

SECTION 240

1 **SECTION 240.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),
2 (2) and (4), as renumbered, are amended to read:

3 701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the
4 trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust distributions,
5 if a beneficiary is entitled to receive income from a trust, but the ~~creating trust~~
6 instrument fails to specify how frequently it is to be paid, the trustee shall distribute
7 at least annually the income to which such beneficiary is entitled.

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

10 (4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed
11 by the ~~creating trust~~ instrument, ~~in the absence of a governing provision in the~~
12 ~~instrument~~, may, in the trustee's discretion, be held in reserve for future distribution
13 as income or be added to principal subject to retransfer to income of the dollar amount
14 originally transferred to principal; ~~but at.~~ At the termination of the income interest,
15 any undistributed income shall be distributed as principal.

16 **SECTION 241.** 701.22 (title) of the statutes is repealed.

17 **SECTION 242.** 701.22 of the statutes is renumbered 701.0417 (4) and amended
18 to read:

19 701.0417 (4) In case of a division of trust assets into 2 or more trusts or shares,
20 any distribution or allocation of assets as an equivalent of a dollar amount fixed by
21 formula or otherwise shall be made at current fair market values unless the
22 ~~governing trust~~ instrument expressly provided that another value may be used. If
23 the ~~governing trust~~ instrument requires or permits a different value to be used, all
24 assets property available for distribution, including cash, shall, unless otherwise
25 expressly provided, be so distributed that the assets property, including cash,

1 distributed as such an equivalent will be fairly representative of the net appreciation
2 or depreciation in the value of the available property on the date or dates of
3 distribution. A provision in the governing trust instrument that the trustee may fix
4 values for purposes of distribution or allocation does not of itself constitute
5 authorization to fix a value other than current fair market value.

6 **SECTION 243.** 701.23 of the statutes is repealed.

7 **SECTION 244.** 701.24 (title) of the statutes is renumbered 701.1206 (title).

8 **SECTION 245.** 701.24 (1) of the statutes is renumbered 701.1206 (1) and
9 amended to read:

10 701.1206 (1) Except as otherwise provided in sub. (3) (2) and s. 701.19 (9) (a),
11 ss. 701.01 to 701.19, 701.21, 701.22, and 701.23 are ss. 701.0602 and 701.0813, this
12 chapter is applicable to a trust existing on July 1, 1971 the effective date of this
13 subsection [LRB inserts date], as well as a trust created after such date, and shall
14 govern trustees acting under such trusts. If application of any provision of ss. 701.01
15 to 701.19, 701.21, 701.22, and 701.23 this chapter to a trust in existence on August
16 1, 1971 the effective date of this subsection [LRB inserts date], is unconstitutional,
17 it shall not affect application of the provision to a trust created after that date.

****NOTE: Your drafting instructions provided conflicting information regarding the inclusion of certain applicability language, specifically provisions related to judicial proceedings. Please confirm that the initial applicability provisions included in this bill are consistent with your intent. As drafted, s. 701.1206 (1) provides that, except for subch. XI and certain sections, the chapter applies to any trust that exists on the effective date of the bill and any trust created after that date (and to any trustee acting under such a trust). Section 701.1206 (2) provides that subch. XI applies to a trust or estate existing on the effective date of the bill and to a trust or estate created after that date. Section 701.1206 (3) provides that ch. 701 applies to a judicial proceeding that is commenced before, on, or after the effective date of the bill unless the court finds that the application of a certain provision will substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of parties. Okay?

18 **SECTION 246.** 701.24 (2) of the statutes is renumbered 701.1206 (2) and
19 amended to read:

1 701.1206 (2) ~~Section 701.20 Subchapter XI of this chapter~~ applies to every a
2 trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this
3 subsection [LRB inserts date], and to every a trust or decedent's estate created or
4 coming into existence after that date, except as otherwise expressly provided in s.
5 ~~701.20 subch. XI~~ or by the decedent's will or the terms of the trust. With respect to
6 a trust or decedent's estate existing on ~~May 17, 2005, s. 701.20 (5) to (30)~~ the effective
7 date of this subsection [LRB inserts date], ss. 701.1110 to 701.1135 shall apply at
8 the beginning of the trust's or estate's first accounting period, as defined in s. ~~701.20~~
9 701.1125 (2) (a), that begins on or after ~~May 17, 2005~~ the effective date of this
10 subsection [LRB inserts date].

11 **SECTION 247.** 701.24 (3) of the statutes is repealed.

12 **SECTION 248.** 701.25 of the statutes is renumbered 701.1205.

13 **SECTION 249.** 701.26 of the statutes is repealed.

14 **SECTION 250.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

15 **SECTION 251.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
16 to read:

17 702.02 (2) "Creating instrument" means the will, trust agreement, or other
18 document which creates or reserves the power of appointment.

19 **SECTION 252.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
20 to read:

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

24 **SECTION 253.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
25 to read:

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

8 **SECTION 254.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
9 to read:

10 702.02 (6) “Power of appointment” means a power ~~of appointment over to~~
11 appoint legal or equitable interests in real or personal property. A power of
12 appointment is ~~a power~~ created or reserved by a person having property subject to
13 his or her disposition which enables the donee of the power of appointment to
14 designate, within such limits as may be prescribed, the transferees of the property
15 or the shares or the interests in which it shall be received; ~~it~~. A power of appointment
16 does not include a power of sale, a power of attorney, a power of revocation, or a power
17 exercisable by a trustee, a directing party, as defined in s. 701.0103 (7), a trust
18 protector, as defined in s. 701.0103 (28), or other fiduciary in his or her fiduciary
19 capacity.

20 **SECTION 255.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
21 to read:

22 702.02 (7) “Special power of appointment” means a power of appointment
23 exercisable only in favor of one or more persons not including the donee, the donee’s
24 estate, the donee’s creditors, or the creditors of the donee’s estate ~~and, when~~
25 ~~exercisable in favor of a class, so limited in size by description of the class that in the~~

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

3 **SECTION 256.** 702.01 (6) of the statutes is repealed.

4 **SECTION 257.** 702.02 (1) of the statutes is created to read:

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

6 **SECTION 258.** 702.02 (3) of the statutes is created to read:

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

9 **SECTION 259.** 702.03 of the statutes is amended to read:

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

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

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

7 **SECTION 260.** 702.05 of the statutes is amended to read:

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

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

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

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

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

9 SECTION 261. 702.05 (5) of the statutes is created to read:

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

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

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

20 SECTION 262. 702.07 of the statutes is amended to read:

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

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

3 **SECTION 263.** 702.08 of the statutes is amended to read:

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

7 **SECTION 264.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
8 amended to read:

9 **702.09 (title) Release of powers a power of appointment.** (1) ~~Except as~~
10 Unless the creating instrument expressly provides that the power of appointment
11 cannot be released or expressly restricts the time, manner, or scope of release, the
12 donee of any power of appointment may do any of the following:

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

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

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

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

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

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

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

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

3 **SECTION 265.** 702.11 of the statutes is amended to read:

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

8 **SECTION 266.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
9 are amended to read:

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

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

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

16 (c) A disclaimer;.

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

19 **SECTION 267.** 702.15 (intro.), (1) and (2) of the statutes are amended to read:

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

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

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

7 **SECTION 268.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
8 amended to read:

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

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

18 **SECTION 269.** 702.17 (1), (2), (3) and (5) of the statutes are amended to read:

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

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

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

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

22 **SECTION 270.** 702.17 (2d) and (2m) of the statutes are created to read:

23 702.17 (2d) CREDITORS OF THE DONEE; SPECIAL POWER OF APPOINTMENT.
24 Notwithstanding sub. (1), property covered by a special power of appointment or
25 general power of appointment that is exercisable solely for the support,

1 maintenance, health, and education of the donee within the meaning of section 2041
2 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code is not subject to the payment
3 of the claims of creditors of the donee, the donee's estate, or the expenses of
4 administering the donee's estate.

5 **(2m) CREDITORS OF THE DONEE; GENERAL POWER OF APPOINTMENT NOT PRESENTLY**
6 **EXERCISABLE.** Notwithstanding sub. (1), property covered by a general power of
7 appointment that is not presently exercisable when it is created is subject to the
8 payment of the claims of the creditors of the donee, the donee's estate, and the
9 expenses of administering the donee's estate only if any of the following applies:

10 (a) The power of appointment was created by the donee in favor of the donee.

11 (b) The power of appointment becomes exercisable in accordance with the
12 terms of the creating instrument, except in the case of a testamentary general power
13 of appointment.

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

14 **SECTION 271.** 702.21 of the statutes is amended to read:

15 **702.21 Applicability of chapter.** The provisions of this chapter are
16 applicable to any power of appointment existing on May 16, 1965, as well as a power
17 of appointment created after such date.

18 **SECTION 272.** 766.575 (1) (e) of the statutes is amended to read:

19 766.575 (1) (e) "Trustee" has the meaning given under s. ~~701.01(8)~~ 701.0103
20 (25).

21 **SECTION 273.** 840.01 (1) of the statutes is amended to read:

22 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
23 estates in, powers of appointment under ch. 702 over, present and future rights to,
24 title to, and interests in real property, including, without limitation by enumeration,

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1 security interests and liens on land, easements, profits, rights of appointees under
2 powers of appointment, rights under covenants running with the land, powers of
3 termination, and homestead rights. The interest may be an interest that was
4 formerly designated legal or equitable. The interest may be surface, subsurface,
5 suprasurface, riparian, or littoral.

6 **SECTION 274.** 853.17 (2) of the statutes is amended to read:

7 853.17 (2) This section does not prevent the court from requiring the contract
8 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
9 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
10 ~~under s. 701.09.~~

11 **SECTION 275.** 853.32 (3) of the statutes is amended to read:

12 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
13 will provision that purports to transfer or appoint property to a living trust are
14 governed by s. 701.08 701.0606.

15 **SECTION 276.** 853.34 (3) of the statutes is created to read:

16 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
17 created by a testator's will is designated as the beneficiary of a transfer under
18 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
19 or at the death of a 3rd party, the transfer of any assets under that other governing
20 instrument to the trustee do not cause the transferred assets to be included in the
21 property administered as part of the testator's estate. The transferred assets are not
22 be subject to taxes, debts, or charges enforceable against the testator's estate to any
23 greater extent than if the proceeds were payable to a beneficiary other than the
24 testator's estate.

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

1 **SECTION 277.** 853.61 (2) (a) of the statutes is amended to read:

2 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
3 trustee shall have all the powers listed in ~~s. 701.16~~ ss. 701.0815 and 701.0816.

4 **SECTION 278.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
5 of the statutes are amended to read:

6 854.13 (1) (c) “Power of appointment” has the meaning given in s. ~~702.01 (4)~~
7 702.02 (6).

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

15 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
16 that a partial disclaimer of property passing by a governing instrument or by the
17 exercise of a power of appointment may not be made if partial disclaimer is expressly
18 prohibited by the governing instrument or by the instrument exercising the power
19 of appointment.

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

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

4 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
5 the governing instrument provides otherwise, either expressly or as construed from
6 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
7 before the decedent. If the disclaimed interest is a remainder contingent on
8 surviving to the time of distribution, the disclaimed interest passes as if the
9 disclaimant had died immediately before the time for distribution. If the disclaimant
10 is an appointee under a power of appointment exercised by a governing instrument,
11 the disclaimed property devolves as if the disclaimant had died before the effective
12 date of the exercise of the power of appointment. If the disclaimant is a taker in
13 default under a power of appointment created by a governing instrument, the
14 disclaimed property devolves as if the disclaimant had predeceased the donee of the
15 power of appointment.

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

1 **SECTION 279.** 854.23 (5) (b) of the statutes is amended to read:

2 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
3 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
4 705 a financial institution is not liable for having transferred an account to a
5 beneficiary designated in a governing instrument who, under this chapter, is not
6 entitled to the account, or for having taken any other action in reliance on the
7 beneficiary's apparent entitlement under the terms of a governing instrument,
8 regardless of whether the financial institution received written notice of a claimed
9 lack of entitlement under this chapter.

10 **SECTION 280.** 859.18 (5) (a) of the statutes is amended to read:

11 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
12 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

13 **SECTION 281.** 859.18 (5) (b) of the statutes is amended to read:

14 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
15 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

16 **SECTION 282.** 861.015 (2) of the statutes is amended to read:

17 861.015 (2) For purposes of this section, property subject to a directive is valued
18 by its clear market value on the date of the decedent's death. Satisfaction of the
19 nonholding spouse's marital property interest in the property subject to the directive
20 shall be based on that value, plus any income from the property subject to the
21 directive after the death of the decedent and before satisfaction. For purposes of
22 determining the income from the property subject to a directive, such property shall
23 be treated as a legacy or devise of property other than money under s. ~~701.20~~
24 701.1115.

25 **SECTION 283.** 861.11 (5) (b) of the statutes is amended to read:

1 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
2 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
3 705 a financial institution is not liable for having transferred an account included
4 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
5 designated in a governing instrument, or for having taken any other action in
6 reliance on the beneficiary's apparent entitlement under the terms of a governing
7 instrument, regardless of whether the financial institution received written notice
8 of an intent to file, or the filing of, a petition for the deferred marital property elective
9 share amount.

10 **SECTION 284.** 865.08 (6) of the statutes is amended to read:

11 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
12 of trust shall be issued by the probate registrar to the trustee upon admission of the
13 will to informal probate at the same time that letters are granted to the personal
14 representative. The probate registrar shall determine if bond shall be required and,
15 if so, the amount thereof, and for such purpose the probate registrar shall have the
16 authority granted to the court by, and shall proceed pursuant to s. ~~701.16 (2)~~
17 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
18 beneficiaries of the testamentary trust shall cease to be interested in the estate
19 except under s. 851.21 (3). The trust shall be administered under supervision of the
20 court under ch. 701.

21 **SECTION 285.** 867.03 (2g) of the statutes is amended to read:

22 867.03 (2g) OBLIGATION OF AFFIANT. By accepting the decedent's property under
23 this section the heir, trustee, or guardian assumes a duty to apply the property
24 transferred for the payment of obligations according to priorities established under
25 s. 859.25 and to distribute any balance to those persons designated in the

1 appropriate governing instrument, as defined in s. 854.01, of the decedent or if there
2 is no governing instrument, according to the rules of intestate succession under ch.
3 852. An heir or guardian may publish a notice to creditors in the same manner and
4 with the same effect as a trustee under s. ~~701.065~~ 701.0605. This subsection does
5 not prohibit any appropriate person from requesting administration of the
6 decedent's estate under s. 856.07 or ch. 865.

7 **SECTION 286.** 879.03 (2) (c) of the statutes is amended to read:

8 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
9 ~~701.01 (2)~~ 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

10 **SECTION 287.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
11 read:

12 879.47 (1) The attorney for any person desiring to file any paper in court is
13 responsible for the preparation of the paper. Except as provided in s. ~~701.16 (4) (d)~~
14 sub. (2), all papers shall be legibly written on substantial paper and shall state the
15 title of the proceeding in which they are filed and the character of the paper. Either
16 uniform forms or computer-generated forms, if the forms exactly recreate the
17 original forms in wording, format and substance, shall be used. If papers are not so
18 written or if uniform forms or computer-generated forms that exactly recreate the
19 original forms in wording, format and substance are not used, the court may refuse
20 to receive and file them. The court shall show on all papers the date of their filing.

21 **SECTION 288.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

22 881.01 (1) (title) DEFINITIONS.

23 **SECTION 289.** 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
24 and amended to read:

1 881.01 (1) (a) (intro.) “Beneficiary,” ~~with respect to a guardianship of the~~
2 ~~estate,~~ means any of the following:

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

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

7 **SECTION 290.** 881.01 (1) (a) 1. and 2. of the statutes are created to read:

8 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.

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

10 **SECTION 291.** 881.01 (1) (b) of the statutes is amended to read:

11 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
12 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
13 who has the power to direct the trustee’s investment decisions, a trust protector, as
14 defined in s. 701.0103 (28), who has power over the investment of trust assets, and
15 any other person to whom a court appoints a power over the investment of the assets
16 of a decedent’s estate, a trust, a conservatorship, or a guardianship of the estate.

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

17 **SECTION 292.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
18 amended to read:

19 881.01 (4) (a) General rule. A fiduciary shall diversify investments unless the
20 fiduciary reasonably determines that, because of special circumstances, the
21 purposes of the estate, trust, conservatorship, or guardianship are better served
22 without diversifying.

23 **SECTION 293.** 881.01 (4) (b) of the statutes is created to read:

1 881.01 (4) (b) *Special rule for assets collected by a fiduciary.* 1. For purposes
2 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
3 the fiduciary did not exercise discretion over to acquire or purchase.

4 2. Notwithstanding par. (a), a fiduciary may retain an asset that is collected by
5 the fiduciary until the fiduciary reasonably determines that it is advisable to dispose
6 of the asset. While the asset is being retained, the fiduciary has a duty to exercise
7 discretion at reasonable intervals to determine the advisability of continuing to
8 retain or disposing of the asset that was collected.

9 3. At any time while an asset that is collected by the fiduciary is being retained,
10 a beneficiary may file an application with a court that has jurisdiction over the
11 fiduciary to compel the fiduciary to sell the asset and invest the sale proceeds in other
12 investment in accordance with this section.

13 4. If a beneficiary files an application under subd. 3., the court shall conduct
14 a hearing after giving notice to all interested persons, as determined by the court.
15 After the hearing, the court shall enter an order directing the fiduciary to retain or
16 sell the asset that is being retained based on what the court finds to be in accordance
17 with the terms and purposes of the estate, trust, conservatorship, or guardianship
18 of the estate and the interests of the beneficiaries.

19 **SECTION 294.** 881.05 of the statutes is repealed.

20 **SECTION 295. Effective date.**

21 (1) This act takes effect on January 1, 2014.

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0010/P2dn
FFK:jld:rs

March 4, 2013 } new
date

↑
keep

To Senator Risser:

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

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

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

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