

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

1 (2) In interpreting, construing, or administering a trust instrument, absent a  
2 clear expression of intent by the settlor to the contrary, a trustee shall apply the  
3 following presumptions, <sup>which</sup> <sup>that</sup> ~~which~~ may only be rebutted by clear and convincing  
4 evidence:

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

7 (b) The settlor intended that any <sup>g</sup> ~~gift~~ <sup>transfer</sup> made to a spouse outright and free of trust  
8 qualify for the gift or estate tax marital deduction and is a marital deduction <sup>g</sup> ~~gift~~ <sup>transfer</sup>.

9 (c) If the trust instrument refers to a trust as a marital trust, qualified terminal  
10 interest property trust, or spousal trust, <sup>or</sup> ~~or~~ refers to qualified terminable interest  
11 property, qualified terminal interest property, section 2044, 2056, or 2523 of the  
12 Internal Revenue Code, or <sup>a</sup> ~~similar provisions~~ of applicable state law, the settlor  
13 intended <sup>that</sup> the trust and property passing to the trust ~~to~~ <sup>to</sup> qualify for the applicable gift  
14 or estate tax marital deduction, <sup>and for</sup> ~~and for~~ <sup>that</sup> ~~the gift to~~ <sup>transfer</sup> ~~qualify~~ <sup>qualifies</sup> for the marital deduction  
15 for federal and state gift or estate tax purposes:

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

16 (3) If a trust receives a marital deduction <sup>g</sup> ~~gift~~ <sup>transfer</sup>, the trust instrument shall be  
17 construed to comply with the marital deduction provisions of the Internal Revenue  
18 Code in every respect.

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

19 (4) If a trust receives a marital deduction <sup>g</sup> ~~gift~~ <sup>transfer</sup>, the trustee has all the powers,  
20 duties, and discretionary authority necessary to comply with the marital deduction



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

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

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

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

12 (a) Prepare or review investment policy statements.

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

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

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

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

18 **701.0903 Nonapplication of prudent investor rule to life insurance**

19 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose

20 of a trust is to hold a life insurance contract or to purchase a life insurance contract

21 from contributions made to the trust, <sup>of the</sup> ~~of the trust~~ trustee <sup>of the trust</sup> does not have a duty to

22 do any of the following with respect to the acquisition, retention, and ownership of

23 a life insurance contract owned by the trust:

24 (a) Determine whether the life insurance contract is <sup>or</sup> or remains a proper

25 investment <sup>of the trust.</sup> ~~of the trust.~~ For purposes of this subsection, determining

whether a life insurance contract is or remains a proper investment includes all of the following:

SECTION 108

- 1 (1) ~~(a)~~ <sup>(b)</sup> ~~Investigate~~ <sup>Investigating</sup> the financial strength or changes in the financial strength of the
- 2 life insurance company maintaining the life insurance contract.
- 3 (3) ~~(b)~~ <sup>(c)</sup> ~~Determine~~ <sup>Determining</sup> whether to exercise any policy option, right, or privilege
- 4 available under the life insurance contract.
- 5 (5) ~~(c)~~ <sup>(d)</sup> ~~Diversify~~ <sup>Diversifying</sup> the life insurance contract relative to any other life insurance
- 6 contracts or any other assets of the trust.
- 7 (7) ~~(d)~~ <sup>(e)</sup> ~~Inquire~~ <sup>Inquiring</sup> about or ~~investigate~~ <sup>investigating</sup> the health or financial condition of an insured.
- 8 (8) ~~(e)~~ <sup>(f)</sup> ~~Prevent~~ <sup>Preventing</sup> the lapse of an underfunded life insurance contract if the trust does
- 9 not receive contributions or hold other readily marketable ~~trust~~ <sup>trust</sup> assets to pay the life
- 10 insurance contract premiums.

11 (2) A trustee is not liable to a beneficiary or to any other person for a loss that

12 arises because the trustee did not take an action specified in sub. (1). ✓

13 (3) This section does not apply to a life insurance contract that is purchased

14 from an affiliate of the trustee, or with respect to any life insurance contract from

15 which the trustee or an affiliate receives a commission, unless the power to purchase

16 the life insurance contract has been delegated to another person and that other

17 person made the decision to purchase the life insurance contract from or through the

18 trustee or an affiliate. ✓

19 <sup>In s 104-18</sup> (4) ~~(4)~~ <sup>(5)</sup> ~~This section applies to a life insurance contract acquired, retained, or owned~~ <sup>Subject to sub. (4)</sup>

20 <sup>(5)</sup> by a trustee before, on, or after the effective date of this subsection ... [LRB inserts

21 date].

22 SECTION 109. 701.10 of the statutes is repealed.

23 SECTION 110. Subchapter X (title) of chapter 701 [precedes 701.1001] of the

24 statutes is created to read:

25 CHAPTER 701

## SUBCHAPTER X

LIABILITY OF TRUSTEES AND RIGHTS  
OF PERSONS DEALING WITH TRUSTEE

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

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

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

(a) Compel the trustee to perform the trustee's duties.

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

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

(d) Order a trustee to account.

(e) Appoint an additional trustee, a directing party, or a trust protector having <sup>the</sup> duties and authority ordered by the court to take possession of the trust property and administer the trust. <sup>including, in the case of an additional trustee, the authority</sup>

(f) Suspend the trustee.

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

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

(i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and <sup>order recovery of</sup> recover the property or its proceeds.

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

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

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

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

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

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

7           **(2)** Except as otherwise provided in this subsection, if more than one trustee  
8           is liable to a beneficiary for a breach of trust, a trustee is entitled to contribution from  
9           the other trustee or trustees. A trustee is not entitled to contribution if the trustee  
10          was substantially more at fault than another trustee or if the trustee committed the  
11          breach of trust in bad faith or with reckless indifference to the purposes of the trust  
12          or the interests of the beneficiary. A trustee who received a benefit from the breach  
13          of trust is not entitled to contribution from another trustee to the extent of the benefit  
14          received.

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

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

19          **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee  
20          is not liable to a beneficiary for a loss or depreciation in the value of trust property  
21          or for not having made a profit.

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

23          **701.1004 Attorney fees and costs. (1)** In a judicial proceeding involving the  
24          administration of a trust, the court, as justice and equity may require, may award

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costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(2) Subject to sub. (3), if a trustee <sup>directing party, or trust protector</sup> defends or prosecutes any proceeding in good faith, whether successful or not, the trustee <sup>directing party, or trust protector</sup> is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney fees, incurred. This subsection <sup>does</sup> may not preclude a court from ordering <sup>another party to</sup> reimbursement of the trust for <sup>reimburse these</sup> such expenses and disbursements from another party as provided in sub. (1).

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

(b) If a claim or defense based upon a breach of trust is made against a trustee in a proceeding, the trustee shall provide notice to each qualified beneficiary of the trust whose share of the trust may be affected by the payment of attorney fees and costs of the <sup>trustee's</sup> intention to pay costs or attorney fees incurred in the proceeding from the trust prior to making payment. The notice shall inform each such qualified beneficiary <sup>directing party, and trust protector</sup> of the right to apply to the court for an order prohibiting the trustee from paying attorney fees or costs from trust property. If a trustee is served with a motion for an order prohibiting the trustee from paying from the trust attorney fees or costs in the proceeding and the trustee pays attorney fees or costs from the trust before an order is entered on the motion, the trustee <sup>directing party, or trust protector</sup> and the trustee's attorney who have been paid attorney fees or costs from trust property are subject to the remedies in pars.

(c) and (d).

(c) If a claim or defense based upon breach of trust is made against a trustee in a proceeding, a party must obtain a court order to prohibit the trustee from paying

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Handwritten note on the right margin: "directing party and trust protector"

Handwritten note: "their respective attorneys"

SECTION 114

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1 costs or attorney fees from trust property. To obtain an order prohibiting payment  
 2 of costs or attorney fees from trust property, a party ~~must~~ <sup>shall</sup> make a reasonable showing  
 3 by evidence in the record or by proffering evidence that provides a reasonable basis  
 4 for a court to conclude that there has been a breach of trust. The trustee <sup>directing party or trust protector</sup> may proffer  
 5 evidence to rebut the evidence submitted by a party. The court in its discretion may  
 6 defer ruling on the motion, pending discovery to be taken by the parties. If the court  
 7 finds that there is a reasonable basis to conclude that there has been a breach of  
 8 trust, unless the court finds good cause to allow attorney fees and costs to be paid  
 9 from the trust, the court shall enter an order prohibiting the payment of further  
 10 attorney fees and costs from trust property and shall order attorney fees or costs  
 11 previously paid from trust property in such proceeding to be refunded. An order  
 12 entered under this paragraph may not limit a trustee's <sup>directing party's or trust protector's</sup> right to seek an order  
 13 permitting the payment of some or all of the attorneys fees or costs incurred in the  
 14 proceeding from trust property, including any fees required to be refunded, after the  
 15 claim or defense is finally determined by the court. If a claim or defense based upon  
 16 a breach of trust is withdrawn, dismissed, or resolved without a determination by the  
 17 court that the trustee committed a breach of trust, after the entry of an order  
 18 prohibiting payment of attorney fees and costs pursuant to this paragraph, the  
 19 trustee may pay costs or attorney fees incurred in the proceeding from the trust  
 20 property without further court authorization.

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21 (d) If the court orders a refund under par. (c), the court may enter such  
 22 sanctions as are appropriate if a refund is not made as directed by the court,  
 23 including striking defenses or pleadings filed by the trustee. <sup>directing party or trust protector</sup> Nothing in this  
 24 paragraph limits other remedies and sanctions the court may employ for the failure  
 25 to refund the trust in a timely manner.



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

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

*(directing party, or trust protector)*

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

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

15 **701.1005 Limitation of action against trustee.** (1) A beneficiary may not  
16 commence a proceeding against a trustee for breach of trust more than one year after  
17 the date on which the beneficiary or a representative of the beneficiary was sent a  
18 report that adequately disclosed the existence of a potential claim for breach of trust.

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

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

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

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

2 (c) The termination of the trust.

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

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

6 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable  
7 reliance on the terms of the trust as expressed in the trust instrument is not liable  
8 to a beneficiary for a breach of trust to the extent the breach resulted from the  
9 reliance.

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

11 **701.1007 Event affecting administration or distribution.** If the  
12 happening of an event, including marriage, divorce, performance of educational  
13 requirements, or death, affects the administration or distribution of a trust, a trustee  
14 who has exercised reasonable care to ascertain the happening of the event is not  
15 liable for a loss resulting from the trustee's lack of knowledge.

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

17 **701.1008 Exculpation of trustee.** (1) A term of a trust relieving a trustee  
18 of liability for breach of trust is unenforceable to the extent that it does any of the  
19 following:

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

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

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

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

7           **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not  
8 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct  
9 constituting the breach, released the trustee from liability for the breach, or ratified  
10 the transaction constituting the breach, unless <sup>or any</sup> ~~one~~ of the following applies:

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

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

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

17           **701.1010 Limitation on personal liability of trustee.** (1) Except as  
18 otherwise provided in the contract, a trustee is not personally liable on a contract  
19 properly entered into in the trustee's fiduciary capacity in the course of  
20 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

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

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

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

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

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

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

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

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

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

23           (4) A person other than a beneficiary who in good faith assists a former trustee,  
24 or who in good faith and for value deals with a former trustee, without knowledge

1 that the trusteeship has terminated is protected from liability as if the former trustee  
2 were still a trustee.

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

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

7 **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust  
8 instrument to a person other than a beneficiary, the trustee may furnish to the  
9 person a certification of trust containing the following information:

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

12 (b) The identity of the settlor.

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

14 (d) The powers of the trustee.

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

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

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

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

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

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

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

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

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

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

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

23           **SECTION 124.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered  
24 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are  
25 amended to read:

1

701.1201 (1) (a) In the administration of any trust ~~which~~ <sup>that</sup> is a private foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue Code, a charitable trust, as defined ~~described~~ in section 4947 (a) (1) of the ~~internal revenue code~~ Internal Revenue Code, or a split-interest trust as defined ~~described~~ in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the following acts shall be prohibited:

7

1. Engaging in any act of self-dealing <sup>2</sup> (as defined in section 4941 (d) of the ~~internal revenue code~~ Internal Revenue Code, ~~which~~ <sup>3</sup> ~~would~~ <sup>that</sup> give rise to any liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal Revenue Code.

11

2. Retaining any excess business holdings <sup>2</sup> (as defined in section 4943 (c) of the ~~internal revenue code~~ Internal Revenue Code, ~~which~~ <sup>3</sup> ~~would~~ <sup>that</sup> give rise to any liability for the tax imposed by section 4943 (a) of the ~~internal revenue code~~ Internal Revenue Code.

15

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

19

4. Making any taxable expenditures <sup>2</sup> (as defined in section 4945 (d) of the ~~internal revenue code~~ Internal Revenue Code, ~~which~~ <sup>3</sup> ~~would~~ <sup>that</sup> give rise to any liability for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal Revenue Code.

23

(b) This subsection ~~shall~~ <sup>does</sup> not apply either to those split-interest trusts or to amounts thereof ~~which~~ <sup>that</sup> are not subject to the prohibitions applicable to private

24

1 foundations by reason of the provisions of section 4947 of the ~~internal revenue code~~  
2 Internal Revenue Code.

3 (2) In the administration of any trust which <sup>that</sup> is a private foundation <sup>3</sup> as defined  
4 in section 509 of the ~~internal revenue code~~ Internal Revenue Code, or which <sup>that</sup> is a  
5 charitable trust <sup>3</sup> as defined described in section 4947 (a) (1) of the ~~internal revenue~~  
6 ~~code~~ Internal Revenue Code, there shall be distributed, for the purposes specified in  
7 the trust instrument, for each taxable year, amounts at least sufficient to avoid  
8 liability for the tax imposed by section 4942 (a) of the ~~internal revenue code~~ Internal  
9 Revenue Code.

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

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

15 SECTION 126. 701.11 of the statutes is repealed.

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

18 CHAPTER 701

19 SUBCHAPTER XI

20 UNIFORM PRINCIPAL AND INCOME ACT

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

22 701.1101 Short title and scope. This subchapter may be cited as the  
23 Wisconsin Uniform Principal and Income Act. In addition to a trust described in s.

24 701.0102 <sup>Subject to s. 701.1206(2),</sup> this subchapter applies to an estate that is administered in this state <sup>as</sup>  
25 provided under s. 701.1206 (2). <sup>a trust described in s. 701.0102 and</sup>



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

2 701.1102 Definitions. (intro.) In this subchapter:

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

4 701.1102 (1g) "Asset" ~~means property as defined in s. 701.0103 (18).~~ <sup>has the meaning given for</sup> ~~under~~

\*\*\*\*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.

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

6 701.1123 (1) In this section:

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

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

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

14 (b) "Plan" means a contractual, custodial, trust, or other arrangement that  
15 provides for distributions to a trust <sup>and includes a private</sup> or commercial annuity, an  
16 individual retirement account, a Roth individual retirement account, a qualified  
17 retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership  
18 plan, or any nonqualified deferred compensation plan.

19 (c) "Separate account" means an account established or maintained <sup>by</sup> a plan  
20 under which income, gains, and losses, whether or not realized, from assets allocated

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(c)

(b)

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1 to the account, are credited to or charged against the account without regard to other  
2 income, gains, or losses of the plan.

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

4 701.1123 (4) (A) For purposes of this subsection, "trustee" means a trustee of  
5 a trust for which an election to qualify for a marital deduction under section 2056 (b)  
6 (7) or 2523 (f) of the Internal Revenue Code has been made for a trust that qualified  
7 for the marital deduction under section 2056 (b) (5) or 2523 (e) of the Internal  
8 Revenue Code. ✓

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

14 (b) (c) Notwithstanding subs. (2) and (3), a trustee of a marital deduction trust shall allocate a payment from  
15 a plan to income to the extent of the plan income and distribute that amount to the  
16 surviving spouse. The trustee of the marital deduction trust shall allocate the balance of the payment to principal.  
17 Upon the request of the surviving spouse, the trustee of the marital deduction trust shall allocate principal to  
18 income to the extent the plan income exceeds payments made from the plan to the  
19 trust during the accounting period.

20 (c) (d) Upon the request of the surviving spouse of the settlor, a trustee of a marital deduction trust shall  
21 demand that a person administering a plan distribute the plan income to the trust.

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

23 701.1126 (title) Timber.

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



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1 **701.1204** Uniformity of application and construction. This chapter shall  
2 be applied and construed to effectuate its general purpose to make uniform the law  
3 with respect to the subject of this chapter among states enacting it.

4 **SECTION 140.** <sup>701.1205</sup> 701.1206(3) of the statutes is created to read:

5 <sup>701.1205</sup> 701.1206(3) (a) Except as provided in par. (b), this chapter applies to a judicial  
6 proceeding concerning a trust commenced before, on, or after the effective date of this  
7 paragraph .... [LRB inserts date].

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

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

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

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

20 **701.0205 Notice.** If notice of a judicial proceeding involving a trust proceeding  
21 to ~~a~~ an interested person interested in the trust, to the person's representative or  
22 guardian ad litem as provided in s. 701.15, or to other persons, is required by law or  
23 deemed necessary by the court, the court shall order such notice to be given as  
24 prescribed in s. 879.05 except that service by publication <sup>✓</sup> shall ~~not~~ <sup>may</sup> be required unless  
25 ordered by the court. The court may order both personal service and service by

1 publication on designated persons. Proof of service shall be made as provided in s.  
2 879.07. ~~Persons interested in the trust~~ Interested persons, on behalf of themselves,  
3 or their representatives or guardians ad litem ~~as provided in s. 701.15~~, on behalf of  
4 themselves the representative or guardian ad litem and those whom they represent  
5 the interested person the representative or guardian ad litem represents, may in  
6 writing waive service of notice and consent to the hearing of any matter without  
7 notice. Waiver of notice or an appearance by any interested person ~~interested in the~~  
8 ~~trust~~ or the interested person's representative or guardian ad litem ~~as provided in~~  
9 ~~s. 701.15~~ is equivalent to timely service of notice.

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

12 **701.0206 Attorney for person in military service.** At the time of filing a  
13 petition for a ~~trust~~ judicial proceeding; involving a trust, the petitioner shall file an  
14 affidavit shall be filed setting forth the name of any interested person ~~interested in~~  
15 ~~the proceeding~~ who is actively engaged in the military service of the United States.  
16 Whenever it appears by the affidavit or otherwise that any person in the active  
17 military service of the United States is an interested in any trust proceeding person  
18 and is not represented by an attorney, or by an attorney-in-fact who is duly  
19 authorized to act on the interested person's behalf in the matter, the court shall  
20 appoint an attorney to represent the interested person and protect the person's  
21 interest.

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

23 **SECTION 146.** 701.15 of the statutes is repealed.

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

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

3           879.47 (2) ~~Notwithstanding s. 879.47, trustees~~ Trustees and cotrustees may  
4 submit to courts accounts in the format that they normally use for accounts  
5 submitted to beneficiaries under this subsection, if all of the information required by  
6 the court is included.

7           **SECTION 149.** 701.17 of the statutes is repealed.

8           **SECTION 150.** 701.18 of the statutes is repealed.

9           **SECTION 151.** 701.19 of the statutes is repealed.

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

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

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

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

15          701.1102 (1m) “Beneficiary” ~~Notwithstanding s. 701.0103 (3),~~ “beneficiary”  
16 means a person who has a beneficial interest in a trust or an estate and includes, in  
17 the case of a decedent’s estate, an heir, a legatee, and a devisee and, in the case of a  
18 trust, an income beneficiary and a remainder beneficiary.

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

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

22          701.1102 (3) “Income” means money or property that a fiduciary receives as  
23 current return from a principal asset. “Income” includes a portion of receipts from  
24 a sale, exchange, or liquidation of a principal asset, to the extent provided in subs.  
25 (10) ~~ss. 701.1115 to (24) 701.1129.~~

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

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

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

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

6 701.1102 (7) "Net income" means the total receipts allocated to income during  
7 an accounting period, minus the disbursements made from income during the period,  
8 plus or minus transfers under <sup>plain</sup> ~~this section~~ ~~subch. XI~~ <sup>subchapter</sup> to or from income during the  
9 period.

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

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

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

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

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

16 701.1103 (1) In allocating receipts and disbursements to income or principal  
17 or between income and principal, and with respect to any matter within the scope of  
18 ~~subs. (5) ss. 701.1110 to (9) 701.1114~~, a fiduciary:

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

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

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

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

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

15 **SECTION 167.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104  
16 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

17 701.1104 (1) A trustee may adjust between principal and income to the extent  
18 the trustee considers necessary if the trustee invests and manages trust assets as a  
19 prudent investor, the terms of the trust describe the amount that may or must be  
20 distributed to a beneficiary by referring to the trust's income, and the trustee  
21 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee  
22 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a  
24 unitrust in any of the following ways:

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

3           701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the  
4 request of a qualified beneficiary, if all of the following apply:

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

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

9           701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided  
10 in ~~sub. (4e) (b) s. 701.1105 (1)~~ of the trustee's intention to convert the trust to a  
11 unitrust, and the notice advises how the unitrust will operate, including the fixed  
12 percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under  
13 ~~par. (e) 4. sub. (3) (d)~~ that the trustee intends to follow.

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

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

17           701.1106 (1) (a) 3. Every ~~sui-juris~~ qualified beneficiary consents to the  
18 conversion to a unitrust in a writing delivered to the trustee.

19           **SECTION 187.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)  
20 4.

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

23           701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified  
24 beneficiary, if all of the following apply:

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

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

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

10           **SECTION 191.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered  
11 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,  
12 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are  
13 amended to read:

14           701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~  
15 ~~(a) 1.~~ sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1., the  
16 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9.~~ s. 701.1104 (2) (a)  
17 to (i).

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

1 which is at least 3 years but not more than 5 years, or the period since the original  
2 trust was created, whichever is less.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 192. 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107

(1) and (2) <sup>(a)</sup>(e), (f) 2., (g) and (h), as renumbered, are amended to read:

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

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

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

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

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

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

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1           **701.1108 Power to treat capital gains as part of a distribution.** Unless  
2 prohibited by the governing instrument will or trust, a trustee <sup>instrument</sup> fiduciary may cause  
3 gains from the sale or exchange of estate or trust assets property, as determined for  
4 federal income tax purposes, to be taxed for federal income tax purposes as part of  
5 a distribution of income that has been increased by an adjustment from principal to  
6 income under ~~sub. (4)~~ s. 701.1104, of a unitrust distribution, of a fixed annuity  
7 distribution, or of a principal distribution to a beneficiary.

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

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

11           701.1109 (1) Nothing in this section subchapter creates a duty to make an  
12 adjustment under ~~sub. (4)~~ s. 701.1104 or to convert a trust to a unitrust under ~~sub.~~  
13 (4g) s. 701.1106. Unless it determines that the decision to make an adjustment or  
14 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not  
15 grant relief from any decision a fiduciary makes regarding the exercise of a  
16 discretionary power conferred by ~~sub. (4)~~ s. 701.1104 or (4g) 701.1106.

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

19           701.1109 (2) An action taken under ~~sub. (4)~~ s. 701.1104 or (4g) 701.1106 is not  
20 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed  
21 action under ~~sub. (4e)~~ s. 701.1105 and did not receive a timely written objection to  
22 the notice. It is not an abuse of discretion not to exercise the power to adjust under  
23 ~~sub. (4)~~ s. 701.1104 or to convert under ~~sub. (4g)~~ s. 701.1106.

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

1           **SECTION 198.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and  
2           701.1109 (4) (c), as renumbered, is amended to read:

3           701.1109 (4) (c) To the extent that the court is unable, after applying ~~subs. 1.~~  
4           ~~pars. (a) and 2. (b),~~ to place the beneficiaries, the trust, or both in the positions that  
5           they would have occupied had the discretion not been abused, the court may order  
6           the fiduciary to pay an appropriate amount from its own funds to one or more of the  
7           beneficiaries, the trust, or both.

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

9           **SECTION 200.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110  
10          (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

11          701.1110 (1) A fiduciary of an estate or of a terminating income interest shall  
12          determine the amount of net income and net principal receipts received from  
13          property specifically given to a beneficiary under the rules in ~~subs. (7) ss. 701.1112~~  
14          to ~~(30) 701.1135~~ that apply to trustees and the rules in ~~par. (e) sub. (5).~~ The fiduciary  
15          shall distribute the net income and net principal receipts to the beneficiary who is  
16          to receive the specific property.

17          (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's  
18          estate or a terminating income interest under the rules in ~~subs. (7) ss. 701.1112~~ to  
19          ~~(30) 701.1135~~ that apply to trustees and by:

20          (3) A fiduciary shall distribute to a beneficiary, including a trustee, who  
21          receives a pecuniary amount not determined by a pecuniary formula related to a  
22          transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of  
23          the pecuniary amount for the period commencing one year after the decedent's death  
24          or after the income interest in the trust ends. The interest under this ~~paragraph~~  
25          subsection shall be distributed from net income determined under ~~par. (b) sub. (2) or~~

1 from principal to the extent that net income is insufficient. For purposes of this  
2 ~~paragraph subsection~~, the deferred marital property elective share amount elected  
3 by a surviving spouse under s. 861.02 (1) is a bequest of a ~~specific pecuniary~~ amount  
4 of money not determined by a pecuniary formula related to a transfer tax.

5 (4) A fiduciary shall distribute the net income remaining after distributions  
6 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.  
7 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary  
8 amount determined by a pecuniary formula related to a transfer tax.

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

21 **SECTION 201.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111  
22 (1), (2) (d) and (4), as renumbered, are amended to read:

23 701.1111 (1) Each beneficiary described in ~~sub. (5) (d)~~ s. 701.1110 (4) is entitled  
24 to receive a portion of the net income equal to the beneficiary's fractional interest in  
25 undistributed principal assets, using values as of the distribution date. If a fiduciary

1 makes more than one distribution of assets to beneficiaries to whom this subsection  
2 section applies, each beneficiary, including one who does not receive part of the  
3 distribution, is entitled, as of each distribution date, to the net income the fiduciary  
4 has received after the date of death or terminating event or earlier distribution date  
5 but has not distributed as of the current distribution date.

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

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

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

15 701.1112 (3) An asset becomes subject to a successive income interest on the  
16 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),  
17 even if there is an intervening period of administration to wind up the preceding  
18 income interest.

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

21 701.1113 (1) A trustee shall allocate to principal an income receipt or  
22 disbursement other than one to which ~~sub. (5)(a)~~ s. 701.1110 (1) applies if its due date  
23 occurs before a decedent dies in the case of an estate or before an income interest  
24 begins in the case of a trust or successive income interest.

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

9           **SECTION 204.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and  
10 701.1114 (1), as renumbered, is amended to read:

11           **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net  
12 income received before the date on which an income interest ends. “Undistributed  
13 income” does not include an item of income or expense that is due or accrued or net  
14 income that has been added or is required to be added to principal under the terms  
15 of the trust.

16           **SECTION 205.** 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115  
17 (1), (2) and (5), as renumbered, is amended to read:

18           **701.1115 (1)** In this ~~subsection~~ section, “entity” means a corporation,  
19 partnership, limited liability company, regulated investment company, real estate  
20 investment trust, common trust fund, or any other organization in which a trustee  
21 has an interest other than a trust or estate to which ~~sub. (11)~~ s. 701.1116 applies, a  
22 business or activity to which ~~sub. (12)~~ s. 701.1117 applies, or an asset-backed  
23 security to which ~~sub. (24)~~ s. 701.1129 applies.

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

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

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

7           **701.1116 Distribution from trust or estate.** A trustee shall allocate to  
8 income an amount received as a distribution of income from a trust or an estate in  
9 which the trust has an interest other than a purchased interest, and shall allocate  
10 to principal an amount received as a distribution of principal from such a trust or  
11 estate. If a trustee purchases an interest in a trust that is an investment entity, or  
12 a decedent or donor transfers an interest in such a trust to a trustee, ~~sub. (10) s.~~  
13 701.1115 or ~~(24) 701.1129~~ applies to a receipt from the trust.

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

16           701.1117 (3) (g) Activities to which ~~sub. (23) s.~~ 701.1128 applies.

17           **SECTION 208.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118  
18 (1), (2), (3) and (6), as renumbered, are amended to read:

19           701.1118 (1) To the extent not allocated to income under this ~~section~~  
20 subchapter, assets received from a transferor during the transferor's lifetime, a  
21 decedent's estate, a trust with a terminating income interest, or a payer under a  
22 contract naming the trust or its trustee as beneficiary.

23           (2) Money or other property received from the sale, exchange, liquidation, or  
24 change in form of a principal asset, including realized profit, subject to ~~subs. (10) ss.~~  
25 701.1115 to ~~(24) 701.1129~~.

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

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

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

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

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

17           701.1120 **(3)** This ~~subsection~~ section does not apply to an obligation to which  
18 ~~sub. (18), (19), (20), (21), (23)~~ s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or  
19 ~~(24) 701.1129~~ applies.

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

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

1 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate  
2 dividends on an insurance policy to income if the premiums on the policy are paid  
3 from income, and to principal if the premiums are paid from principal.

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

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

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

11 **701.1122 Insubstantial allocations not required.** (intro.) If a trustee  
12 determines that an allocation between principal and income required by ~~sub. (15) (b),~~  
13 ~~(18), (19), (20), (21)~~ s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24)  
14 701.1129 is insubstantial, the trustee may allocate the entire amount to principal  
15 unless one of the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the  
16 allocation. This power may be exercised by a cotrustee in the circumstances  
17 described in ~~sub. (4) (d)~~ s. 701.1104 (4) and may be released for the reasons and in  
18 the manner described in ~~sub. (4) (e)~~ s. 701.1104 (5). An allocation is presumed to be  
19 insubstantial if:

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

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

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

24 701.1123 (2) To the extent that a payment is characterized as interest ~~or~~, a  
25 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate



1 it the payment to income. The trustee shall allocate to principal the balance of the  
2 payment and any other payment received in the same accounting period that is not  
3 characterized as interest, a dividend, or ~~an equivalent a payment in lieu of interest~~  
4 or a dividend.

5 **SECTION 216.** 701.20 (18) (c) <sup>1.</sup> of the statutes is renumbered 701.1123 <sup>(1) (d)</sup> (3) and  
6 amended to read:

7 701.1123 (3) (a) <sup>(1) (d)</sup> ~~In this paragraph subsection and sub. (4),~~ "plan <sup>Plan</sup> income" means  
8 any of the following:

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

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

SECTION #.  
701.20 (18) (C) 2. of the statutes is renumbered SECTION 216  
701.1123 (3) and amended to read:

1 701.1123 (3) (b) For each accounting period of a trust in which the trust receives a payment  
2 (b) but no part of any payment is allocated to income under ~~par. (b)~~ sub. (2), the trustee  
3 shall allocate to income that portion of the aggregate value of all payments received  
4 by the trustee in that accounting period that is equal to the amount of plan income  
5 that is attributable to the trust's interest in the plan from which payment is received  
6 for that accounting period. The trustee shall allocate the balance of any payments  
7 to principal.

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

10 701.1123 (5) If, to obtain an estate or gift tax marital deduction for an interest  
11 in a trust, a trustee must allocate more of a payment to income than provided for by  
12 this ~~subsection~~ section, the trustee shall allocate to income the additional amount  
13 necessary to obtain the marital deduction.

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

16 701.1123 (6) This ~~subsection~~ section does not apply to ~~payments~~ a payment to  
17 which ~~sub. (19)~~ s. 701.1124 applies.

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

20 701.1124 (1) In this ~~subsection~~ section, "liquidating asset" means an asset  
21 whose value will diminish or terminate because the asset is expected to produce  
22 receipts for a period of limited duration. The term includes a leasehold, patent,  
23 copyright, royalty right, and right to receive payments during a period of more than  
24 one year under an arrangement that does not provide for the payment of interest on  
25 the unpaid balance. The term does not include a payment subject to ~~sub. (18)~~ s.

1 701.1123, resources subject to ~~sub. (20)~~ s. 701.1125, timber subject to ~~sub. (21)~~ s.  
2 701.1126, an activity subject to ~~sub. (23)~~ s. 701.1128, an asset subject to ~~sub. (24)~~ s.  
3 701.1129, or any asset for which the trustee establishes a reserve for depreciation  
4 under ~~sub. (27)~~ s. 701.1132.

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

7 701.1125 (1) (intro.) To the extent that a trustee accounts for receipts from an  
8 interest in minerals or other natural resources in accordance with this ~~subsection~~  
9 section, the trustee shall allocate them as follows:

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

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

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

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

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

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

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

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

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

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

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

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

22           **701.1127 Property not productive of income.** (1) If a marital deduction  
23 is allowed for all or part of a trust whose assets consist substantially of property that  
24 does not provide the surviving spouse with sufficient income from or use of the trust  
25 assets, and if the amounts that the trustee transfers from principal to income under

1 ~~sub. (4)~~ s. 701.1104 and distributes to the spouse from principal in accordance with  
2 the terms of the trust are insufficient to provide the spouse with the beneficial  
3 enjoyment required to obtain the marital deduction, the spouse may require the  
4 trustee to make property productive of income, convert property within a reasonable  
5 time, or exercise the power conferred by ~~sub. (4)(a)~~ s. 701.1104 (1). The trustee may  
6 decide which action or combination of actions to take.

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

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

12 701.1128 (1) In this ~~subsection~~ section, “derivative” means a contract or  
13 financial instrument or a combination of contracts and financial instruments that  
14 gives a trust the right or obligation to participate in some or all changes in the price  
15 of a tangible or intangible asset or group of assets, or changes in a rate, an index of  
16 prices or rates, or another market indicator for an asset or a group of assets.

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

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

22 701.1129 (1) In this ~~subsection~~ section, “asset-backed security” means an asset  
23 whose value is based upon the right it gives the owner to receive distributions from  
24 the proceeds of financial assets that provide collateral for the security. The term  
25 includes an asset that gives the owner the right to receive from the collateral

1 financial assets only the interest or other current return or only the proceeds other  
2 than interest or current return. The term does not include an asset to which ~~sub. (10)~~  
3 s. 701.1115 or ~~(18)~~ 701.1123 applies.

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

6 **701.1130 Disbursements from income.** (intro.) A trustee shall make the  
7 following disbursements from income to the extent that they are not disbursements  
8 specified in ~~sub. (5) (b) 2.~~ s. 701.1110 (2) (b) or ~~3. (c):~~

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

11 701.1131 (1) (a) The remaining one-half of the disbursements described in ~~sub.~~  
12 ~~(25) (a)~~ s. 701.1130 (1) and ~~(b) (2).~~

13 (e) Premiums paid on a policy of insurance not described in ~~sub. (25) (d)~~ s.  
14 701.1130 (4) of which the trust is the owner and beneficiary.

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

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

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

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

6           **SECTION 229.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133  
7 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

8           701.1133 (1) If a trustee makes or expects to make a principal disbursement  
9 described in this subsection section, the trustee may transfer an appropriate amount  
10 from income to principal in one or more accounting periods to reimburse principal  
11 or to provide a reserve for future principal disbursements.

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

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

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

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

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

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

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

24           701.1134 (3) (intro.) A tax required to be paid by a trustee on the trust’s share  
25 of an entity’s taxable income must be paid ~~proportionately~~ as follows:

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

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

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

7           701.1134 (3) (b) From principal to the extent that: ~~2. a. Receipts~~ receipts from  
8 the entity are allocated only to principal.

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

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

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

13          701.1135 (1) (a) Elections and decisions, other than those described in par. (b)  
14 sub. (2), that the fiduciary makes from time to time regarding tax matters.

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

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

18          701.1136 (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the  
19 trustee or a court under s. ~~701.20 (4g)~~ 701.1106 with respect to unitrust distributions,  
20 if a beneficiary is entitled to receive income from a trust, but the ~~creating~~ trust  
21 instrument fails to specify how frequently it is to be paid, the trustee shall distribute  
22 at least annually the income to which such beneficiary is entitled.

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



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

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

8 SECTION 242. 701.22 of the statutes is renumbered 701.0417 (4) and amended  
9 to read:

10 701.0417 (4) In case of a division of trust ~~assets~~ into 2 or more trusts ~~or shares~~,  
11 any distribution or allocation of assets as an equivalent of a dollar amount fixed by  
12 formula or otherwise shall be made at current fair market values unless the  
13 governing trust instrument expressly provided that another value may be used. If  
14 the governing trust instrument requires or permits a different value to be used, all  
15 assets property available for distribution, including cash, shall, ~~unless otherwise~~  
16 ~~expressly provided,~~ be ~~so~~ distributed <sup>so</sup> that the assets property, including cash,  
17 ~~distributed as such an equivalent will be~~ <sup>is</sup> fairly representative of the net appreciation  
18 or depreciation in the value of the available property on the date or dates of  
19 distribution. A provision in the governing trust instrument that the trustee may fix  
20 values for purposes of distribution or allocation does not of itself constitute  
21 authorization to fix a value other than current fair market value.

22 SECTION 243. 701.23 of the statutes is repealed.

23 SECTION 244. 701.24 (title) of the statutes is renumbered 701.1206 (title).  
701.1205

24 SECTION 245. 701.24 (1) of the statutes is renumbered 701.1206 (1) and  
25 amended to read:  
701.1205

1 701.1206 <sup>0 701.1205</sup> (1) Except as otherwise provided in sub. (3) (2) and s. 701.19 (9) (a),  
 2 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ are ss. 701.0602 and 701.0813 <sup>9 2</sup> ~~this~~ <sup>and 701.0903</sup>  
 3 chapter is applicable to a trust existing on July 1, 1971 the effective date of this  
 4 subsection .... [LRB inserts date], as well as a trust created after such date, and shall  
 5 govern trustees acting under such trusts. If application of any provision of ss. 701.01  
 6 to 701.19, 701.21, 701.22, and 701.23 this chapter to a trust in existence on August  
 7 1, 1971 the effective date of this subsection .... [LRB inserts date], is unconstitutional,  
 8 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?

9 SECTION 246. 701.24 (2) of the statutes is renumbered 701.1206 <sup>701.1205</sup> (2) and  
 10 amended to read:

11 701.1206 <sup>701.1205</sup> (2) Section 701.20 Subchapter XI of this chapter applies to every a  
 12 trust or decedent's estate existing on May 17, 2005 the effective date of this  
 13 subsection .... [LRB inserts date], and to every a trust or decedent's estate created or  
 14 coming into existence after that date, except as otherwise expressly provided in s.  
 15 701.20 subch. XI or by the decedent's will or the terms of the trust. With respect to  
 16 a trust or decedent's estate existing on May 17, 2005, s. 701.20 (5) to (30) the effective  
 17 date of this subsection .... [LRB inserts date], ss. 701.1110 to 701.1135 shall apply at  
 18 the beginning of the trust's or estate's first accounting period, as defined in s. 701.20