

1 (4) PERMISSIBLE TERMS OF 2ND TRUST. (a) Subject to subs. (2), (3), and (5), the
2 trustee of the first trust may create a 2nd trust instrument that includes terms that
3 are intended to achieve any purpose, including to do any of the following:

****NOTE: Your instructions suggested that it is not your intent to identify the settlor of the 2nd trust. However, this language in combination with the definition of settlor under s. 701.0103 could be interpreted to identify the trustee of the first trust as the settlor of the 2nd trust. Okay?

which defines a settlor as a person who creates a trust,

X

- 4 1. Correct a drafting error in the first trust.
- 5 2. Clarify potentially ambiguous terms contained in the first trust.
- 6 3. Change the age of distribution to a beneficiary of the first trust.
- 7 4. Extend the duration of the first trust.
- 8 5. Protect the interests of a beneficiary of the first trust, including protecting
- 9 the beneficiary from self-destructive behavior.
- 10 6. Allow the trustee of the 2nd trust to transfer trust assets to a community
- 11 trust. In this subdivision, "community trust" means a master trust that is
- 12 established and managed by a nonprofit organization that maintains sub-accounts
- 13 for individual beneficiaries that satisfy the definition of a trust for an individual with
- 14 a disability.
- 15 7. Add or remove a spendthrift trust provision to the first trust.
- 16 8. Modify investment provisions contained in the first trust, including those
- 17 relating to permissible investments, use of investment advisors, directed trust
- 18 property, or self-dealing transactions.
- 19 9. Change a present or future trustee of the first trust, including by defining
- 20 the method by which a trustee or cotrustee may be appointed or removed and
- 21 replaced.
- 22 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
- 23 protector.

1 11. Appoint a directing party of the 2nd trust and define the powers of the
2 directing party.

3 12. Change the principal place of administration of the first trust.

4 13. Change the governing law of the first trust.

5 14. Allow for the division of the first trust into 2 or more trusts.

6 15. Allow for the merger of the first trust with one or more trusts.

7 16. Add or modify an exculpatory provision for a trustee, trust protector, or
8 directing party.

9 17. Obtain desirable tax treatment, as determined by the trustee of the first
10 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
11 trust, including provisions relating to grantor trust status under sections 671 to 679
12 of the Internal Revenue Code.

13 (b) Notwithstanding par. (a), the trust instrument of the 2nd trust may include
14 terms that are intended to do any of the following only if the trustee of the first trust
15 has the absolute power to invade income and principal:

16 1. Modify the terms of the first trust governing the power to invade income and
17 principal.

18 2. Grant, eliminate, or modify a general or special powers of appointment.

19 (c) 1. Notwithstanding par. (a), the trust instrument of the 2nd trust may
20 include terms that are intended to change terms of the first trust that are applicable
21 to a beneficiary who is an individual with a disability only if the purpose of the change
22 is to allow the beneficiary to qualify or continue to be qualified to receive benefits
23 under a government program.

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

1 (d) Notwithstanding par. (a), the trust instrument of the 2nd trust may include
2 terms that are intended to change a provision governing the administration of the
3 first trust only if the trustee of the first trust believes it will provide for more effective
4 and efficient administration of the trust.

5 (e) Notwithstanding par. (a), the trust instrument of the 2nd trust may include
6 a term that would reduce the potential liability of a trustee, including a term that
7 adopts or expands an exculpatory provision relating to the trustee, only if one of the
8 following applies:

9 1. A trustee of the first trust who would benefit from the adoption of the term
10 in the 2nd trust abstains from the consideration and adoption of the term and the
11 trustees of the first trust who would not benefit from the adoption of the term adopt
12 the trust instrument of the 2nd trust.

13 2. A court approves the trust instrument of the 2nd trust.

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

20 (b) 1. If the trustee chooses to proceed without a court order, the trustee shall
21 give notice of the manner in which the trustee intends to appoint assets to a 2nd
22 trust, as described in sub. (2), to all of the following:

23 a. The qualified beneficiaries of the first trust.

24 b. Any trust protector appointed under the terms of the first trust.

25 c. Any directing party appointed under the terms of the first trust.

1 d. The settlor of the first trust, if living.

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

4 a. A copy of the proposed written instrument under which the trustee will
5 appoint assets to a 2nd trust.

6 b. The proposed effective date of the appointment.

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

8 d. A copy of the trust instrument of the 2nd trust.

9 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
10 trustee provides notice as required under this paragraph unless every person who
11 is entitled to receive notice under subd. 1. waives the 30-day notice period by
12 delivering a signed written instrument to the trustee. A person's waiver of the
13 30-day notice period does not constitute that person's consent to the trustee's
14 appointment of assets to a 2nd trust.

15 4. If a person entitled to receive notice under subd. 1. delivers a written
16 objection to the trustee before the effective date of the appointment of assets to a 2nd
17 trust, the trustee may not appoint the assets to a 2nd trust, as specified in the
18 trustee's notice, without obtaining court approval under par. (c).

19 5. If the trustee does not receive a written objection from any person entitled
20 to receive notice under subd. 1., the trustee shall notify each person entitled to
21 receive notice under subd. 1. that the trustee did not receive an objection to the notice
22 and that the trustee will appoint the assets from the first trust to the 2nd trust, as
23 provided in the notice. Notice under this subdivision is binding and precludes a
24 recipient from requiring court approval of the appointment of assets to a 2nd trust.

****NOTE: Is this language consistent with your intent?

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

13 2. If a person who is entitled to receive notice under subd. 1. files an objection
14 with the court, in determining whether to grant or deny a petition under subd. 1., the
15 court shall consider all of the following:

- 16 a. The purpose of the proposed appointment of assets under sub. (2).
17 b. The reasons for any objection made by a person entitled to receive notice
18 under subd. 1.
19 c. Changes in circumstances that have occurred since the creation of the first
20 trust.
21 d. Whether the appointment of assets under sub. (2) complies with the
22 requirements of this section.

23 3. If no person who is entitled to receive notice under subd. 1. files an objection
24 with the court, the court shall enter an order approving the appointment of assets

1 under sub. (2) as set forth in the trustee's notice unless the court determines that the
2 appointment of assets does not comply with the requirements of this section.

3 (6) SUBSEQUENTLY DISCOVERED ASSETS. (a) The appointment of all of the assets
4 comprising the first trust in favor of the trustee of the 2nd trust includes
5 subsequently discovered assets otherwise belonging to the first trust and assets paid
6 to or acquired by the first trust subsequent to the appointment in favor of the 2nd
7 trust.

8 (b) Except as otherwise provided by the trustee of the first trust, the
9 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
10 does not include subsequently discovered assets belonging to the first trust and
11 assets paid to or acquired by the first trust subsequent to the appointment in favor
12 of the 2nd trust. Subsequently discovered assets belonging to the first trust and
13 assets paid to or acquired by the first trust subsequent to the appointment in favor
14 of the 2nd trust remain the assets of the first trust.

15 (7) LIABILITY. (a) This section does not create or imply a duty on a trustee to
16 appoint assets to a 2nd trust, as described in sub. (2), and a trustee that does not
17 appoint assets to a 2nd trust, as described in sub. (2), is not liable for the failure to
18 do so.

19 (b) A trustee who appoints assets to a 2nd trust, as described in sub. (2), is not
20 liable to any beneficiary for any loss related to the appointment unless the trustee
21 did not appoint the assets to a 2nd trust, as described in sub. (2), in good faith.

22 (8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust,
23 as described in sub. (2), is not an exercise of a general power of appointment.

****NOTE: Is this consistent with your intent?

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

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

8 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
9 cotrustee who does not have a beneficial interest in the first trust from appointing
10 assets to a 2nd trust, as described in sub. (2), even if the terms of the first trust,
11 applicable law, or other circumstances would otherwise require the majority or
12 unanimous action of the trustees of the first trust.

13 (e) For purposes of this section, if beneficiaries of a first trust are defined as a
14 class of persons, the class shall include any person who falls within the class of
15 persons after the trustee appoints assets to the 2nd trust.

16 **SECTION 54.** 701.05 of the statutes is repealed.

17 **SECTION 55.** Subchapter V (title) of chapter 701 [precedes 701.0501] of the
18 statutes is created to read:

19 **CHAPTER 701**

20 **SUBCHAPTER V**

21 **CREDITOR'S CLAIMS; SPENDTHRIFT**

22 **AND DISCRETIONARY TRUSTS**

23 **SECTION 56.** 701.0501 of the statutes is created to read:

24 **701.0501 Rights of beneficiary's creditor or assignee.** (1) (a) To the
25 extent a beneficiary's interest is not protected by a spendthrift provision, the court

1 may authorize a judgment creditor or an assignee of the beneficiary to reach the
2 beneficiary's interest by attachment of present or future distributions to or for the
3 benefit of the beneficiary or other means. The court may limit the award to such
4 relief as is appropriate under the circumstances.

5 (b) This subsection does not apply to a trust for an individual with a disability.

6 (2) A trustee is not liable to any creditor of a beneficiary for any distributions
7 made to or for the benefit of the beneficiary if any of the following applies:

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

9 (b) The trust is a trust for an individual with a disability.

10 **SECTION 57.** 701.0502 of the statutes is created to read:

11 **701.0502 Spendthrift provision.** (1) Valid only if any of the following
12 applies:

13 (a) The beneficiary is other than the settlor.

14 (b) The trust is a trust for an individual with a disability.

15 (2) Subject to sub. (1), a term of a trust providing that the interest of a
16 beneficiary is held subject to a spendthrift trust, or words of similar import, restrains
17 both a voluntary and involuntary transfer of the beneficiary's interest.

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

22 (4) Real property or tangible personal property that is owned by the trust but
23 that is made available for a beneficiary's occupancy or use in accordance with the
24 trustee's authority under the trust instrument may not be considered to have been

1 distributed by the trustee or received by the beneficiary for purposes of allowing a
2 creditor or assignee of the beneficiary to reach the property.

3 **SECTION 58.** 701.0503 of the statutes is created to read:

4 **701.0503 Exceptions to spendthrift provision. (1) CLAIMS FOR CHILD**
5 **SUPPORT.** Notwithstanding s. 701.0502, upon application of a person having a valid
6 order directing a beneficiary to make payment for support of the beneficiary's child,
7 a court may do any of the following:

8 (a) If the beneficiary is entitled to receive income or principal under the trust,
9 order the trustee to satisfy part or all of the claim out of part or all of the payments
10 of income or principal as they are due, presently or in the future.

11 (b) If the beneficiary may receive income or principal at the trustee's discretion
12 under the trust, order the trustee to satisfy part or all of the claim out of part or all
13 of any future payments of income or principal that are made pursuant to the exercise
14 of the trustee's discretion in favor of the beneficiary.

15 **(2) CLAIMS FOR PUBLIC SUPPORT.** Notwithstanding s. 701.0502, and except as
16 provided in sub. (3), if the settlor is legally obligated to pay for the public support of
17 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
18 to pay for the beneficiary's public support or for support furnished to the beneficiary's
19 spouse or minor child under s. 46.10, 49.345, or 301.12, upon application by the
20 appropriate state department or county official, a court may do any of the following:

21 (a) If the beneficiary is entitled to receive income or principal under the trust,
22 order the trustee to satisfy part or all of the liability out of part or all of the payments
23 of income or principal as they are due, presently or in the future.

24 (b) 1. Except as provided in subd. 2., if the beneficiary may receive income or
25 principal at the trustee's discretion under the trust, order the trustee to satisfy part

1 or all of the liability out of part or all of any future payments of income or principal
2 that are made pursuant to the exercise of the trustee's discretion in favor of the
3 beneficiary.

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

9 (3) TRUST FOR AN INDIVIDUAL WITH A DISABILITY. Subsection (2) does not apply to
10 any trust for an individual with a disability.

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

13 (5) EXEMPT ASSETS. Assets of a trust that are exempt from claims of creditors
14 under other statutes are not subject to sub. (1) or (2).

15 **SECTION 59.** 701.0504 of the statutes is created to read:

16 **701.0504 Discretionary trusts; effect of standard.** (1) For purposes of this
17 subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that
18 is subject to the trustee's discretion does not constitute an interest in property or an
19 enforceable right even if the discretion is expressed in the form of a standard of
20 distribution or the beneficiary is then serving as sole trustee or cotrustee.

21 (2) Except as provided in this subchapter, a creditor or other claimant may not
22 attach present or future distributions from such an interest in property or an
23 enforceable right, obtain an order from a court forcing the judicial sale of the interest
24 or compelling the trustee to make distributions, or reach the interest or right by any
25 other means, even if the trustee has abused the trustee's discretion.

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

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

8 (b) The right of a beneficiary described in par. (a) may not be exercised by a
9 creditor.

10 **SECTION 60.** 701.0505 of the statutes is created to read:

11 **701.0505 Creditor's claim against settlor.** (1) (a) Whether or not the terms
12 of a trust include a spendthrift provision and except as provided in par. (b), the
13 following rules apply to claims of a settlor's creditors:

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

16 2. With respect to an irrevocable trust that is not a trust for an individual with
17 a disability, upon application of a judgment creditor of the settlor, the court may, if
18 the trust instrument requires or authorizes the trustee to make payments of income
19 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
20 out of part or all of the payments of income or principal as they are due, presently
21 or in the future, or which are payable in the trustee's discretion. If a trust has more
22 than one settlor, the amount the judgment creditor of a particular settlor may reach
23 may not exceed the settlor's interest in the trust.

24 3. After the death of a settlor, and subject to the settlor's right to direct the
25 source from which liabilities will be paid, the property of a trust that was revocable

1 at the settlor's death is subject to claims of the settlor's creditors, costs of
2 administration of the settlor's estate, the expenses of the settlor's funeral and
3 disposal of remains, and statutory allowances to a surviving spouse and children to
4 the extent the settlor's probate estate is inadequate to satisfy those claims, costs,
5 expenses, and allowances.

6 (b) Assets of a trust that are exempt from claims of creditors under other
7 statutes are not subject to par. (a).

8 (2) For purposes of this subchapter, all of the following apply:

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

12 (b) A beneficiary of a trust may not be considered a settlor solely because of a
13 lapse, waiver, or release of any of the following:

****NOTE: Now that this subsection applies to the entire subchapter, please
consider whether this location is appropriate. For example, would a person applying s.
701.0502 know to look here to fully understand who may be considered a settlor for
purposes of that section?

14 1. A power described under par. (c).

15 2. The beneficiary's right to withdraw part of the trust property, to the extent
16 the value of the property affected by the lapse, waiver, or release in any year does not
17 exceed the greater of the following:

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

20 b. The amount referenced in section 2503 (b) of the Internal Revenue Code for
21 each individual other than the beneficiary who makes a transfer to the trust or who
22 is deemed to make a transfer to the trust pursuant to an election to split gifts under
23 section 2513 (a) of the Internal Revenue Code.

1 (c) A beneficiary of a trust is not a settlor, has not made a voluntary or
2 involuntary transfer of the beneficiary's interest in the trust, and does not have the
3 power to make a voluntary or involuntary transfer of the beneficiary's interest in the
4 trust solely because the beneficiary holds, exercises, or allows in any capacity, any
5 of the following:

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

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

10 b. Limited by an ascertainable standard of the beneficiary.

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

14 3. A testamentary power of appointment.

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

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

18 (e) 1. Contributions to the following trusts are not considered to have been
19 contributed by the settlor:

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

24 b. An irrevocable living marital trust that is treated as a general power of
25 appointment trust under section 2523 (e) of the Internal Revenue Code if after the

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1 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
2 trust that receives property from the trust.

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

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

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

11 2. A person who would otherwise be treated as a settlor of a trust described in
12 subd. 1. a. to e. is not treated as a settlor of the trust.

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

16 (f) Any order entered by a court under this section is subject to modification
17 upon application of an interested person.

18 **SECTION 61.** 701.0506 of the statutes is created to read:

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

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

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

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

8 **SECTION 62.** 701.0507 of the statutes is created to read:

9 **701.0507 Personal obligations of trustee.** Trust property is not subject to
10 personal obligations of the trustee, even if the trustee becomes insolvent or
11 bankrupt.

12 **SECTION 63.** 701.06 of the statutes is repealed.

13 **SECTION 64.** Subchapter VI (title) of chapter 701 [precedes 701.0601] of the
14 statutes is created to read:

15 **CHAPTER 701**

16 **SUBCHAPTER VI**

17 **REVOCABLE TRUSTS**

18 **SECTION 65.** 701.0601 of the statutes is created to read:

19 **701.0601 Capacity of settlor of revocable trust.** The capacity required to
20 create, amend, revoke, or add property to a revocable trust, or to direct the actions
21 of the trustee of a revocable trust, is the same as that required to make a will.

22 **SECTION 66.** 701.0602 of the statutes is created to read:

23 **701.0602 Revocation or amendment of revocable trust.** (1) Unless the
24 terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke
25 or amend the trust. This subsection does not apply to a trust created under an

1 instrument executed before the effective date of this subsection [LRB inserts
2 date].

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

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

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

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

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

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

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

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

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

23 (4) Upon revocation of a revocable trust, the trustee shall transfer the trust
24 property as the settlor directs. However, with respect to marital or community

1 property, the trustee shall transfer the property to both spouses as marital or
2 community property.

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

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

9 (7) A trustee who does not know that a trust has been revoked or amended is
10 not liable for distributions made and other actions taken on the assumption that the
11 trust had not been amended or revoked, or for distributions made pursuant to sub.
12 (5).

13 **SECTION 67.** 701.0603 of the statutes is created to read:

14 **701.0603 Settlor's powers; powers of withdrawal.** (1) While a trust is
15 revocable, the rights of the beneficiaries are subject to the control of, and the duties
16 of the trustee, any directing party, and any trust protector are owed exclusively to,
17 the settlor.

18 (2) If a revocable trust has more than one settlor, the duties of the trustee, any
19 directing party, and any trust protector are owed to all of the settlors.

20 (3) During the period in which a power of withdrawal may be exercised, the
21 holder of the power has the rights of a settlor of a revocable trust under this section
22 to the extent of the property subject to the power.

23 **SECTION 68.** 701.0604 of the statutes is created to read:

24 **701.0604 Limitation on action contesting validity of revocable trust;
25 distribution of trust property.** (1) A person must commence a judicial proceeding

1 to contest the validity of a trust that was revocable immediately before the settlor's
2 death within the earlier of the following:

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

4 (b) Four months after the trustee sent the person a copy of the trust instrument
5 and a notice informing the person of the trust's existence, of the trustee's name and
6 address, and of the time allowed for commencing a proceeding. Except as provided
7 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
8 information described in this paragraph.

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

13 (a) The trustee knows of a pending judicial proceeding contesting the validity
14 of the trust.

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

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

20 **SECTION 69.** 701.065 of the statutes is renumbered 701.0605, and 701.0605 (1)

21 (a) 2., as renumbered, is amended to read:

22 701.0605 (1) (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies
23 the requirements for the publication of the notice under subd. 1., all claims, including
24 claims of the any state and any ~~subdivision thereof~~ of its subdivisions, whether due
25 or to become due, absolute or contingent, liquidated or unliquidated, are barred

1 against the trustee, the trust property and any recipient of trust property unless filed
2 with the trustee on or before the date specified in the notice under subd. 1.

3 **SECTION 70.** 701.07 of the statutes is repealed.

4 **SECTION 71.** Subchapter VII (title) of chapter 701 [precedes 701.0701] of the
5 statutes is created to read:

6 **CHAPTER 701**

7 **SUBCHAPTER VII**

8 **OFFICE OF TRUSTEE**

9 **SECTION 72.** 701.0701 of the statutes is created to read:

10 **701.0701 Accepting or declining trusteeship.** (1) Except as provided in
11 sub. (3), a person designated as trustee accepts the trusteeship by doing any of the
12 following:

13 (a) Substantially complying with a method of acceptance provided in the terms
14 of the trust.

15 (b) If the terms of the trust do not provide a method or the method provided in
16 the terms is not expressly made exclusive, by accepting delivery of the trust property,
17 exercising powers or performing duties as trustee, or otherwise indicating
18 acceptance of the trusteeship.

19 (2) A person designated as trustee who has not yet accepted the trusteeship
20 may decline the trusteeship. A designated trustee who does not accept the
21 trusteeship within a reasonable time after knowing of the designation is considered
22 to have rejected the trusteeship.

23 (3) A person designated as trustee, without accepting the trusteeship, may do
24 any of the following:

1 (a) Act to preserve the trust property if, within a reasonable time after acting,
2 the person sends a declination of the trusteeship in writing to the settlor or, if the
3 settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the
4 successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

5 (b) Inspect or investigate trust property to determine potential liability under
6 environmental or other law or for any other purpose.

7 **SECTION 73.** 701.0702 of the statutes is created to read:

8 **701.0702 Trustee's bond.** (1) A trustee shall give bond to secure performance
9 of the trustee's duties only if the court finds that a bond is needed to protect the
10 interests of the beneficiaries or is required by the terms of the trust and the court has
11 not dispensed with the requirement.

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

14 (3) A court may not require a bond from a trust company bank, state bank, or
15 national bank that is authorized to exercise trust powers and that has complied with
16 s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or
17 educational corporation or society.

18 **SECTION 74.** 701.0703 of the statutes is created to read:

19 **701.0703 Cotrustees.** (1) Cotrustees may act only by majority decision.

20 (2) If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a
21 majority of the remaining cotrustees may act for the trust.

22 (3) A cotrustee shall participate in the performance of a trustee's function
23 unless the cotrustee is unavailable to perform the function because of absence,
24 illness, disqualification under other law, or other temporary incapacity or the
25 cotrustee has properly delegated the performance of the function to another trustee.

1 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
2 disqualification under other law, or other temporary incapacity, and prompt action
3 is necessary to achieve the purposes of the trust or to avoid injury to the trust
4 property, the remaining cotrustee or a majority of the remaining cotrustees may act
5 for the trust.

6 (5) A trustee may delegate to a cotrustee a function unless the delegation is
7 expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a
8 trustee may revoke a delegation previously made.

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

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

12 (a) Prevent a cotrustee from committing a material breach of trust.

13 (b) Compel a cotrustee to redress a material breach of trust.

14 (8) A dissenting trustee who joins in an action at the direction of the majority
15 of the trustees and who notified all cotrustees of the dissent at or before the time of
16 the action is not liable for the action unless the action is a material breach of trust.

17 **SECTION 75.** 701.0704 of the statutes is created to read:

18 **701.0704 Vacancy in trusteeship; appointment of successor.** (1) A
19 vacancy in a trusteeship exists if any of the following occurs:

20 (a) A person designated as trustee declines the trusteeship.

21 (b) A person designated as trustee cannot be identified or does not exist.

22 (c) A trustee resigns.

23 (d) A trustee is disqualified or removed.

24 (e) A trustee dies.

25 (f) A guardian or conservator is appointed for an individual serving as trustee.

1 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship does
2 not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no
3 remaining trustee.

4 (3) A vacancy in a trusteeship that is required to be filled shall be filled in the
5 following order of priority:

6 (a) By a person designated in the terms of the trust to act as successor trustee.

7 (b) By a person appointed by unanimous agreement of the qualified
8 beneficiaries, except that, if the trust is a trust for an individual with a disability, the
9 person appointed under this paragraph may not be the individual with a disability,
10 his or her spouse, or a relative of the individual with a disability who is legally
11 responsible for his or her support.

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

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

17 **SECTION 76.** 701.0705 of the statutes is created to read:

18 **701.0705 Resignation of trustee.** (1) A trustee may resign in any of the
19 following manners:

20 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
21 living and not incapacitated, all cotrustees, any trust protector, and any directing
22 party.

23 (b) With the approval of the court.

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

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

4 **SECTION 77.** 701.0706 of the statutes is created to read:

5 **701.0706 Removal of trustee.** **(1)** The settlor, a cotrustee, or a qualified
6 beneficiary may request the court to remove a trustee, or a trustee may be removed
7 by the court on its own initiative.

8 **(2)** The court may remove a trustee if any of the following applies:

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

10 **(b)** A lack of cooperation among cotrustees substantially impairs the
11 administration of the trust.

12 **(c)** The court determines that removal of the trustee best serves the interests
13 of the beneficiaries because of unfitness, unwillingness, or persistent failure of the
14 trustee to administer the trust effectively.

15 **(d)** There has been a substantial change of circumstances or removal is
16 requested by all of the qualified beneficiaries, the court finds that removal of the
17 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
18 a material purpose of the trust, and a suitable cotrustee or successor trustee is
19 available.

20 **(3)** Pending a final decision on a request to remove a trustee, or in lieu of or in
21 addition to removing a trustee, the court may order such appropriate relief under s.
22 701.1001 (2) as may be necessary to protect the trust property or the interests of the
23 beneficiaries.

24 **SECTION 78.** 701.0707 of the statutes is created to read:

1 **701.0707 Delivery of property by former trustee.** (1) Unless a cotrustee
2 remains in office or the court otherwise orders, and until the trust property is
3 delivered to a successor trustee or other person entitled to it, a trustee who has
4 resigned or been removed has the duties of a trustee and the powers necessary to
5 protect the trust property.

6 (2) A trustee who has resigned or been removed shall proceed expeditiously to
7 deliver the trust property within the trustee's possession to the cotrustee, successor
8 trustee, or other person entitled to it.

9 **SECTION 79.** 701.0708 of the statutes is created to read:

10 **701.0708 Compensation of trustee.** (1) If the terms of a trust do not specify
11 the trustee's compensation, a trustee is entitled to compensation that is reasonable
12 under the circumstances.

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

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

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

21 (3) If the trustee has rendered other services in connection with the
22 administration of the trust, the trustee may receive reasonable compensation for the
23 other services rendered, in addition to reasonable compensation as trustee.

24 **SECTION 80.** 701.0709 of the statutes is created to read:

1 **701.0709 Reimbursement of expenses.** (1) A trustee is entitled to be
2 reimbursed out of the trust property, with interest as appropriate, for all of the
3 following:

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

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

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

9 **SECTION 81.** 701.0710 of the statutes is created to read:

10 **701.0710 Title of trust property.** A settlor or transferor may effectively
11 transfer property to a trust by placing legal title of the property in the name of the
12 trustee, which shall include any successor trustee regardless of whether a successor
13 trustee is referenced in the transfer document. A transfer that places legal title in
14 the name of the trust itself shall place legal title in the name of the trustee.

15 **SECTION 82.** 701.08 of the statutes is renumbered 701.0606 and amended to
16 read:

17 **701.0606 Transfers to living revocable trusts.** (1) **VALIDITY AND EFFECT.**
18 The order of execution of a living revocable trust instrument and a will or other
19 instrument purporting to transfer or appoint property to the trust evidenced by the
20 trust instrument shall be disregarded in determining the validity of the transfer or
21 appointment. No reference in any will to a living revocable trust shall cause assets
22 in such trust to be included in property administered as part of the testator's estate;
23 nor shall it cause the trust or any portion thereof to be treated as a testamentary
24 trust.

1 (2) GOVERNING TERMS. Property transferred or appointed by a will or by a
2 beneficiary designation under an employee benefit plan, life insurance policy, or
3 other instrument permitting designation of a beneficiary to a living revocable trust,
4 the terms of which the testator or designator was the sole holder of a power to modify,
5 shall be administered in accordance with the terms of the trust as they may have
6 been modified prior to the testator's or designator's death, even though the will or
7 beneficiary designation was not reexecuted or republished after exercise of the power
8 to modify, unless the will or beneficiary designation expressly provides otherwise.
9 Such property transferred or appointed to a living revocable trust, which is subject
10 to a power of modification requiring action or consent of a person other than the
11 testator or designator, shall be administered in accordance with the terms of the
12 trust instrument as they exist at the execution of the will or beneficiary designation,
13 unless expressly otherwise provided. If the will or beneficiary designation expressly
14 provides that the property shall be administered in accordance with the terms of the
15 trust instrument as they may be modified thereafter, the will or beneficiary
16 designation need not be reexecuted or republished after exercise of the power to
17 modify.

18 (3) DISPOSITION WHEN NO EXISTING LIVING REVOCABLE TRUST. If at the death of a
19 testator a living revocable trust has been completely revoked, or otherwise
20 terminated, a provision in the testator's will purporting to transfer or appoint
21 property to ~~such~~ the trust shall have the following effect, unless the will provides
22 otherwise:

23 (a) If the testator was a necessary party to the revocation or other termination
24 of ~~such~~ the revocable trust, the provision in the testator's will shall be invalid.

1 (b) If the testator was not a necessary party to the revocation or other
2 termination of such trust, the provision in the testator's will shall be deemed to
3 create a testamentary trust upon the terms of the living revocable trust instrument
4 at the time the will was executed or as otherwise provided where sub. (2) is
5 applicable.

6 **SECTION 83.** Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the
7 statutes is created to read:

8 **CHAPTER 701**

9 **SUBCHAPTER VIII**

10 **DUTIES AND POWERS OF TRUSTEES**

11 **SECTION 84.** 701.0801 of the statutes is created to read:

12 **701.0801 Duty to administer trust.** Upon acceptance of a trusteeship, the
13 trustee shall administer the trust in good faith, in accordance with its terms and
14 purposes and the interests of the beneficiaries, and in accordance with this chapter.

15 **SECTION 85.** 701.0802 of the statutes is created to read:

16 **701.0802 Duty of loyalty. (1)** A trustee shall administer the trust solely in
17 the interests of the beneficiaries.

18 **(2)** Subject to the rights of persons dealing with or assisting the trustee as
19 provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the
20 investment or management of trust property and is entered into by the trustee for
21 the trustee's own personal account or that is otherwise affected by a conflict between
22 the trustee's fiduciary and personal interests is voidable by a beneficiary affected by
23 the transaction unless any of the following applies:

24 (a) The transaction was authorized by the terms of the trust.

25 (b) The transaction was approved by the court.

1 (c) The beneficiary did not commence a judicial proceeding within the time
2 allowed by s. 701.1005.

3 (d) The beneficiary consented to the trustee's conduct, ratified the transaction,
4 or released the trustee in compliance with s. 701.1009.

5 (e) The transaction involves a contract entered into or claim acquired by the
6 trustee before the person became trustee.

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

11 (a) The trustee's spouse.

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

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

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

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

20 **(5)** An investment by a trustee in securities of an investment company or
21 investment trust to which the trustee, or its affiliate, provides services in a capacity
22 other than as trustee is not presumed to be affected by a conflict between personal
23 and fiduciary interests if the investment otherwise complies with the prudent
24 investor rule of s. 881.01. In addition to receiving compensation for acting as trustee,
25 the trustee may be compensated by the investment company or investment trust for

1 providing those services out of fees charged to the trust. If the trustee receives
2 compensation from the investment company or investment trust for providing
3 investment advisory or investment management services, the trustee shall at least
4 annually notify the persons entitled to receive a copy of the trustee's report under s.
5 701.0813 (3) of the rate and method by which that compensation was determined.

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

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

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

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

16 (c) A transaction between a trust and another trust, a decedent's estate, a
17 guardianship of the estate, a conservatorship, or a custodianship of which the trustee
18 is a fiduciary or in which a beneficiary has an interest.

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

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

22 (8) The court may appoint a trustee, trust protector, or directing party to make
23 a decision with respect to any proposed transaction that might violate this section
24 if entered into by the trustee.

25 **SECTION 86.** 701.0803 of the statutes is created to read:

1 **701.0803 Impartiality.** If a trust has 2 or more beneficiaries, the trustee shall
2 act impartially in investing, managing, and distributing the trust property, giving
3 due regard to the beneficiaries' respective interests and the purposes and terms of
4 the trust.

5 **SECTION 87.** 701.0804 of the statutes is created to read:

6 **701.0804 Prudent administration.** A trustee shall administer the trust as
7 a prudent person would, by considering the purposes, terms, distributional
8 requirements, and other circumstances of the trust. In satisfying this standard, the
9 trustee shall exercise reasonable care, skill, and caution.

10 **SECTION 88.** 701.0805 of the statutes is created to read:

11 **701.0805 Costs of administration.** In administering a trust, the trustee may
12 incur only costs that are reasonable in relation to the trust property, the purposes of
13 the trust, the skills of the trustee, and the complexity of the trust administration.

14 **SECTION 89.** 701.0806 of the statutes is created to read:

15 **701.0806 Trustee's skills.** A trustee who has special skills or expertise, or is
16 named trustee in reliance upon the trustee's representation that the trustee has
17 special skills or expertise, shall use those special skills or expertise.

18 **SECTION 90.** 701.0807 of the statutes is created to read:

19 **701.0807 Delegation by trustee.** (1) A trustee may delegate duties and
20 powers that a prudent trustee of comparable skills could properly delegate under the
21 circumstances. The trustee shall exercise reasonable care, skill, and caution in each
22 of the following:

23 (a) Selecting an agent.

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

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

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

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

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

11 (5) This section does not apply to the delegation of investment and
12 management functions. Delegation of investment and management functions is
13 governed by s. 881.01 (10).

14 **SECTION 91.** 701.0808 of the statutes is created to read:

15 **701.0808 Powers to direct.** (1) While a trust is revocable, the trustee may
16 follow a direction of the settlor that is contrary to the terms of the trust.

17 (2) The trust instrument may appoint a directing party to direct the trustee on
18 investment or distribution decisions or to make investment or distribution decisions
19 regarding directed trust property. If the trustee acts in accordance with the direction
20 of the directing party or fails to act due to lack of direction, then, except for acts or
21 omissions as a result of willful misconduct, the trustee is not liable for any loss
22 resulting directly or indirectly from any action taken or omitted with respect to the
23 specified action.

24 (3) A trustee does not have a duty to do any of the following:

1 (a) Provide advice to, consult with, monitor, or evaluate a directing party's
2 conduct.

3 (b) Except as otherwise provided in this chapter, provide information to a
4 directing party. This paragraph does not apply to information requested by a
5 directing party that is related to a power granted to the directing party.

6 (c) Inform or warn a beneficiary, a 3rd party, or a directing party that the trustee
7 disagrees with any of the directing party's actions or directions.

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

9 (e) Compel a directing party to redress a breach of the directing party's duties.

10 (4) The administrative actions of a trustee related to matters within the scope
11 of a directing party's power, including confirming that the directing party's directions
12 have been carried out and recording and reporting actions taken pursuant to the
13 directing party's direction, do not constitute either monitoring the directing party's
14 actions or participating in the actions of the directing party.

15 (5) A directing party is a fiduciary with respect to its powers to direct
16 investment and distribution decisions or to make investment and distribution
17 decisions. As a fiduciary, the directing party has similar fiduciary duties and
18 obligations to the beneficiaries that are applicable to a trustee.

19 (6) Sections 701.0701, 701.0708, 701.0709, and 701.1001 to 701.1010 apply to
20 a directing party as if the directing party was a trustee.

21 (7) A party who accepts an appointment as a directing party under a trust
22 subject to the laws of this state submits to the jurisdiction of the courts of this state,
23 as provided in s. 701.0202 (1), with respect to matters involving the trust.

24 SECTION 92. 701.0809 of the statutes is created to read:

1 **701.0809 Control and protection of trust property.** A trustee shall take
2 reasonable steps to take control of and protect the trust property.

3 **SECTION 93.** 701.0810 of the statutes is created to read:

4 **701.0810 Record keeping and identification of trust property.** (1) A
5 trustee shall keep adequate records of the administration of the trust.

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

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

11 (4) If the trustee maintains records clearly indicating the respective interests,
12 a trustee may invest as a whole the property of 2 or more separate trusts.

13 **SECTION 94.** 701.0811 of the statutes is created to read:

14 **701.0811 Enforcement and defense of claims.** A trustee shall take
15 reasonable steps to enforce claims of the trust known to the trustee and to defend
16 claims against the trust known to the trustee.

17 **SECTION 95.** 701.0812 of the statutes is created to read:

18 **701.0812 Collecting trust property; duties of successor trustees.** (1) A
19 trustee shall take reasonable steps to compel a former trustee or other person to
20 deliver trust property to the trustee, and to redress a breach of trust known to the
21 trustee to have been committed by a former trustee a directing party, or a trust
22 protector of the trust.

23 (2) A successor trustee does not have a duty to examine the accounts of a former
24 trustee.

25 **SECTION 96.** 701.0813 of the statutes is created to read:

1 **701.0813 Duty to inform and report.** (1) A trustee shall keep the
2 distributees or permissible distributees of trust income or principal, and other
3 qualified beneficiaries who so request, reasonably informed about the
4 administration of the trust. Unless unreasonable under the circumstances, a trustee
5 shall promptly respond to a qualified beneficiary's request for information related to
6 the administration of the trust.

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

8 (a) Upon request of a qualified beneficiary, promptly furnish to the qualified
9 beneficiary either a copy of the portions of the trust instrument relating to the
10 interest of the qualified beneficiary or a copy of the trust instrument, in the discretion
11 of the trustee.

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

15 (c) Within a reasonable period of time after the date on which the trustee
16 acquires knowledge of the creation of an irrevocable trust, or the date on which the
17 trustee acquires knowledge that a formerly revocable trust has become irrevocable,
18 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
19 all of the following:

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

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

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

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

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

10 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the
11 former trustee shall send a report containing the information described under par.
12 (a) 1. to the qualified beneficiaries. A personal representative or guardian may send
13 the qualified beneficiaries a report containing the information described in par. (a)
14 1. on behalf of a deceased or incapacitated trustee.

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

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

24 **SECTION 97.** 701.0814 of the statutes is created to read:

1 **701.0814 Discretionary powers; tax savings.** (1) Notwithstanding the
2 breadth of discretion granted to a trustee in the terms of the trust, including the use
3 of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a
4 discretionary power in good faith and in accordance with the terms and purposes of
5 the trust and the interests of the beneficiaries. A court may not determine that a
6 trustee abused its discretion merely because the court would have exercised the
7 discretion in a different manner or would not have exercised the discretion.

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

10 (a) A person other than a settlor who is a beneficiary and a trustee, directing
11 party, or trust protector of a trust that confers on the trustee, directing party, or trust
12 protector a power to make discretionary distributions to or for the trustee’s, directing
13 party’s, or trust protector’s personal benefit may exercise the power only in
14 accordance with an ascertainable standard.

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

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

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

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

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

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

8 **SECTION 98.** 701.0815 of the statutes is created to read:

9 **701.0815 General powers of trustee.** (1) A trustee, without authorization
10 by the court, may exercise the following powers:

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

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

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

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

17 3. Any other powers conferred by this chapter.

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

20 **SECTION 99.** 701.0816 of the statutes is created to read:

21 **701.0816 Specific powers of trustee.** Without limiting the authority
22 conferred by s. 701.0815, a trustee may do all of the following:

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

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

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

2 (4) Deposit trust money in an account in a regulated financial–service
3 institution.

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

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

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

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

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

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

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

22 (8) With respect to an interest in real property, construct, or make ordinary or
23 extraordinary repairs to, alterations to, or improvements in, buildings or other
24 structures, demolish improvements, raze existing or erect new party walls or

1 buildings, subdivide or develop land, dedicate land to public use or grant public or
2 private easements, and make or vacate plats and adjust boundaries.

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

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

10 (11) Insure the property of the trust against damage or loss and insure the
11 trustee, the trustee's agents, any directing party, any trust protector, and the
12 beneficiaries against liability arising from the administration of the trust.

13 (12) Abandon or decline to administer property of no value or of insufficient
14 value to justify its collection or continued administration.

15 (13) With respect to possible liability for violation of environmental law, do any
16 of the following:

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

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

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

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

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

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

9 (15) Pay taxes, assessments, compensation of the trustee, a directing party, a
10 trust protector, and employees and agents of the trust, and other expenses incurred
11 in the administration of the trust.

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

13 (17) Select a mode of payment under any employee benefit or retirement plan,
14 annuity, or life insurance payable to the trustee, exercise rights thereunder,
15 including exercise of the right to indemnification for expenses and against liabilities,
16 and take appropriate action to collect the proceeds.

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

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

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

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

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

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

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

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

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

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

24 **(24)** Prosecute or defend an action, claim, or judicial proceeding in any
25 jurisdiction to protect trust property or the trustee, a directing party, or a trust

1 protector in the performance of the trustee's, directing party's or trust protector's
2 duties.

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

6 (26) On termination of the trust, exercise the powers appropriate to wind up
7 the administration of the trust and distribute the trust property to the persons
8 entitled to it.

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

11 **SECTION 100.** 701.0817 of the statutes is created to read:

12 **701.0817 Distribution upon termination.** (1) Upon termination or partial
13 termination of a trust, the trustee may send a proposal for distribution to the
14 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent
15 to object to the proposed distribution terminates if the beneficiary does not notify the
16 trustee of an objection within 30 days after the proposal was sent but only if the
17 proposal informed the beneficiary of the right to object and of the time allowed for
18 objection.

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

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

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

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

3 **SECTION 101.** 701.0818 of the statutes is created to read:

4 **701.0818 Trust protectors.** (1) APPOINTMENT. A settlor or a court may
5 appoint a trust protector in a trust instrument, whether referred to as a trust
6 protector, another title, or no title. A trust protector has the powers granted to the
7 trust protector in the trust instrument.

8 (2) LEGAL CAPACITY OF TRUST PROTECTOR POWERS. (a) A settlor or a court may
9 specify in a trust instrument that a particular power granted to a trust protector is
10 required to be exercised in a fiduciary, nonfiduciary, or personal capacity.

11 (b) If a power is exercisable in a fiduciary capacity and the trust protector
12 exercises the power, all of the following apply:

13 1. The trust protector shall exercise the power in a manner that is consistent
14 with the terms of the trust.

15 2. With respect to the exercise of the power, the trust protector has fiduciary
16 duties and obligations to the beneficiaries that are similar to the fiduciary duties and
17 obligations that the trustee has to the beneficiaries.

18 3. The trust protector may be held liable for damages associated with a
19 violation of a duty or obligation described under subd. 2.

20 (c) If a power is exercisable in a nonfiduciary capacity, all of the following apply:

21 1. The trust protector may exercise the power in a manner that is inconsistent
22 with the terms of the trust but shall exercise the power in good faith.

23 2. With respect to the power, the trust protector does not have fiduciary duties
24 or obligations to the beneficiaries or to any other party.

1 3. The trust protector may be held liable for damages associated with any of the
2 following:

3 a. The exercise or nonexercise of the power if the trust protector's exercise or
4 nonexercise of a nonfiduciary power was not in good faith.

5 b. The actions or inactions of a fiduciary over whom the trust protector has a
6 power of removal if the trust protector's failure to exercise the power of removal was
7 not in good faith.

8 (d) If a power is exercisable in a personal capacity, all of the following apply:

9 1. The trust protector may exercise the power in a manner that is inconsistent
10 with the terms of the trust.

11 2. With respect to the power, the trust protector does not have fiduciary duties
12 or obligations to the beneficiaries or to any other party.

13 3. The trust protector is not subject to any standard of care with respect to the
14 exercise or nonexercise of the power, including an obligation to act in good faith.

15 4. The trust protector is not liable for the exercise or nonexercise of the power
16 or for the actions or inactions of a fiduciary over whom the trust protector has a power
17 of removal.

18 (e) Except as provided in par. (c) 3., a trust protector does not have a duty to
19 exercise its powers and does not have a duty to monitor the conduct of the trustees
20 or any directing party, nor a duty to monitor changes in the law or circumstances of
21 the beneficiaries.

 ****NOTE: I included an exception for par. (c) 3., because under that subdivision a
trust protector may be held liable for damages associated with the nonexercise of a power
if the nonexercise was not in good faith. Please confirm that sub. (2) is consistent with
your intent.

22 **(3) TRUST PROTECTOR POWERS.** (a) Except as provided in pars. (b) to (d), if a
23 trust instrument does not specify that a trust protector is required to exercise a

1 particular power in a fiduciary, nonfiduciary, or personal capacity, the trust protector
2 shall exercise the power in a nonfiduciary capacity, including the power to do any of
3 the following:

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

7 2. Modify or amend the trust instrument to achieve a different tax status or to
8 respond to changes in federal or state law.

9 3. Change the principal place of administration, the tax situs of the trust, or
10 the governing law of the trust.

11 4. Eliminate or modify the interests of a beneficiary or add a new beneficiary
12 or class of beneficiaries.

****NOTE: Subdivisions 4. and 5. contained language about actions that a trust
protector could not take in exercising a power. I moved this language to sub. (4) because
it did not follow the introductory language for this list of powers, which relates to what
powers must be exercised in a nonfiduciary capacity.

13 5. Modify the terms of a power of appointment granted under the trust.

14 6. Remove, replace, or appoint a trustee, trust protector, or directing party.

****NOTE: How is this power different that the power described in subd. 9.?

15 7. Terminate the trust.

16 8. Appoint assets to a new trust under s. 701.0418.

17 9. Appoint a successor trustee, trust protector, or directing party.

18 10. Advise the trustee on matters concerning a beneficiary.

19 11. Advise the trustee on the exercise of a trustee duty or power, including the
20 duty to provide notification to qualified beneficiaries under s. 701.0813.

21 12. Except as provided in par. (b) 5., consent to or veto specified actions of a
22 trustee or a directing party.

1 (b) If a trust instrument grants a trust protector the power to do any of the
2 following actions and the trust instrument does not specify that the trust protector
3 power is required to exercise the power in a fiduciary, nonfiduciary, or personal
4 capacity, the trust protector shall exercise the power in a fiduciary capacity:

5 1. Interpret terms of the instrument at the request of the trustee.

6 2. Correct errors or ambiguities in the terms of the trust that might otherwise
7 require court construction or defeat the settlor's intent.

8 3. Review and approve the trustee's reports or accounting.

9 4. Resolve disputes between the trustee or a directing party and a beneficiary.

10 5. Consent to or veto distributions to a beneficiary.

11 (c) A trust protector who is also the settlor or a qualified beneficiary shall
12 exercise any power granted to the trust protector in a personal capacity.

13 (d) A trust protector who is also serving as a trustee or a directing party shall
14 exercise any power granted to the trust protector in a fiduciary capacity.

****NOTE: Could the same trust protector be described in both pars. (c) and (d)? If
so, in what capacity would the trust protector be required to exercise his or her powers?

15 (e) A trust protector may resign or release any power granted to the trust
16 protector by giving written notice to the trustee and to any successor trust protector.

17 (4) PROHIBITED ACTIONS. A trust protector may not exercise a power granted to
18 the trust protector to do any of the following:

19 (a) Create or expand any beneficial interest, power of appointment, right of
20 withdrawal, or right to receive trust property as a result of the exercise of a power
21 of appointment in favor of the trust protector, the trust protector's estate, the trust
22 protector's creditors, or creditors of the trust protector's estate.

23 (b) Modify or amend a trust in order to do any of the following:

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

4 2. Reduce or eliminate an income interest of the income beneficiary of any of
5 the following:

6 a. A trust for which a marital deduction has been taken for federal income tax
7 purposes under section 2056 or 2523 of the Internal Revenue Code or for state tax
8 purposes under any comparable provision of applicable state law, during the life of
9 the settlor's spouse.

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

12 c. A grantor retained annuity trust under section 2702 of the Internal Revenue
13 Code, during any period in which the settlor is a beneficiary.

14 d. A trust for which an election as a qualified Subchapter S Trust under section
15 1361(d) of the Internal Revenue Code is currently in place.

16 (c) Modify any beneficial interest of a trust that qualified for a marital
17 deduction or charitable deduction from federal or state estate tax in a manner that
18 would have caused such trust not to qualify for the deduction.

 ****NOTE: This paragraph is based on the substantive restriction that was included
in your proposed sub. (3) (a) 4. Please confirm that this placement, particularly the
introduction, is consistent with your intent.

19 (d) Grant a beneficial interest to any individual or class of individuals not
20 specifically provided for under the trust instrument.

 ****NOTE: This paragraph is based on the substantive restriction that was included
in your proposed sub. (3) (a) 5. Please confirm that this placement, particularly the
introduction, is consistent with your intent.

1 (e) Cause the trust property to be included in the trust protector's gross estate
2 for federal or state tax purposes.

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

****NOTE: Section 701.0818 (1), which you asked about in your drafting instructions, allows a trustee to follow the direction of a settlor that is contrary to the terms of the trust while the trust is revocable. As a drafting matter, there is not a conflict between s. 701.0818 and this subsection. Currently, a trust protector is not subject to the direction of the settlor, but could arguably, if he or she desired, follow the direction of the settlor under this provision. Whether or not the trust protector could take actions that are inconsistent with the terms of the trust will depend on the legal capacity under which the trust protector is acting. See sub. (2). Please let me know if you would like to make any changes to this section.

8 (6) RESPONSIBILITIES OF TRUSTEES AND DIRECTING PARTIES. (a) A trustee and a
9 directing party are not liable for any loss that results from the trustee or the directing
10 party taking an action that is consistent with a modification of the trustee's or the
11 directing party's powers, authority, or discretion as a result of an action taken by a
12 trust protector unless the trustee or the directing party breaches a duty owed for the
13 exercise of the power, authority, or discretion, as modified by the trust protector.

14 (b) A trustee and a directing party may refuse to act consistently with a trust
15 protector's modification if the trustee or the directing party knows the modification
16 is contrary to the terms of the trust or would constitute a serious breach of any duty
17 owed by the trust protector.

18 (c) A trustee and a directing party do not have a duty to monitor the conduct
19 of the trust protector, provide advice to or consult with the trust protector, or
20 communicate with, warn, or apprise any beneficiary concerning instances in which

1 the trustee or the directing party would or might have exercised the trustee's or the
2 directing party's discretion in a manner different from the manner exercised by the
3 trust protector.

4 (7) RIGHT TO INFORMATION. A trust protector may request information about
5 the trust from the trustee and, if such information is related to the exercise or
6 nonexercise of a power expressly granted to the trust protector in the trust
7 instrument, the trustee shall provide the requested information to the trust
8 protector. Except as otherwise provided in this chapter, a trustee does not have an
9 obligation to provide any information to the trust protector that the trust protector
10 does not request. If a trustee is bound by any confidentiality restrictions with respect
11 to information requested by a trust protector, the trustee may require that the trust
12 protector agree to be bound by the confidentiality restrictions before delivering such
13 information to the trust protector.

14 (8) REIMBURSEMENT OF COSTS AND FEES. From the trust property for which the
15 trust protector is acting, a trustee shall provide to a trust protector reimbursement
16 of attorney fees and expenses, including the cost of defending any claim made against
17 the trust protector arising from the acts or omissions of the trust protector, unless
18 the trust protector was not acting in accordance with the applicable legal capacity,
19 as described in sub. (2).

***NOTE: Please confirm that this is consistent with your intent.

20 (9) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS. Sections 701.0701,
21 701.0708, 701.0709, 701.1003, 701.1005, 701.1006, 701.1007, 701.1008, 701.1009,
22 and 701.1010 apply to a trust protector as if the trust protector is the trustee.
23 Sections 701.1001 and 701.1002 apply to a trust protector who is acting in a fiduciary

1 or nonfiduciary capacity as if the trust protector is the trustee but do not apply to a
2 trust protector who is acting in a personal capacity.

3 (10) JURISDICTION. A person who accepts an appointment to serve as a trust
4 protector of a trust having its principal place of administration in this state submits
5 to the jurisdiction of the courts of this state, as provided in s. 701.0202 (1), with
6 respect to matters involving the trust.

7 **SECTION 102.** 701.0819 of the statutes is created to read:

8 **701.0819 Presumptions about trust contributions.** (1) For purposes of
9 this section, “marital deduction gift” means a gift intended to qualify for the marital
10 deduction as indicated by the terms of the trust regardless of whether the trust
11 instrument is ambiguous.

****NOTE: If the trust instrument is ambiguous, how does it indicate the required
intent?

12 (2) In interpreting, construing, or administering a trust instrument, absent a
13 clear expression of intent by the settlor to the contrary, a trustee shall apply the
14 following presumptions, which may only be rebutted by clear and convincing
15 evidence:

16 (a) The settlor intended to take maximum advantage of tax deductions,
17 exemptions, exclusions, and credits.

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

20 (c) If the trust instrument refers to a trust as a marital trust, qualified terminal
21 interest property trust, or spousal trust, or refers to qualified terminable interest
22 property, qualified terminal interest property, section 2044, 2056, or 2523 of the
23 Internal Revenue Code, or similar provisions of applicable state law, the settlor

1 intended the trust and property passing to the trust to qualify for the applicable gift
2 or estate tax marital deduction, and for the gift to qualify for the marital deduction
3 for federal and state gift or estate tax purposes.

****NOTE: The language you provided included the phrase "or refers to qualified terminable interest property, QTIP, or QTIP property." Because QTIP is defined as qualified terminal interest property in the proposed language, I eliminated QTIP property from this list. Please let me know if I inadvertently eliminated a substantive reference.

4 **(3)** If a trust receives a marital deduction gift, the trust instrument shall be
5 construed to comply with the marital deduction provisions of the Internal Revenue
6 Code in every respect.

****NOTE: This provision is written in the passive voice. Who is required to construe the trust instrument as provided in this subsection?

7 **(4)** If a trust receives a marital deduction gift, the trustee has all the powers,
8 duties, and discretionary authority necessary to comply with the marital deduction
9 provisions of the Internal Revenue Code. The trustee shall not take any action or
10 have any power that may impair the availability of the marital deduction, but this
11 does not require the trustee to make the election under either section 2056 (b) (7) or
12 2523 (f) of the Internal Revenue Code.

****NOTE: What does it mean that the trustee shall not have any power that may impair the availability of a deduction? Also, how would the trustee not taking an action or not having a power, require the trustee to make an election for tax purposes?

****NOTE: Please confirm that this is the appropriate place for this provision within the chapter.

13

SECTION 103. 701.09 (title) ~~(1)~~ ^{1, 2, and} ~~(2)~~ of the statutes are renumbered 853.34 (title),
14 (1) and (2).

15 **SECTION 104.** 701.09 (3), (4) and (5) of the statutes are repealed.

16 **SECTION 105.** Subchapter IX (title) of chapter 701 [precedes 701.0901] of the
17 statutes is created to read:

18

CHAPTER 701