trust, or both.

14 SECTION 59. 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

15 SECTION 60. 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110

16 (title), (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

17 **701.1110 (title) Determination Article XI, Section 1110 — Determination**

18 **and distribution of net income.** (1) A fiduciary of an estate or of a terminating

19 income interest shall determine the amount of net income and net principal receipts

20 received from property specifically given to a beneficiary under the rules in subs. (7)

21 ss. 701.1112 to (30) 701.1135 that apply to trustees and the rules in par. (e) sub. (5).

22 The fiduciary shall distribute the net income and net principal receipts to the

23 beneficiary who is to receive the specific property.



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1 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's
2 estate or a terminating income interest under the rules in ~~subs. (7)~~ ss. 701.1112 to
3 (30) 701.1135 that apply to trustees and by:

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

14 (4) A fiduciary shall distribute the net income remaining after distributions
15 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.
16 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary
17 amount determined by a pecuniary formula related to a transfer tax.

18 (5) A fiduciary may not reduce principal or income receipts from property
19 described in ~~par. (a)~~ sub. (1) because of a payment described in ~~sub. (25)~~ s. 701.1130
20 or ~~(26)~~ 701.1131 to the extent that the will, the terms of the trust, or applicable law
21 requires the fiduciary to make the payment from assets other than the property or
22 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd
23 party. The net income and principal receipts from the property are determined by
24 including all of the amounts the fiduciary receives or pays with respect to the
25 property, whether those amounts accrued or became due before, on, or after the date

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1 of a decedent's death or an income interest's terminating event, and by making a
2 reasonable provision for amounts that the fiduciary believes the estate or
3 terminating income interest may become obligated to pay after the property is
4 distributed.

5 SECTION 61. 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111

6 (title), (1), (2) (d) and (4), as renumbered, are amended to read:

7 **701.1111 (title) Distribution Article XI, Section 1111 — Distribution to**

8 **residuary and remainder beneficiaries.** (1) Each beneficiary described in sub-

9 (5) (d) s. 701.1110 (4) is entitled to receive a portion of the net income equal to the
10 beneficiary's fractional interest in undistributed principal assets, using values as of
11 the distribution date. If a fiduciary makes more than one distribution of assets to
12 beneficiaries to whom this ~~subsection~~ section applies, each beneficiary, including one
13 who does not receive part of the distribution, is entitled, as of each distribution date,
14 to the net income the fiduciary has received after the date of death or terminating
15 event or earlier distribution date but has not distributed as of the current
16 distribution date.

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

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

24 SECTION 62. 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112

25 (title) and (3), as renumbered, ~~are~~ ^{is} amended to read:



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^{NO (B)} 701.1112 (title) **When Article XI, Section 1112 — When right to income**

begins and ends.

^{NO #} (3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under par. (d) sub. (4), even if there is an intervening period of administration to wind up the preceding income interest.

SECTION 63. 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113

(title), (1) and (3), as renumbered, are amended to read:

^{NO (B)} 701.1113 (title) **Apportionment Article XI, Section 1113 —**

Apportionment of receipts and disbursements when decedent dies or income interest begins. (1) A trustee shall allocate to principal an income receipt

or disbursement other than one to which sub. (5) (a) s. 701.1110 (1) applies if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this section. Distributions to shareholders or other owners from an entity, as defined in sub. (10) s. 701.1115, are due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

SECTION 64. 701.20 (9) (a) of the statutes is renumbered 701.1114, and 701.1114

(title) and (1), as renumbered, ^{IS} are amended to read:

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701.1114 (title) **Apportionment Article XI, Section 1114 —**

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

SECTION 65. 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115

(1), (2) and (5), as renumbered, is amended to read:

701.1115 (title) **Character Article XI, Section 1115 — Character of**

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

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

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

SECTION 66. 701.20 (11) of the statutes is renumbered 701.1116 and amended
to read:

701.1116 **Distribution Article XI, Section 1116 — Distribution from**
trust or estate. A trustee shall allocate to income an amount received as a

plain
No strike



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1 distribution of income from a trust or an estate in which the trust has an interest
2 other than a purchased interest, and shall allocate to principal an amount received
3 as a distribution of principal from such a trust or estate. If a trustee purchases an
4 interest in a trust that is an investment entity, or a decedent or donor transfers an
5 interest in such a trust to a trustee, sub. (10) s. 701.1115 or (24) 701.1129 applies to
6 a receipt from the trust.

7 SECTION 67. 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117

8 (title) and (3) (g), as renumbered, ^{is} (are) amended to read:

9 ^{No (B)} → 701.1117 (title) **Business Article XI, Section 1117 — Business and other**
10 **activities conducted by trustee.**

11 ^{No (B)} (3) (g) Activities to which sub. (23) s. 701.1128 applies.

12 SECTION 68. 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118

13 (title), (1), (2), (3) and (6), as renumbered, are amended to read:

14 ^{No (B)} → 701.1118 (title) **Principal Article XI, Section 1118 — Principal receipts.**

15 ²³ (1) To the extent not allocated to income under this section subchapter, assets
16 received from a transferor during the transferor's lifetime, a decedent's estate, a
17 trust with a terminating income interest, or a payer under a contract naming the
18 trust or its trustee as beneficiary.

19 (2) Money or other property received from the sale, exchange, liquidation, or
20 change in form of a principal asset, including realized profit, subject to subs. (10) ss.
21 701.1115 to (24) 701.1129.

22 (3) Amounts recovered from 3rd parties to reimburse the trust because of
23 disbursements described in sub. (26) (a) 7. s. 701.1131 (1) (g) or for other reasons to
24 the extent not based on the loss of income.

25 (6) Other receipts as provided in subs. (17) ss. 701.1122 to (24) 701.1129.

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1 SECTION 69. 701.20 (14) of the statutes is renumbered 701.1119 and amended
2 to read:

3 **701.1119 Rental Article XI, Section 1119 — Rental property.** To the extent
4 that a trustee accounts for receipts from rental property in accordance with this
5 ~~subsection~~ section, the trustee shall allocate to income an amount received as rent
6 of real or personal property, including an amount received for cancellation or renewal
7 of a lease. An amount received as a refundable deposit, including a security deposit
8 or a deposit that is to be applied as rent for future periods, must be added to principal
9 and held subject to the terms of the lease and is not available for distribution to a
10 beneficiary until the trustee's contractual obligations have been satisfied with
11 respect to that amount.

12 SECTION 70. 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120
13 (title) and (3), as renumbered, ^{of 15} are amended to read:

14 **701.1120 (title) Obligation Article XI, Section 1120 — Obligation to pay**
15 **money.**

16 ^{NO} (3) This ~~subsection~~ section does not apply to an obligation to which sub. (18),
17 (19), (20), (21), (23) s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or (24)
18 701.1129 applies.

19 SECTION 71. 701.20 (16) of the statutes is renumbered 701.1121 and amended
20 to read:

21 **701.1121 Insurance Article XI, Section 1121 — Insurance policies and**
22 **similar contracts.** (1) Except as provided in par. (b) sub. (2), a trustee shall allocate
23 to principal the proceeds of a life insurance policy or other contract in which the trust
24 or its trustee is named as beneficiary, including a contract that insures the trust or
25 its trustee against loss for damage to, destruction of, or loss of title to, a trust asset.

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1 The trustee shall allocate dividends on an insurance policy to income if the premiums
2 on the policy are paid from income, and to principal if the premiums are paid from
3 principal.

4 (2) A trustee shall allocate to income proceeds of a contract that insures the
5 trustee against loss of occupancy or other use by an income beneficiary, loss of
6 income, or, subject to sub. (12) s. 701.1117, loss of profits from a business.

7 (3) This subsection ~~section~~ does not apply to a contract to which sub. (18) s.
8 701.1123 applies.

9 SECTION 72. 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122
10 (intro.), as renumbered, ^{9/15} are amended to read:

11 ^{plain} ~~701.1122~~ ^{No strike} Article XI, Section 1122 — Insubstantial

12 **allocations not required.** (intro.) If a trustee determines that an allocation
13 between principal and income required by sub. (15) (b), (18), (19), (20), (21) s.
14 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24) 701.1129 is
15 insubstantial, the trustee may allocate the entire amount to principal unless one of
16 the circumstances described in sub. (4) (e) s. 701.1104 (3) applies to the allocation.
17 This power may be exercised by a cotrustee in the circumstances described in sub.
18 (4) (d) s. 701.1104 (4) and may be released for the reasons and in the manner
19 described in sub. (4) (e) s. 701.1104 (5). An allocation is presumed to be insubstantial
20 if:

21 ^{Fix Component} SECTION 73. 701.20 (18) (title) of the statutes is renumbered 701.1123 (title)
22 and amended to read:

23 701.1123 (title) Deferred Article XI, Section 1123 — Deferred
24 compensation, annuities, and similar payments.

25 SECTION 74. 701.20 (18) (a) of the statutes is repealed.



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1 SECTION 75. 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and
2 amended to read:

3 701.1123 (2) To the extent that a payment is characterized as interest or, a
4 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate
5 it the payment to income. The trustee shall allocate to principal the balance of the
6 payment and any other payment received in the same accounting period that is not
7 characterized as interest, a dividend, or ~~an equivalent~~ a payment in lieu of interest
8 or a dividend.

9 SECTION 76. 701.20 (18) (c) of the statutes is renumbered 701.1123 (3) and
10 amended to read:

11 701.1123 (3) (a) In this ~~paragraph~~ subsection and sub. (4), "plan income" means
12 any of the following:

13 1. With respect to payments received from a plan that maintains separate
14 accounts or funds for its participants or account holders, ~~such as defined contribution~~
15 ~~retirement plans, individual retirement accounts, Roth individual retirement~~
16 ~~accounts, and some types of deferred compensation plans~~, either the amount of the
17 ~~plan~~ separate account ~~or fund~~ held for the benefit of the trust that, if the plan
18 separate account ~~or fund~~ were a trust, would be allocated to income ~~under pars. (b)~~
19 ~~and (d)~~ for that accounting period, or 4 percent of the value of the plan account or fund
20 on the first day of the accounting period. The trustee shall, ~~in his or her discretion,~~
21 choose the method of determining "plan income" under this ~~subd. 1. a.~~ subdivision,
22 and may change the method of determining "plan income" under this ~~subd. 1. a.~~
23 subdivision for any subsequent accounting period.

24 2. With respect to payments received from a plan that does not maintain
25 separate accounts ~~or funds~~ for its participants or account holders, ~~such as defined~~



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1 benefit retirement plans and some types of deferred compensation plans, 4 percent
2 of the total present value of the trust's interest in the plan as of the first day of the
3 accounting period, based on reasonable actuarial assumptions as determined by the
4 trustee.

5 (b) For each accounting period of a trust in which the trust receives a payment
6 but no part of any payment is allocated to income under ~~par. (b) sub. (2)~~, the trustee
7 shall allocate to income that portion of the aggregate value of all payments received
8 by the trustee in that accounting period that is equal to the amount of plan income
9 that is attributable to the trust's interest in the plan from which payment is received
10 for that accounting period. The trustee shall allocate the balance of any payments
11 to principal.

12 SECTION 77. 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and
13 amended to read:

14 701.1123 (5) If, to obtain an estate or gift tax marital deduction for an interest
15 in a trust, a trustee must allocate more of a payment to income than provided for by
16 this ~~subsection~~ section, the trustee shall allocate to income the additional amount
17 necessary to obtain the marital deduction.

18 SECTION 78. 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and
19 amended to read:

20 701.1123 (6) This ~~subsection~~ section does not apply to ~~payments~~ a payment to
21 which ~~sub. (19) s. 701.1124~~ applies.

22 SECTION 79. 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124
23 (title) and (1), as renumbered, ^{g 13} are amended to read:

24 ^{No B} 701.1124 (title) **Liquidating Article XI, Section 1124 — Liquidating**
25 **asset.** (1) In this ~~subsection~~ section, "liquidating asset" means an asset whose value



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1 will diminish or terminate because the asset is expected to produce receipts for a
 2 period of limited duration. The term includes a leasehold, patent, copyright, royalty
 3 right, and right to receive payments during a period of more than one year under an
 4 arrangement that does not provide for the payment of interest on the unpaid balance.
 5 The term does not include a payment subject to ~~sub. (18)~~ s. 701.1123, resources
 6 subject to ~~sub. (20)~~ s. 701.1125, timber subject to ~~sub. (21)~~ s. 701.1126, an activity
 7 subject to ~~sub. (23)~~ s. 701.1128, an asset subject to ~~sub. (24)~~ s. 701.1129, or any asset
 8 for which the trustee establishes a reserve for depreciation under ~~sub. (27)~~ s.
 9 701.1132.

10 SECTION 80. 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125

11 (title), (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

12 **701.1125** (title) **Minerals Article XI, Section 1125 — Minerals, water, and**

13 **other natural resources.** (1) (intro.) To the extent that a trustee accounts for
 14 receipts from an interest in minerals or other natural resources in accordance with
 15 this ~~subsection~~ section, the trustee shall allocate them as follows:

16 (d) If an amount is received from a working interest or any other interest not
 17 provided for in ~~subd. 1., 2. par. (a), (b), or 3. (c)~~, 90 percent of the net amount received
 18 must be allocated to principal and the balance to income.

19 (3) This ~~subsection~~ section applies whether or not a decedent or donor was
 20 extracting minerals, water, or other natural resources before the interest became
 21 subject to the trust.

22 (4) If a trust owns an interest in minerals, water, or other natural resources
 23 on May 17, 2005, the trustee may allocate receipts from the interest as provided in
 24 this ~~subsection~~ section or in the manner used by the trustee before May 17, 2005.

25 If the trust acquires an interest in minerals, water, or other natural resources after



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1 May 17, 2005, the trustee shall allocate receipts from the interest as provided in this
2 ~~subsection~~ section.

3 SECTION 81. 701.20 (21) (title) of the statutes is repealed.

4 SECTION 82. 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126
5 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

6 701.1126 (1) (intro.) To the extent that a trustee accounts for receipts from the
7 sale of timber and related products in accordance with this ~~subsection~~ section, the
8 trustee shall allocate the net receipts:

9 (c) To income or principal or between income and principal if the net receipts
10 are from the lease of timberland or from a contract to cut timber from land owned by
11 a trust, by determining the amount of timber removed from the land under the lease
12 or contract and applying the rules in ~~subds. 1. pars. (a) and 2. (b)~~.

13 (d) To principal to the extent that advance payments, bonuses, and other
14 payments are not allocated under ~~subd. 1., 2. par. (a), (b), or 3. (c)~~.

15 (2) In determining net receipts to be allocated under ~~par. (a)~~ sub. (1), a trustee
16 shall deduct and transfer to principal a reasonable amount for depletion.

17 (3) This ~~subsection~~ section applies whether or not a decedent or transferor was
18 harvesting timber from the property before it became subject to the trust.

19 (4) If a trust owns an interest in timberland on May 17, 2005, the trustee may
20 allocate net receipts from the sale of timber and related products as provided in this
21 ~~subsection~~ section or in the manner used by the trustee before May 17, 2005. If the
22 trust acquires an interest in timberland after May 17, 2005, the trustee shall allocate
23 net receipts from the sale of timber and related products as provided in this
24 ~~subsection~~ section.



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1 SECTION 83. 701.20 (22) of the statutes is renumbered 701.1127 and amended
2 to read:

plain
no strike

3 **701.1127 Property Article XI, Section 1127 — Property not productive**
4 **of income.** (1) If a marital deduction is allowed for all or part of a trust whose assets
5 consist substantially of property that does not provide the surviving spouse with
6 sufficient income from or use of the trust assets, and if the amounts that the trustee
7 transfers from principal to income under ~~sub. (4)~~ s. 701.1104 and distributes to the
8 spouse from principal in accordance with the terms of the trust are insufficient to
9 provide the spouse with the beneficial enjoyment required to obtain the marital
10 deduction, the spouse may require the trustee to make property productive of
11 income, convert property within a reasonable time, or exercise the power conferred
12 by ~~sub. (4) (a)~~ s. 701.1104 (1). The trustee may decide which action or combination
13 of actions to take.

14 (2) In cases not governed by ~~par. (a)~~ sub. (1), proceeds from the sale or other
15 disposition of an asset are principal without regard to the amount of income the asset
16 produces during any accounting period.

17 SECTION 84. 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128
18 (title), (1) and (2), as renumbered, are amended to read:

19 **701.1128 (title) Derivatives Article XI, Section 1128 — Derivatives and**
20 **options.** (1) In this ~~subsection~~ section, “derivative” means a contract or financial
21 instrument or a combination of contracts and financial instruments that gives a trust
22 the right or obligation to participate in some or all changes in the price of a tangible
23 or intangible asset or group of assets, or changes in a rate, an index of prices or rates,
24 or another market indicator for an asset or a group of assets.



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1 (2) To the extent that a trustee does not account under sub. (12) s. 701.1117 for
2 transactions in derivatives, the trustee shall allocate to principal receipts from and
3 disbursements made in connection with those transactions.

4 SECTION 85. 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129

5 (title) and (1), as renumbered, is amended to read:

6 **701.1129 (title) Asset-backed Article XI, Section 1129 — Asset-backed**

7 **securities.** (1) In this subsection section, "asset-backed security" means an asset

8 whose value is based upon the right it gives the owner to receive distributions from

9 the proceeds of financial assets that provide collateral for the security. The term

10 includes an asset that gives the owner the right to receive from the collateral

11 financial assets only the interest or other current return or only the proceeds other

12 than interest or current return. The term does not include an asset to which sub. (10)

13 s. 701.1115 or ~~(18)~~ 701.1123 applies.

14 SECTION 86. 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130

15 (intro.), as renumbered, are amended to read:

16 **701.1130 ^{plain} Disbursements ~~Article XI, Section 1130~~ — Disbursements**

17 **from income.** (intro.) A trustee shall make the following disbursements from

18 income to the extent that they are not disbursements specified in sub. (5) (b) 2. s.

19 701.1110 (2) (b) or ~~3.~~ (c):

20 SECTION 87. 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131

21 (title) and (1) (a), (e) and (g), as renumbered, are amended to read:

22 **701.1131 ^{NO} (title) Disbursements ^(B) Article XI, Section 1131 —**

23 **Disbursements from principal.**

24 ^{NO} (1) (a) The remaining one-half of the disbursements described in sub. (25) (a)

25 s. 701.1130 (1) and (b) (2).

INS 116-6
CONT

1 (e) Premiums paid on a policy of insurance not described in sub. (25) (d) s.
2 701.1130 (4) of which the trust is the owner and beneficiary.

3 (g) Disbursements related to environmental matters, including reclamation,
4 assessing environmental conditions, remedying and removing environmental
5 contamination, monitoring remedial activities and the release of substances,
6 preventing future releases of substances, collecting amounts from persons liable or
7 potentially liable for the costs of those activities, penalties imposed under
8 environmental ~~laws or regulations~~ law and other payments made to comply with
9 ~~those laws or regulations~~ environmental law, statutory or common law claims by 3rd
10 parties, and defending claims based on environmental matters.

11 SECTION 88. 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132

12 (title) (1) and (2) (c), as renumbered, are amended to read:

13 ^{NO B} **701.1132 (title) Transfers Article XI, Section 1132 — Transfers from**
14 **income to principal for depreciation.**

15 ^{NO} (1) In this ~~subsection~~ section, "depreciation" means a reduction in value due
16 to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful
17 life of more than one year.

18 (2) (c) Under this ~~subsection~~ section if the trustee is accounting under sub. (12)
19 s. 701.1117 for the business or activity in which the asset is used.

20 SECTION 89. 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133

21 (title), (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

22 ^{NO B} **701.1133 (title) Transfers Article XI, Section 1133 — Transfers from**
23 **income to reimburse principal.** (1) If a trustee makes or expects to make a

24 principal disbursement described in this ~~subsection~~ section, the trustee may transfer



INS 116-6
cont

1 an appropriate amount from income to principal in one or more accounting periods
2 to reimburse principal or to provide a reserve for future principal disbursements.

3 (2) (intro.) Principal disbursements to which ~~par. (a)~~ sub. (1) applies include the
4 following, but only to the extent that the trustee has not been and does not expect
5 to be reimbursed by a 3rd party:

6 (e) Disbursements described in ~~sub. (26) (a) 7.~~ s. 701.1131 (1) (g).

7 (3) If the asset whose ownership gives rise to the disbursements becomes
8 subject to a successive income interest after an income interest ends, a trustee may
9 continue to transfer amounts from income to principal as provided in ~~par. (a)~~ sub. (1).

10 *Fix component* SECTION 90. 701.20 (29) (title) of the statutes is renumbered 701.1134 (title) *e*
11 and amended to read:

12 701.1134 (title) **Income Article XI, Section 1134 — Income taxes.**

13 SECTION 91. 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

14 SECTION 92. 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

15 SECTION 93. 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)
16 (intro.) and amended to read:

17 701.1134 (3) (intro.) A tax required to be paid by a trustee on the trust's share
18 of an entity's taxable income must be paid ~~proportionately~~ as follows:

19 SECTION 94. 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a) and
20 amended to read:

21 701.1134 (3) (a) From income to the extent that receipts from the entity are
22 allocated only to income.

23 SECTION 95. 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,
24 renumbered 701.1134 (3) (b) and amended to read:



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cont

1 701.1134 (3) (b) From principal to the extent that: 2. a. Receipts receipts from
2 the entity are allocated only to principal.

3 SECTION 96. 701.20 (29) (c) 2. b. of the statutes is repealed.

4 SECTION 97. 701.20 (29) (d) of the statutes is repealed.

5 SECTION 98. 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135

6 (title) and (1) (a), as renumbered, are amended to read:

7 **701.1135** (title) **Adjustments Article XI, Section 1135 — Adjustments**
8 **between principal and income because of taxes.**

9 (1) (a) Elections and decisions, other than those described in par. (b) sub. (2),
10 that the fiduciary makes from time to time regarding tax matters.

11 SECTION 99. 701.20 (31) of the statutes is repealed.

12 SECTION 100. 701.21 of the statutes is renumbered 701.1136, and 701.1136

13 (title), (1), (2) and (4), as renumbered, are amended to read:

14 **701.1136** (title) **Income Article XI, Section 1136 — Income payments and**
15 **accumulations.** (1) DISTRIBUTION OF INCOME. Except as otherwise determined by

16 the trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust
17 distributions, if a beneficiary is entitled to receive income from a trust, but the
18 creating trust instrument fails to specify how frequently it is to be paid, the trustee
19 shall distribute at least annually the income to which such beneficiary is entitled.

20 (2) PERMITTED ACCUMULATIONS. No provision directing or authorizing
21 accumulation of trust income shall be ~~is~~ invalid.

22 (4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed
23 by the creating trust instrument, in the absence of a governing provision in the
24 instrument, may, in the trustee's discretion, be held in reserve for future distribution
25 as income or be added to principal subject to retransfer to income of the dollar amount

SECTION ~~101~~ 701.22 (title) is repealed.

1 originally transferred to principal; but at At the termination of the income interest,
2 any undistributed income shall be distributed as principal.

End Ins 116-6 →

(end ins 116-6)

~~3 SECTION 101. 701.24 (1) and (2) of the statutes are repealed.~~

4 SECTION 102. 861.015 (2) of the statutes is amended to read:

Ins 131-15

5 861.015 (2) For purposes of this section, property subject to a directive is valued
6 by its clear market value on the date of the decedent's death. Satisfaction of the
7 nonholding spouse's marital property interest in the property subject to the directive
8 shall be based on that value, plus any income from the property subject to the
9 directive after the death of the decedent and before satisfaction. For purposes of
10 determining the income from the property subject to a directive, such property shall
11 be treated as a legacy or devise of property other than money under s. 701.20
12 701.1115.

End Ins



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4324/P1
FFK:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF

Ins. 133-17A

1 AN ACT *to renumber and amend* 881.01 (1) (a); *to amend* 881.01 (1) (b), 881.01
2 (4) and 881.01 (5); *to repeal and recreate* 881.01 (1) (title); and *to create*
3 881.01 (1) (a) 1. and 2. and 881.01 (12m) of the statutes; **relating to:** the
4 Uniform Prudent Investor Act.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Ins.
133-17A

5 SECTION 1. 881.01 (1) (title) ^x of the statutes is repealed and recreated to read:
6 881.01 (1) (title) DEFINITIONS.

7 SECTION 2. 881.01 (1) (a) ^x of the statutes is renumbered 881.01 (1) (a) (intro.)
8 and amended to read:

9 881.01 (1) (a) (intro.) [✓] "Beneficiary," ~~with respect to a guardianship of the~~
10 estate," means any of the following: [✓]



stat of the estate ✓

1 3. With respect to guardianship, a ward for whom a guardian of the estate has
2 been appointed and, ~~with respect to a conservator, means,~~

3 4. With respect to a conservatorship, a person for whose estate a conservator
4 has been appointed.

5 SECTION 3. 881.01 (1) (a) 1. and 2. of the statutes are created to read:

6 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03. ✓

7 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3). ✓

8 SECTION 4. 881.01 (1) (b) of the statutes is amended to read:

9 881.01 (1) (b) "Fiduciary" means a personal representative, trustee, directing
10 party, as defined in s. 701.0103 (7), conservator, or guardian of the estate.

11 SECTION 5. 881.01 (4) of the statutes is amended to read:

12 881.01 (4) DIVERSIFICATION. A fiduciary shall diversify investments unless the
13 fiduciary reasonably determines that, ~~because of special circumstances,~~ the
14 purposes of the estate, trust, conservatorship, or guardianship are better served
15 without diversifying.

16 SECTION 6. 881.01 (5) of the statutes is amended to read:

17 881.01 (5) DUTIES AT INCEPTION. Within a reasonable time after accepting a
18 fiduciary appointment or receiving assets, a fiduciary shall review the assets and
19 make and implement decisions concerning the retention and disposition of assets, in
20 order to bring the portfolio into compliance with the purposes, terms, distribution
21 requirements, and other circumstances of the estate, trust, conservatorship, or
22 guardianship and with the requirements of this section. Subsection (12m) applies
23 to assets that are initially received by a fiduciary.

24 SECTION 7. 881.01 (12m) of the statutes is created to read:

End IAS

10

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/P2dn

FFK: A:...

date

JCD

To Senator Risser:

This draft removes the "Article, Section" language from the section titles to conform with LRB drafting conventions and to be consistent with other uniform acts that are in the statutes. For example, please see the Uniform Commercial Code in chapters 401 to 411 of the statutes. *

Also, I know it is a goal of the committee to avoid using numeral-letter numbering in this draft, such as sub. (1m). This draft does include some numeral-letter numbering to avoid the unnecessary work of renumbering everything that follows an insertion and changing all necessary cross-references based on that renumbering before the changes are finalized. When the draft is in its final form, I will renumber as necessary to remove the number-letter combinations.

Fern Knepp