

1 SUBCHAPTER IX

2 INVESTMENT MANAGEMENT OF TRUSTS

3 SECTION 106. 701.0901 of the statutes is created to read:

4 **701.0901 Application of the Wisconsin Prudent Investor Act.** Except as
5 provided in this subchapter, the investment management of the property of a trust
6 is governed by ch. 881.

7 SECTION 107. 701.0902 of the statutes is created to read:

8 **701.0902 Directed trust property. (1)** A directing party who has power over
9 directed trust property shall do all of the following:10 (a) Direct the trustee on the retention, purchase, sale, exchange, tender,
11 encumbrance, or any other investment transaction of the directed trust property and
12 the investment and reinvestment of principal and income.13 (b) Direct the trustee with respect to the management, control, and voting
14 powers, including voting proxies, of the directed trust property.15 (c) Select and determine reasonable compensation of one or more outside
16 investment advisors, managers, consultants, or counselors, which may include the
17 trustee, and delegate investment authority to them pursuant to the investment
18 delegation provisions under s. 881.01 (10).19 (d) Determine the frequency of and methodology for valuing directed trust
20 property and provide the value of property for which there is no readily available
21 daily market value.22 **(2)** A trustee who has no power over directed trust property does not have a
23 duty to do any of the following with respect to the directed trust property:

24 (a) Prepare or review investment policy statements.

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

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

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

4 **SECTION 108.** 701.0903 of the statutes is created to read:

5 **701.0903 Nonapplication of prudent investor rule to life insurance**
6 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose
7 of a trust is to hold a life insurance contract or to purchase a life insurance contract
8 from contributions made to the trust, a trustee of the trust does not have a duty to
9 do any of the following with respect to the acquisition, retention, and ownership of
10 a life insurance contract owned by the trust:

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

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

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

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

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

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

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

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

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

10 **SECTION 109.** 701.10 of the statutes is repealed.

11 **SECTION 110.** Subchapter X (title) of chapter 701 [precedes 701.1001] of the
 12 statutes is created to read:

13 **CHAPTER 701**

14 **SUBCHAPTER X**

15 **LIABILITY OF TRUSTEES AND RIGHTS**

16 **OF PERSONS DEALING WITH TRUSTEE**

17 **SECTION 111.** 701.1001 of the statutes is created to read:

18 **701.1001 Remedies for breach of trust.** (1) A violation by a trustee of a duty
 19 the trustee owes to a beneficiary is a breach of trust.

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

22 (a) Compel the trustee to perform the trustee’s duties.

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

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

1 (d) Order a trustee to account.

2 (e) Appoint an additional trustee, a directing party, or a trust protector having
3 duties and authority ordered by the court to take possession of the trust property and
4 administer the trust.

5 (f) Suspend the trustee.

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

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

8 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
9 constructive trust on trust property, or trace trust property wrongfully disposed of
10 and recover the property or its proceeds.

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

13 **SECTION 112.** 701.1002 of the statutes is created to read:

14 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

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

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

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

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

SECTION 112

1 of trust is not entitled to contribution from another trustee to the extent of the benefit
2 received.

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

6 **SECTION 113.** 701.1003 of the statutes is created to read:

7 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee
8 is not liable to a beneficiary for a loss or depreciation in the value of trust property
9 or for not having made a profit.

10 **SECTION 114.** 701.1004 of the statutes is created to read:

11 **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the
12 administration of a trust, the court, as justice and equity may require, may award
13 costs and expenses, including reasonable attorney fees, to any party, to be paid by
14 another party or from the trust that is the subject of the controversy.

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

21 (3) (a) Payment of costs or attorney fees incurred in any proceeding from the
22 trust property may be made by the trustee without the approval of any person and
23 without court authorization, unless the court orders otherwise as provided in par. (c).

24 (b) If a claim or defense based upon a breach of trust is made against a trustee
25 in a proceeding, the trustee shall provide notice to each qualified beneficiary of the

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

11 (c) If a claim or defense based upon breach of trust is made against a trustee
12 in a proceeding, a party must obtain a court order to prohibit the trustee from paying
13 costs or attorney fees from trust property. To obtain an order prohibiting payment
14 of costs or attorney fees from trust property, a party must make a reasonable showing
15 by evidence in the record or by proffering evidence that provides a reasonable basis
16 for a court to conclude that there has been a breach of trust. The trustee may proffer
17 evidence to rebut the evidence submitted by a party. The court in its discretion may
18 defer ruling on the motion, pending discovery to be taken by the parties. If the court
19 finds that there is a reasonable basis to conclude that there has been a breach of
20 trust, unless the court finds good cause to allow attorney fees and costs to be paid
21 from the trust, the court shall enter an order prohibiting the payment of further
22 attorney fees and costs from trust property and shall order attorney fees or costs
23 previously paid from trust property in such proceeding to be refunded. An order
24 entered under this paragraph may not limit a trustee's right to seek an order
25 permitting the payment of some or all of the attorneys fees or costs incurred in the

1 proceeding from trust property, including any fees required to be refunded, after the
2 claim or defense is finally determined by the court. If a claim or defense based upon
3 a breach of trust is withdrawn, dismissed, or resolved without a determination by the
4 court that the trustee committed a breach of trust, after the entry of an order
5 prohibiting payment of attorney fees and costs pursuant to this paragraph, the
6 trustee may pay costs or attorney fees incurred in the proceeding from the trust
7 property without further court authorization.

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

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

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

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

1 **SECTION 115.** 701.1005 of the statutes is created to read:

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

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

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

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

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

14 (c) The termination of the trust.

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

17 **SECTION 116.** 701.1006 of the statutes is created to read:

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

22 **SECTION 117.** 701.1007 of the statutes is created to read:

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

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

3 **SECTION 118.** 701.1008 of the statutes is created to read:

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

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

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

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

17 **SECTION 119.** 701.1009 of the statutes is created to read:

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

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

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

4 **SECTION 120.** 701.1010 of the statutes is created to read:

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

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

13 **SECTION 121.** 701.1011 of the statutes is created to read:

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

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

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

25 **SECTION 122.** 701.1012 of the statutes is created to read:

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

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

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

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

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

18 **SECTION 123.** 701.1013 of the statutes is created to read:

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

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

24 (b) The identity of the settlor.

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

1 (d) The powers of the trustee.

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

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

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

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

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

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

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

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

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

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

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

11 **SECTION 124.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered
12 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are
13 amended to read:

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

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

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

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

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

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

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

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

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

1 **SECTION 125.** 701.105 (4) of the statutes is repealed.

2 **SECTION 126.** 701.11 of the statutes is repealed.

3 **SECTION 127.** Subchapter XI (title) of chapter 701 [precedes 701.1101] of the
4 statutes is created to read:

5 **CHAPTER 701**

6 **SUBCHAPTER XI**

7 **UNIFORM PRINCIPAL AND INCOME ACT**

8 **SECTION 128.** 701.1101 of the statutes is created to read:

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

13 **SECTION 129.** 701.1102 (intro.) of the statutes is created to read:

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

15 **SECTION 130.** 701.1102 (1g) of the statutes is created to read:

16 **701.1102 (1g)** “Asset” means property, as defined in s. 701.0103 (18).

 ****NOTE: I assumed that the intention of providing a definition for asset was to make the usage of asset in this subchapter consistent with usage of property in the remainder of the chapter. I did not include the suggested 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.

17 **SECTION 131.** 701.1123 (1) of the statutes is created to read:

18 **701.1123 (1)** In this section:

19 (a) “Payment” means an amount of money or property received by a trustee that
20 is any of the following:

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

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

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

11 (c) “Separate account” means an account established or maintained by a plan
12 under which income, gains, and losses, whether or not realized, from assets allocated
13 to the account, are credited to or charged against the account without regard to other
14 income, gains, or losses of the plan.

15 **SECTION 132.** 701.1123 (4) of the statutes is created to read:

16 701.1123 (4) (a) For purposes of this subsection, “trustee” means a trustee of
17 a trust for which an election to qualify for a marital deduction under section 2056 (b)
18 (7) or 2523 (f) of the Internal Revenue Code has been made, or a trust that qualified
19 for the marital deduction under section 2056 (b) (5) or 2523 (e) of the Internal
20 Revenue Code.

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

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

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

9 **SECTION 133.** 701.1126 (title) of the statutes is created to read:

10 **701.1126 (title) Timber.**

11 **SECTION 134.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

12 701.1134 (3) (c) Proportionately from principal and income to the extent that
13 receipts from the entity are allocated to both income and principal.

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

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

19 **SECTION 135.** 701.115 of the statutes is repealed.

20 **SECTION 136.** 701.12 of the statutes is repealed.

21 **SECTION 137.** Subchapter XII (title) of chapter 701 [precedes 701.1201] of the
22 statutes is created to read:

23 **CHAPTER 701**

24 **SUBCHAPTER XII**

25 **MISCELLANEOUS PROVISIONS**

1 **SECTION 138.** 701.1203 of the statutes is created to read:

2 **701.1203 Electronic records and signatures.** The provisions of this
3 chapter governing the legal effect, validity, or enforceability of electronic records or
4 signatures, and of contracts formed or performed with the use of such records or
5 signatures conform to the requirements of section 102 of the federal Electronic
6 Signatures in Global and National Commerce Act, 15 USC 7002, and supersede,
7 modify, and limit the federal Electronic Signatures in Global and National
8 Commerce Act, 15 USC 7001 to 7031.

9 **SECTION 139.** 701.1204 of the statutes is created to read:

10 **701.1204 Uniformity of application and construction.** This chapter shall
11 be applied and construed to effectuate its general purpose to make uniform the law
12 with respect to the subject of this chapter among states enacting it.

13 **SECTION 140.** 701.1206 (3) of the statutes is created to read:

14 701.1206 (3) (a) Except as provided in par. (b), this chapter applies to a judicial
15 proceeding concerning a trust commenced before, on, or after the effective date of this
16 paragraph [LRB inserts date].

17 (b) If a court finds that application of a particular provision of this chapter to
18 a judicial proceeding commenced before the effective date of this paragraph [LRB
19 inserts date], will substantially interfere with the effective conduct of the judicial
20 proceedings or prejudice the rights of the parties, the particular provision of this
21 chapter does not apply to that judicial proceeding and the court shall apply ch. 701,
22 2011 stats., as the court finds to be necessary to prevent interference with the
23 effective conduct of the judicial proceeding and to avoid prejudicing the rights of the
24 parties.

25 **SECTION 141.** 701.13 of the statutes is repealed.

1 **SECTION 142.** 701.14 (title) and (1) of the statutes are repealed.

2 **SECTION 143.** 701.14 (2) of the statutes is renumbered 701.0205 and amended
3 to read:

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

19 **SECTION 144.** 701.14 (3) of the statutes is renumbered 701.0206 and amended
20 to read:

21 **701.0206 Attorney for person in military service.** At the time of filing a
22 petition for a trust judicial proceeding, involving a trust, the petitioner shall file an
23 affidavit shall be filed setting forth the name of any interested person interested in
24 ~~the proceeding~~ who is actively engaged in the military service of the United States.
25 Whenever it appears by the affidavit or otherwise that any person in the active

1 military service of the United States is an interested in ~~any trust proceeding~~ person
 2 and is not represented by an attorney, or by an attorney-in-fact who is duly
 3 authorized to act on the interesting ^{ed ← sure} person's behalf in the matter, the court shall
 4 appoint an attorney to represent the interested person and protect the person's
 5 interest.

6 SECTION 145. 701.14 (4) of the statutes is repealed.

7 SECTION 146. 701.15 of the statutes is repealed.

8 SECTION 147. 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the
 9 statutes are repealed.

10 SECTION 148. 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and
 11 amended to read:

12 879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may
 13 submit to courts accounts in the format that they normally use for accounts
 14 submitted to beneficiaries under this subsection, if all of the information required by
 15 the court is included.

16 SECTION 149. 701.17 of the statutes is repealed.

17 SECTION 150. 701.18 of the statutes is repealed.

18 SECTION 151. 701.19 of the statutes is repealed.

19 SECTION 152. 701.20 (title) of the statutes is repealed.

20 SECTION 153. 701.20 (2) (intro.) of the statutes is repealed.

21 SECTION 154. 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

22 SECTION 155. 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and
 23 amended to read:

24 701.1102 (1m) "Beneficiary" ~~Notwithstanding s. 701.0103 (3), "beneficiary"~~
 25 means a person who has a beneficial interest in a trust or an estate and includes, in

1 the case of a decedent's estate, an heir, a legatee, and a devisee and, in the case of a
2 trust, an income beneficiary and a remainder beneficiary.

3 **SECTION 156.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

4 **SECTION 157.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and
5 amended to read:

6 701.1102 (3) "Income" means money or property that a fiduciary receives as
7 current return from a principal asset. "Income" includes a portion of receipts from
8 a sale, exchange, or liquidation of a principal asset, to the extent provided in subse-
9 ~~(10)~~ ss. 701.1115 to (24) 701.1129.

10 **SECTION 158.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

11 **SECTION 159.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

12 **SECTION 160.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

13 **SECTION 161.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and
14 amended to read:

15 701.1102 (7) "Net income" means the total receipts allocated to income during
16 an accounting period, minus the disbursements made from income during the period,
17 plus or minus transfers under ~~this section~~ subch. XI to or from income during the
18 period.

19 **SECTION 162.** 701.20 (2) (i) of the statutes is repealed.

20 **SECTION 163.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

21 **SECTION 164.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9).

22 **SECTION 165.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

23 **SECTION 166.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103
24 (1) and (2), as renumbered, are amended to read:

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

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

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

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

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

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

24 **SECTION 167.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104
25 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

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

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

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

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

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

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

24 (6) Terms of a trust that limit the power of a trustee to make an adjustment
25 between principal and income do not affect the application of this subsection unless

1 it is clear from the terms of the trust that the terms are intended to deny the trustee
2 the power of adjustment conferred by ~~par. (a) sub. (1)~~.

3 **SECTION 168.** 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

4 **SECTION 169.** 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
5 (intro.) and amended to read:

6 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of
7 a proposed action under ~~sub. (4) (a) s. 701.1104 (1)~~ by providing a written notice that
8 complies with all of the following:

9 **SECTION 170.** 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

10 **SECTION 171.** 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

11 **SECTION 172.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
12 (1) (c) and amended to read:

13 701.1105 (1) (c) Is given to all *sui juris* qualified beneficiaries ~~who are any of~~
14 ~~the following:~~

15 **SECTION 173.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

16 **SECTION 174.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
17 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

18 701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~
19 section and discloses the following information:

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

22 **SECTION 175.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
23 amended to read:

24 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
25 section, the trustee is not required to give notice to a *sui juris* qualified beneficiary

1 who consents to the proposed action in writing at any time before or after the
2 proposed action is taken.

3 **SECTION 176.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
4 amended to read:

5 701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action
6 by giving a written objection to the trustee within the time specified in the notice
7 under ~~par. (b) 4. e. sub. (1) (d) 3.~~

8 **SECTION 177.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
9 amended to read:

10 701.1105 (4) A trustee may decide not to take a proposed action after the
11 trustee receives a written objection to the proposed action or at any other time for any
12 other reason. In that case, the trustee shall give written notice to the sui-juris
13 qualified beneficiaries of the decision not to take the proposed action.

14 **SECTION 178.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
15 amended to read:

16 701.1105 (5) If a trustee receives a written objection to a proposed action within
17 the time specified in the notice under ~~par. (b) 4. e. sub. (1) (d) 3.~~, either the trustee
18 or the qualified beneficiary making the written objection may petition the court to
19 have the proposed action approved, modified, or prohibited. In the court proceeding,
20 the qualified beneficiary objecting to the proposed action has the burden of proving
21 that the proposed action should be modified or prohibited. A qualified beneficiary
22 who did not make the written objection may oppose the proposed action in the court
23 proceeding.

24 **SECTION 179.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
25 amended to read:

1 701.1105 ~~(6)~~ For purposes of this ~~subsection~~ section, a proposed action under
2 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
3 ~~sub. (4) s. 701.1104~~.

4 **SECTION 180.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

5 **SECTION 181.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
6 (intro.) and amended to read:

7 701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a
8 unitrust in any of the following ways:

9 **SECTION 182.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
10 (1) (a) (intro.) and amended to read:

11 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
12 request of a qualified beneficiary, if all of the following apply:

13 **SECTION 183.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)
14 (a) 1.

15 **SECTION 184.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)
16 (a) 2. and amended to read:

17 701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided
18 in ~~sub. (4e) (b) s. 701.1105 (1)~~ of the trustee's intention to convert the trust to a
19 unitrust, and the notice advises how the unitrust will operate, including the fixed
20 percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under
21 ~~par. (e) 4. sub. (3) (d)~~ that the trustee intends to follow.

22 **SECTION 185.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

23 **SECTION 186.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)
24 (a) 3. and amended to read:

SECTION 186

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

3 **SECTION 187.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
4 4.

5 **SECTION 188.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
6 (1) (b) (intro.) and amended to read:

7 701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified
8 beneficiary, if all of the following apply:

9 **SECTION 189.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)
10 (b) 1. and amended to read:

11 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
12 under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust
13 to a 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 will be requested.

16 **SECTION 190.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)
17 (b) 2.

18 **SECTION 191.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
19 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
20 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
21 amended to read:

22 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
23 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1.,~~ the
24 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
25 to (i).

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

10 (b) 1. Subject to subd. 2. ~~b.~~, if the trust is converted to a unitrust under ~~par. (a)~~
11 ~~1. sub. (1) (a)~~, the trustee shall determine the fixed percentage to be applied under
12 ~~subd. 1. par. (a)~~, and the notice under ~~par. (a) 1. b. sub. (1) (a) 2.~~ must state the fixed
13 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b)~~, the
14 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a)~~.

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

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

20 1. Convert the unitrust back to the original trust under the ~~creating trust~~
21 instrument.

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

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

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

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

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

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

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

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

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

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

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

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

8 **SECTION 192.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107
9 (1) and (2) (e), (f) 2., (g) and (h), as renumbered, are amended to read:

10 701.1107 (1) ~~In this subsection~~ section, “express unitrust” means any trust that
11 by its governing instrument requires the distribution at least annually of a unitrust
12 amount equal to a fixed percentage of the net fair market value of the trust’s assets,
13 valued at least annually, other than a trust solely for charitable purposes or a
14 charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
15 Revenue Code.

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

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

23 (g) The trust ~~document~~ instrument may provide that assets used by the trust
24 beneficiary, such as a residence or tangible personal property, may be excluded from

1 the net fair market value for computing the unitrust amount. Such use may be
2 considered equivalent to the income or unitrust amount.

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

6 SECTION 193. 701.20 (4k) of the statutes is renumbered 701.1108 and amended
7 to read:

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

15 SECTION 194. 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

16 SECTION 195. 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
17 amended to read:

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

24 SECTION 196. 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
25 amended to read:

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 197.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

7 **SECTION 198.** 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 199.** 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

15 **SECTION 200.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110
16 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

17 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall
18 determine the amount of net income and net principal receipts received from
19 property specifically given to a beneficiary under the rules in ~~subs. (7) ss. 701.1112~~
20 ~~to (30) 701.1135~~ that apply to trustees and the rules in ~~par. (e) sub. (5)~~. The fiduciary
21 shall distribute the net income and net principal receipts to the beneficiary who is
22 to receive the specific property.

23 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's
24 estate or a terminating income interest under the rules in ~~subs. (7) ss. 701.1112~~ to
25 ~~(30) 701.1135~~ that apply to trustees and by:

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

11 (4) A fiduciary shall distribute the net income remaining after distributions
12 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.
13 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary
14 amount determined by a pecuniary formula related to a transfer tax.

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

1 terminating income interest may become obligated to pay after the property is
2 distributed.

3 **SECTION 201.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111
4 (1), (2) (d) and (4), as renumbered, are amended to read:

5 701.1111 (1) Each beneficiary described in ~~sub. (5) (d)~~ s. 701.1110 (4) is entitled
6 to receive a portion of the net income equal to the beneficiary's fractional interest in
7 undistributed principal assets, using values as of the distribution date. If a fiduciary
8 makes more than one distribution of assets to beneficiaries to whom this ~~subsection~~
9 section applies, each beneficiary, including one who does not receive part of the
10 distribution, is entitled, as of each distribution date, to the net income the fiduciary
11 has received after the date of death or terminating event or earlier distribution date
12 but has not distributed as of the current distribution date.

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

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

20 **SECTION 202.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112
21 (3), as renumbered, is amended to read:

22 701.1112 (3) An asset becomes subject to a successive income interest on the
23 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),
24 even if there is an intervening period of administration to wind up the preceding
25 income interest.

SECTION 203

1 **SECTION 203.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113
2 (1) and (3), as renumbered, are amended to read:

3 701.1113 (1) A trustee shall allocate to principal an income receipt or
4 disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due date
5 occurs before a decedent dies in the case of an estate or before an income interest
6 begins in the case of a trust or successive income interest.

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

15 **SECTION 204.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and
16 701.1114 (1), as renumbered, is amended to read:

17 **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net
18 income received before the date on which an income interest ends. “Undistributed
19 income” does not include an item of income or expense that is due or accrued or net
20 income that has been added or is required to be added to principal under the terms
21 of the trust.

22 **SECTION 205.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115
23 (1), (2) and (5), as renumbered, is amended to read:

24 701.1115 (1) In this ~~subsection~~ section, “entity” means a corporation,
25 partnership, limited liability company, regulated investment company, real estate

1 investment trust, common trust fund, or any other organization in which a trustee
2 has an interest other than a trust or estate to which ~~sub. (11)~~ s. 701.1116 applies, a
3 business or activity to which ~~sub. (12)~~ s. 701.1117 applies, or an asset-backed
4 security to which ~~sub. (24)~~ s. 701.1129 applies.

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

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

11 **SECTION 206.** 701.20 (11) of the statutes is renumbered 701.1116 and amended
12 to read:

13 **701.1116 Distribution from trust or estate.** A trustee shall allocate to
14 income an amount received as a distribution of income from a trust or an estate in
15 which the trust has an interest other than a purchased interest, and shall allocate
16 to principal an amount received as a distribution of principal from such a trust or
17 estate. If a trustee purchases an interest in a trust that is an investment entity, or
18 a decedent or donor transfers an interest in such a trust to a trustee, ~~sub. (10)~~ s.
19 701.1115 or ~~(24)~~ 701.1129 applies to a receipt from the trust.

20 **SECTION 207.** 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117
21 (3) (g), as renumbered, is amended to read:

22 701.1117 (3) (g) Activities to which ~~sub. (23)~~ s. 701.1128 applies.

23 **SECTION 208.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118
24 (1), (2), (3) and (6), as renumbered, are amended to read:

SECTION 208

1 701.1118 (1) To the extent not allocated to income under this section
2 subchapter, assets received from a transferor during the transferor's lifetime, a
3 decedent's estate, a trust with a terminating income interest, or a payer under a
4 contract naming the trust or its trustee as beneficiary.

5 (2) Money or other property received from the sale, exchange, liquidation, or
6 change in form of a principal asset, including realized profit, subject to ~~subs. (10)~~ ss.
7 701.1115 to ~~(24)~~ 701.1129.

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

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

12 **SECTION 209.** 701.20 (14) of the statutes is renumbered 701.1119 and amended
13 to read:

14 **701.1119 Rental property.** To the extent that a trustee accounts for receipts
15 from rental property in accordance with this ~~subsection~~ section, the trustee shall
16 allocate to income an amount received as rent of real or personal property, including
17 an amount received for cancellation or renewal of a lease. An amount received as a
18 refundable deposit, including a security deposit or a deposit that is to be applied as
19 rent for future periods, must be added to principal and held subject to the terms of
20 the lease and is not available for distribution to a beneficiary until the trustee's
21 contractual obligations have been satisfied with respect to that amount.

22 **SECTION 210.** 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120
23 (3), as renumbered, is amended to read:

1 701.1120 ~~(3)~~ This ~~subsection~~ section does not apply to an obligation to which
2 ~~sub. (18), (19), (20), (21), (23)~~ s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or
3 ~~(24)~~ 701.1129 applies.

4 **SECTION 211.** 701.20 (16) of the statutes is renumbered 701.1121 and amended
5 to read:

6 **701.1121 Insurance policies and similar contracts.** (1) Except as
7 provided in ~~par. (b)~~ sub. (2), a trustee shall allocate to principal the proceeds of a life
8 insurance policy or other contract in which the trust or its trustee is named as
9 beneficiary, including a contract that insures the trust or its trustee against loss for
10 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate
11 dividends on an insurance policy to income if the premiums on the policy are paid
12 from income, and to principal if the premiums are paid from principal.

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

16 (3) This ~~subsection~~ section does not apply to a contract to which ~~sub. (18)~~ s.
17 701.1123 applies.

18 **SECTION 212.** 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122
19 (intro.), as renumbered, is amended to read:

20 **701.1122 Insubstantial allocations not required.** (intro.) If a trustee
21 determines that an allocation between principal and income required by ~~sub. (15) (b),~~
22 ~~(18), (19), (20), (21)~~ s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24)
23 701.1129 is insubstantial, the trustee may allocate the entire amount to principal
24 unless one of the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the
25 allocation. This power may be exercised by a cotrustee in the circumstances

1 described in sub. (4) (d) s. 701.1104 (4) and may be released for the reasons and in
2 the manner described in sub. (4) (e) s. 701.1104 (5). An allocation is presumed to be
3 insubstantial if:

4 **SECTION 213.** 701.20 (18) (title) of the statutes is renumbered 701.1123 (title).

5 **SECTION 214.** 701.20 (18) (a) of the statutes is repealed.

6 **SECTION 215.** 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and
7 amended to read:

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

14 **SECTION 216.** 701.20 (18) (c) of the statutes is renumbered 701.1123 (3) and
15 amended to read:

16 701.1123 (3) (a) In this ~~paragraph subsection and sub. (4)~~, “plan income” means
17 any of the following:

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

1 choose the method of determining “plan income” under this ~~subd. 1. a.~~ subdivision,
2 and may change the method of determining “plan income” under this ~~subd. 1. a.~~
3 subdivision for any subsequent accounting period.

4 2. With respect to payments received from a plan that does not maintain
5 separate accounts ~~or funds~~ for its participants or account holders, ~~such as defined~~
6 ~~benefit retirement plans and some types of deferred compensation plans~~, 4 percent
7 of the total present value of the trust’s interest in the plan as of the first day of the
8 accounting period, based on reasonable actuarial assumptions as determined by the
9 trustee.

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

17 **SECTION 217.** 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and
18 amended to read:

19 701.1123 (5) If, to obtain an estate or gift tax marital deduction for an interest
20 in a trust, a trustee must allocate more of a payment to income than provided for by
21 this ~~subsection~~ section, the trustee shall allocate to income the additional amount
22 necessary to obtain the marital deduction.

23 **SECTION 218.** 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and
24 amended to read:

1 701.1123 (6) This ~~subsection~~ section does not apply to ~~payments~~ a payment to
2 which ~~sub. (19) s. 701.1124~~ applies.

3 **SECTION 219.** 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124
4 (1), as renumbered, is amended to read:

5 701.1124 (1) In this ~~subsection~~ section, “liquidating asset” means an asset
6 whose value will diminish or terminate because the asset is expected to produce
7 receipts for a period of limited duration. The term includes a leasehold, patent,
8 copyright, royalty right, and right to receive payments during a period of more than
9 one year under an arrangement that does not provide for the payment of interest on
10 the unpaid balance. The term does not include a payment subject to ~~sub. (18) s.~~
11 701.1123, resources subject to ~~sub. (20) s. 701.1125~~, timber subject to ~~sub. (21) s.~~
12 701.1126, an activity subject to ~~sub. (23) s. 701.1128~~, an asset subject to ~~sub. (24) s.~~
13 701.1129, or any asset for which the trustee establishes a reserve for depreciation
14 under ~~sub. (27) s. 701.1132~~.

15 **SECTION 220.** 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125
16 (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

17 701.1125 (1) (intro.) To the extent that a trustee accounts for receipts from an
18 interest in minerals or other natural resources in accordance with this ~~subsection~~
19 section, the trustee shall allocate them as follows:

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

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

1 (4) If a trust owns an interest in minerals, water, or other natural resources
2 on May 17, 2005, the trustee may allocate receipts from the interest as provided in
3 this subsection ~~section~~ or in the manner used by the trustee before May 17, 2005.
4 If the trust acquires an interest in minerals, water, or other natural resources after
5 May 17, 2005, the trustee shall allocate receipts from the interest as provided in this
6 subsection ~~section~~.

7 **SECTION 221.** 701.20 (21) (title) of the statutes is repealed.

8 **SECTION 222.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126
9 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

10 701.1126 (1) (intro.) To the extent that a trustee accounts for receipts from the
11 sale of timber and related products in accordance with this subsection ~~section~~, the
12 trustee shall allocate the net receipts:

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

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

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

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

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

1 trust acquires an interest in timberland after May 17, 2005, the trustee shall allocate
2 net receipts from the sale of timber and related products as provided in this
3 subsection section.

4 **SECTION 223.** 701.20 (22) of the statutes is renumbered 701.1127 and amended
5 to read:

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

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

19 **SECTION 224.** 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128
20 (1) and (2), as renumbered, are amended to read:

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

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 225.** 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129
5 (1), as renumbered, is amended to read:

6 701.1129 (1) In this ~~subsection~~ section, “asset-backed security” means an asset
7 whose value is based upon the right it gives the owner to receive distributions from
8 the proceeds of financial assets that provide collateral for the security. The term
9 includes an asset that gives the owner the right to receive from the collateral
10 financial assets only the interest or other current return or only the proceeds other
11 than interest or current return. The term does not include an asset to which ~~sub. (10)~~
12 s. 701.1115 or ~~(18)~~ 701.1123 applies.

13 **SECTION 226.** 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130
14 (intro.), as renumbered, are amended to read:

15 **701.1130 Disbursements from income.** (intro.) A trustee shall make the
16 following disbursements from income to the extent that they are not disbursements
17 specified in ~~sub. (5) (b) 2.~~ s. 701.1110 (2) (b) or 3. (c):

18 **SECTION 227.** 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131
19 (1) (a), (e) and (g), as renumbered, are amended to read:

20 701.1131 (1) (a) The remaining one-half of the disbursements described in ~~sub.~~
21 ~~(25) (a)~~ s. 701.1130 (1) and (b) (2).

22 (e) Premiums paid on a policy of insurance not described in ~~sub. (25) (d)~~ s.
23 701.1130 (4) of which the trust is the owner and beneficiary.

24 (g) Disbursements related to environmental matters, including reclamation,
25 assessing environmental conditions, remedying and removing environmental

SECTION 227

1 contamination, monitoring remedial activities and the release of substances,
2 preventing future releases of substances, collecting amounts from persons liable or
3 potentially liable for the costs of those activities, penalties imposed under
4 environmental laws or regulations law and other payments made to comply with
5 ~~those laws or regulations~~ environmental law, statutory or common law claims by 3rd
6 parties, and defending claims based on environmental matters.

7 **SECTION 228.** 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132
8 (1) and (2) (c), as renumbered, are amended to read:

9 701.1132 (1) In this ~~subsection~~ section, “depreciation” means a reduction in
10 value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset
11 having a useful life of more than one year.

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

14 **SECTION 229.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133
15 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

16 701.1133 (1) If a trustee makes or expects to make a principal disbursement
17 described in this ~~subsection~~ section, the trustee may transfer an appropriate amount
18 from income to principal in one or more accounting periods to reimburse principal
19 or to provide a reserve for future principal disbursements.

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

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

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

4 **SECTION 230.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title).

5 **SECTION 231.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

6 **SECTION 232.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

7 **SECTION 233.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)
8 (intro.) and amended to read:

9 701.1134 **(3)** (intro.) A tax required to be paid by a trustee on the trust's share
10 of an entity's taxable income must be paid ~~proportionately~~ as follows:

11 **SECTION 234.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)
12 and amended to read:

13 701.1134 **(3)** (a) From income to the extent that receipts from the entity are
14 allocated only to income.

15 **SECTION 235.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,
16 renumbered 701.1134 (3) (b) and amended to read:

17 701.1134 **(3)** (b) From principal to the extent that: ~~2. a. Receipts~~ receipts from
18 the entity are allocated only to principal.

19 **SECTION 236.** 701.20 (29) (c) 2. b. of the statutes is repealed.

20 **SECTION 237.** 701.20 (29) (d) of the statutes is repealed.

21 **SECTION 238.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135
22 (1) (a), as renumbered, is amended to read:

23 701.1135 **(1)** (a) Elections and decisions, other than those described in ~~par. (b)~~
24 sub. (2), that the fiduciary makes from time to time regarding tax matters.

25 **SECTION 239.** 701.20 (31) of the statutes is repealed.