

1 701.1125 (2) (a), that begins on or after ~~May 17, 2005~~ the effective date of this
2 subsection [LRB inserts date].

3 SECTION 247. 701.24 (3) of the statutes is repealed.

4 SECTION 248. 701.25 of the statutes is renumbered 701.1205 701.1204

5 SECTION 249. 701.26 of the statutes is repealed.

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

7 SECTION 251. 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
8 to read:

9 702.02 (2) "Creating instrument" means the will, trust agreement, or other
10 document which creates or reserves the power of appointment.

11 SECTION 252. 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
12 to read:

13 702.02 (4) "Donor" means the person who creates or reserves the power;
14 "donee" means the person in whom the power is created or reserved; and "appointee"
15 means ~~the person to whom an interest is appointed~~ of appointment.

16 SECTION 253. 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
17 to read:

18 702.02 (5) "General power of appointment" means a power exercisable in favor
19 of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's
20 estate, whether or not it is ^{also} exercisable in favor of others. A power to appoint to any
21 person or a power of appointment ^{that} ~~which~~ is not expressly restricted as to appointees
22 may be exercised in favor of the donee or the donee's creditors if exercisable during
23 lifetime, and in favor of the donee's estate or the creditors of the donee's estate if
24 exercisable by will.

SECTION 254

1 SECTION 254. 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
2 to read:

3 702.02 (6) "Power of appointment" means a power of ~~appointment over to~~
4 appoint legal or equitable interests in real or personal property. A power of
5 appointment is ~~a power~~ created or reserved by a person having property subject to
6 his or her disposition which enables the donee of the power of appointment to
7 designate, within such limits as may be prescribed, the transferees of the property
8 or the shares or the interests in which it shall be received; ~~it~~. A power of appointment
9 does not include a power of sale, a power of attorney, a power of revocation, or a power
10 exercisable by a trustee, a directing party, as defined in s. 701.0103 (7), ~~a trust~~

11 ~~protector, as defined in s. 701.0103 (28), or other~~ fiduciary in his or her fiduciary
12 capacity. ~~or a trust~~

13 SECTION 255. 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
14 to read:

15 702.02 (7) "Special power of appointment" means a power of appointment
16 ~~exercisable only in favor of one or more persons not including the donee, the donee's~~
17 ~~estate, the donee's creditors, or the creditors of the donee's estate and, when~~
18 ~~exercisable in favor of a class, so limited in size by description of the class that in the~~
19 ~~event of nonexercise of the power a court can make distribution to persons within the~~
20 ~~class if the donor has failed to provide for this contingency.~~

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

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

23 702.02 (1) "Appointee" means the person to whom an interest is appointed.

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

that is not a
general power of
appointment

1 702.02 (3) "Donee" means the person in whom the power of appointment is
2 created or reserved.

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

4 **702.03 Manifestation of intent to exercise powers a power of**

5 **appointment.** (1) Unless the person who executed it had a contrary intention, if

6 a governing creating instrument, ~~as defined in s. 854.01 (2), or an inter vivos~~

7 ~~governing instrument, as defined in s. 700.27 (1) (c),~~ creates a power of appointment

8 that expressly requires that the power ^{of appointment} be exercised by any type of reference to the

9 ^{of appointment} power ^{for its source,} the donor's intention in requiring the reference is presumed to

10 be to prevent an inadvertent exercise of the power of appointment. Extrinsic

11 evidence, as defined in s. 854.01 (1), may be used to construe the intent.

12 (2) In the case of other powers, ~~an of appointment, a creating instrument~~

13 manifests an intent to exercise the power of appointment if the creating instrument

14 purports to transfer an interest in the appointive property which the donee would

15 have no power to transfer except by virtue of the power of appointment, even though

16 the power of appointment is not recited or referred to in the creating instrument, or

17 if the creating instrument either expressly or by necessary implication from its

18 wording interpreted in light of the circumstances surrounding its drafting and

19 execution manifests an intent to exercise the power of appointment. If there is a

20 general power of appointment exercisable by will with no gift in default in the

21 creating instrument, a residuary clause or other general language in the donee's will

22 purporting to dispose of all of the donee's estate or property operates to exercise the

23 power of appointment in favor of the donee's estate, but in all other cases such a

24 clause or language does not in itself manifest an intent to exercise a power ✓

25 ^{of appointment} exercisable by will.

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

2 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO
3 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by
4 a person who would have the capacity to transfer the property covered by the power
5 of appointment.

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

14 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
15 person is required by the donor for the exercise of a power of appointment, such
16 consent must be expressed in the creating instrument exercising the power of
17 appointment or in a separate written instrument, signed in either case by the
18 persons whose consent is required. If any person whose consent is required dies or
19 becomes legally incapable of consenting, the power of appointment may be exercised
20 by the donee without the consent of that person unless the donor has manifested a
21 contrary intent in the creating instrument ~~creating the power~~.

22 (4) POWER OF APPOINTMENT VESTED IN 2 OR MORE DONEES. Unless the donor
23 manifests a contrary intent, when a power of appointment is vested in 2 or more
24 persons, all must unite in its exercise, but if one or more of the donees dies, becomes
25 incapable of exercising the power of appointment, or renounces, releases, or

1 disclaims the power of appointment, the power of appointment may be exercised by
2 the others.

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

4 702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal
5 representative, trustee, or other fiduciary who holds property subject to a power of
6 appointment may administer that property as if the power of appointment was not
7 exercised if the personal representative, trustee, or other fiduciary has no notice of
8 the existence of any of the following within 6 months after the death of the donee of
9 the power of appointment:

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

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

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

15 **702.07 Powers Power of appointment to be construed as exclusive.** The
16 donee of any power of appointment may appoint the whole or any part of the
17 appointive assets to any one or more of the permissible appointees and exclude
18 others, except to the extent that the donor specifies either a minimum share or
19 amount to be appointed to each permissible appointee or to designated appointees,
20 or a maximum share or amount appointable to any one or more appointees.

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

22 **702.08 Disclaimer of powers a power of appointment.** The donee of any
23 power of appointment may disclaim all or part of the power of appointment as
24 provided under s. 700.27 or 854.13.

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

3 **702.09** (title) **Release of powers a power of appointment.** (1) ~~Except as~~
4 Unless the creating instrument expressly provides that the power of appointment
5 cannot be released or expressly restricts the time, manner, or scope of release, the
6 donee of any power of appointment may do any of the following:

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

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

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

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

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

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

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

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

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

22 **702.11 Irrevocability of creation, exercise and release of powers a**
23 **power of appointment.** The creation, exercise or release of a power of appointment
24 is irrevocable unless the power to revoke is reserved in the creation, exercise or
25 release of the power of appointment.

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

3 **702.13 (title) Recording instruments relating to powers a power of**
4 **appointment.** (1) (intro.) Any of the following instruments relating to powers a
5 power of appointment is entitled to be recorded as a conveyance upon compliance
6 with s. 706.05 (1):

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

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

9 (c) A disclaimer;.

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

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

13 **702.15 Disposition when a special power of appointment is**
14 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise
15 effectively the special power of appointment, the interests which might have been
16 appointed under the special power of appointment pass in one of the following ways:

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

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

1 SECTION 268. 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
2 amended to read:

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

7 (b) If the creating instrument expressly states that there is no reversion in the
8 donor, then any language in the creating instrument indicating or stating that the
9 permissible appointees are to take only if the donee exercises the special power of
10 appointment is to be disregarded and the interests shall pass in accordance with sub.
11 (2).

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

13 702.17 (1) GENERAL POLICY. If the donee has ~~either a general power or an~~
14 ~~unclassified power which is unlimited as to permissible appointees except for~~
15 ~~exclusion of the donee, the donee’s estate, the donee’s creditors and the creditors of~~
16 ~~the donee’s estate, or a substantially similar exclusion of appointment~~, any interest
17 which the donee has power to appoint or has appointed is to be treated as property
18 of the donee for purposes of satisfying claims of the donee’s creditors, as provided in
19 this section.

20 (2) DURING LIFETIME OF THE DONEE. If the donee has an unexercised general
21 power of the kinds specified in sub. (1) appointment, and can presently exercise such
22 ~~a the general power of appointment~~, in favor of the donee or the donee’s creditors
23 any creditor of the donee may by appropriate
24 proceedings reach any interest which the donee could appoint, to the extent that the
25 donee’s individual assets are insufficient to satisfy the creditor’s claim. Such an
interest is to be treated as property of the donee within ch. 816. If the donee has

1 exercised such a general power of appointment, the creditor can reach the appointed
2 interests to the same extent that under the law relating to fraudulent conveyances
3 the creditor could reach property which the donee has owned and transferred.

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

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

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

17 **702.17 (2d) CREDITORS OF THE DONEE; SPECIAL POWER OF APPOINTMENT.**
18 Notwithstanding sub. (1), property covered by a special power of appointment or
19 general power of appointment that is exercisable solely for the support,
20 maintenance, health, and education of the donee within the meaning of section 2041
21 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code is not subject to the payment
22 of the claims of creditors of the donee, the donee's estate, or the expenses of
23 administering the donee's estate.

24 **(2m) CREDITORS OF THE DONEE; GENERAL POWER OF APPOINTMENT NOT PRESENTLY**
25 **EXERCISABLE.** Notwithstanding sub. (1), property covered by a general power of

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1 appointment that is not presently exercisable when it is created is subject to the
2 payment of the claims of the creditors of the donee, the donee's estate, and the
3 expenses of administering the donee's estate only if any of the following applies:

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

5 (b) The power of appointment becomes exercisable in accordance with the
6 terms of the creating instrument, except in the case of a testamentary general power
7 of appointment.

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

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

9 **702.21 Applicability of chapter.** The provisions of this chapter are
10 applicable to any power of appointment existing on May 16, 1965, as well as a power
11 of appointment created after such date.

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

13 766.575 (1) (e) "Trustee" has the meaning given under s. 701.01(8) 701.0103
14 (25).

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

16 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
17 estates in, powers of appointment under ch. 702 over, present and future rights to,
18 title to, and interests in real property, including, without limitation by enumeration,
19 security interests and liens on land, easements, profits, rights of appointees under
20 powers of appointment, rights under covenants running with the land, powers of
21 termination, and homestead rights. The interest may be an interest that was
22 formerly designated legal or equitable. The interest may be surface, subsurface,
23 suprasurface, riparian, or littoral.

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

1 853.17 (2) This section does not prevent the court from requiring the contract
2 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
3 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
4 ~~under s. 701.09.~~

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

6 853.32 (3) TRANSFERS TO LIVING TRUSTS. The validity and implementation of a
7 will provision that purports to transfer or appoint property to a living trust are
8 governed by s. ~~701.08~~ 701.0606.

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

10 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
11 created by a testator's will is designated as the beneficiary of a transfer under
12 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
13 or at the death of a 3rd party, the transfer of any assets under that other governing
14 instrument to the trustee ^{does} ~~do~~ not cause the transferred assets to be included in the
15 property administered as part of the testator's estate. The transferred assets are not
16 ^{to} be subject to taxes, debts, or charges enforceable against the testator's estate to any
17 greater extent than if the proceeds were payable to a beneficiary other than the
18 testator's estate.

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

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

20 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
21 trustee shall have all the powers listed in s. ~~701.16~~ ss. 701.0815 and 701.0816.

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

1 854.13 (1) (c) “Power of appointment” has the meaning given in s. 702.01 (4)
2 702.02 (6).

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

10 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
11 that a partial disclaimer of property passing by a governing instrument or by the
12 exercise of a power of appointment may not be made if partial disclaimer is expressly
13 prohibited by the governing instrument or by the instrument exercising the power
14 of appointment.

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

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

23 (7) (a) *In general.* Subject to pars. (bm) and (c) and subs. (8), (9), and (10), unless
24 the governing instrument provides otherwise, either expressly or as construed from
25 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died

1 before the decedent. If the disclaimed interest is a remainder contingent on
2 surviving to the time of distribution, the disclaimed interest passes as if the
3 disclaimant had died immediately before the time for distribution. If the disclaimant
4 is an appointee under a power of appointment exercised by a governing instrument,
5 the disclaimed property devolves as if the disclaimant had died before the effective
6 date of the exercise of the power of appointment. If the disclaimant is a taker in
7 default under a power of appointment created by a governing instrument, the
8 disclaimed property devolves as if the disclaimant had predeceased the donee of the
9 power of appointment.

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

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

21 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
22 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
23 705 a financial institution is not liable for having transferred an account to a
24 beneficiary designated in a governing instrument who, under this chapter, is not
25 entitled to the account, or for having taken any other action in reliance on the

1 beneficiary's apparent entitlement under the terms of a governing instrument,
2 regardless of whether the financial institution received written notice of a claimed
3 lack of entitlement under this chapter.

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

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

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

8 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
9 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

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

11 861.015 (2) For purposes of this section, property subject to a directive is valued
12 by its clear market value on the date of the decedent's death. Satisfaction of the
13 nonholding spouse's marital property interest in the property subject to the directive
14 shall be based on that value, plus any income from the property subject to the
15 directive after the death of the decedent and before satisfaction. For purposes of
16 determining the income from the property subject to a directive, such property shall
17 be treated as a legacy or devise of property other than money under s. ~~701.20~~
18 701.1115.

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

20 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
21 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
22 705 a financial institution is not liable for having transferred an account included
23 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
24 designated in a governing instrument, or for having taken any other action in
25 reliance on the beneficiary's apparent entitlement under the terms of a governing

1 instrument, regardless of whether the financial institution received written notice
2 of an intent to file, or the filing of, a petition for the deferred marital property elective
3 share amount.

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

5 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
6 of trust shall be issued by the probate registrar to the trustee upon admission of the
7 will to informal probate at the same time that letters are granted to the personal
8 representative. The probate registrar shall determine if bond shall be required and,
9 if so, the amount thereof, and for such purpose the probate registrar shall have the
10 authority granted to the court by, and shall proceed pursuant to s. 701.16 (2)
11 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
12 beneficiaries of the testamentary trust shall cease to be interested in the estate
13 except under s. 851.21 (3). The trust shall be administered under supervision of the
14 court under ch. 701.

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

16 867.03 (2g) OBLIGATION OF AFFIANT. By accepting the decedent's property under
17 this section the heir, trustee, or guardian assumes a duty to apply the property
18 transferred for the payment of obligations according to priorities established under
19 s. 859.25 and to distribute any balance to those persons designated in the
20 appropriate governing instrument, as defined in s. 854.01, of the decedent or if there
21 is no governing instrument, according to the rules of intestate succession under ch.
22 852. An heir or guardian may publish a notice to creditors in the same manner and
23 with the same effect as a trustee under s. 701.065 701.0605. This subsection does
24 not prohibit any appropriate person from requesting administration of the
25 decedent's estate under s. 856.07 or ch. 865.

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

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

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

6 879.47 (1) The attorney for any person desiring to file any paper in court is
7 responsible for the preparation of the paper. Except as provided in s. ~~701.16 (4) (d)~~
8 sub. (2), all papers shall be legibly written on substantial paper and shall state the
9 title of the proceeding in which they are filed and the character of the paper. Either
10 uniform forms or computer-generated forms, if the forms exactly recreate the
11 original forms in wording, format and substance, shall be used. If papers are not so
12 written or if uniform forms or computer-generated forms that exactly recreate the
13 original forms in wording, format and substance are not used, the court may refuse
14 to receive and file them. The court shall show on all papers the date of their filing.

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

16 881.01 (1) (title) DEFINITIONS.

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

19 881.01 (1) (a) (intro.) ~~“Beneficiary,” with respect to a guardianship of the~~
20 ~~estate,”~~ means any of the following:

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

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

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

- 1 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.
2 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3).

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

4 881.01 (1) (b) “Fiduciary” means a personal representative, trustee,
5 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
6 who has the power to direct the trustee’s investment decisions, a trust protector, as
7 defined in s. 701.0103 (28), who has ^a power over the investment of trust assets, and
8 any other person to whom a court appoints a power over the investment of the assets
9 of a decedent’s estate, a trust, a conservatorship, or a guardianship of the estate.

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

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

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

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

17 881.01 (4) (b) *Special rule for assets collected by a fiduciary.* 1. For purposes
18 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
19 the fiduciary did not exercise discretion over to acquire or purchase.

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

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

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

Handwritten notes on the left margin: "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96", "97", "98", "99", "100".

SECTION 294. 881.05 of the statutes is repealed.

SECTION 295. Effective date.

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

the first day of the 7th month after publication beginning

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

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/P3ins2
FFK:.....

INS 11-12

1 **SECTION 1.** ^X 445.125 (1) (a) 1. of the statutes is amended to read:

2 445.125 (1) (a) 1. Except as provided in sub. (3m), whenever a person, referred
3 to in this subsection as the depositor, makes an agreement with another person
4 selling or offering for sale funeral or burial merchandise or services, referred to in
5 this subsection as the beneficiary, for the purchase of a casket, outer burial container
6 not preplaced into the burial excavation of a grave, combination casket-outer burial
7 container or other receptacle not described in sub. (4) ~~(b)~~ [✓] (a) 2. for the burial or other
8 disposition of human remains or for the furnishing of funeral or burial services,
9 either of which is intended to be provided for the final disposition of the body of a
10 person, referred to in this subsection as the potential decedent, wherein the use of
11 such personal property or the furnishing of such services is not immediately
12 required, all payments made under the agreement shall be and remain trust funds,
13 including interest and dividends if any, until occurrence of the death of the potential
14 decedent, unless the funds are sooner released upon demand to the depositor, after
15 written notice to the beneficiary.

History: 1973 c. 227; 1977 c. 40; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.125; 1981 c. 64; 1983 a. 448, 485, 538; 1985 a. 29; 1989 a. 307; 1991 a. 39, 221; 1995 a. 295; 1999 a. 9; 2001 a. 16; 2003 a. 167; 2005 a. 134.

(END INS 11-12)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0010/P3
FFK:.....

INS 11-6

1 SECTION 1. 445.125 (4) of the statutes is renumbered 445.125^x (4) (a).

2 SECTION 2. 445.125 (4) (b)ⁿ of the statutes is created to read:

3 445.125 (4) (b)ⁿ Sections 701.0410 to 701.0418[✓] do not apply to an agreement,
4 interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.[✓]

* ****NOTE: In your instructions you asked about the placement of your proposed s.
* 701.0410 (4) and (5), which address the applicability of a range of sections in subchapter
* IV. It is my recommendation to move each of those provisions to the section with which
* the range of sections interacts, in this case s. 445.125. Proposed s. 701.0410 (5) of the /P2
* version states that sections 701.0410 to 704.0418 are not subject to s. 445.125. Upon
* comparing s. 445.125 to the range of sections in subchapter IV, I assumed that the
* proposed language was intended to preserve s. 701.12 (1) under current law. Please
* review this provision and confirm that it is consistent with your intent. If it is not
* consistent with your intent, please let me know how else 701.0410 to 704.0418 may be
subject to s. 445.125. ✓

SS.

END INS 11-6

INS 20-3

5 (27) "Trust instrument"[✓] means an instrument, including any amendments or
6 modifications to^{gt} the instrument under s. 701.0111 or subch. IV[✓], that is executed by
7 the settlor that contains terms of a trust or is created under a statute, judgment, or
8 decree that orders property to be transferred to a trustee to be administered for the
9 benefit of a beneficiary.

~~11/10/13~~

END INS 20-3

INS 41-22

✓
****NOTE: The proposed language ends with "for purposes of public assistance."
However, the definition of a trust for an individual with a disability described assets that
are not counted for purposes of "eligibility for medical assistance under subch. IV of ch.
49." Is this an intentional distinction?

END INS 41-22

INS 43-9



1 (7) A party proposing to modify or terminate a trust under sub. (1) or (2) shall
2 give notice of the proposed modification or termination to the settlor, if living, the
3 trustee, each trust protector, each directing party, and each beneficiary at least 30
4 days before the proposed effective date of the modification or termination.

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

END INS 43-9

INS 52-20

5 18. Modify a power in the first trust to invade income and principal.

6 19. Modify or eliminate a general or special power of appointment in the first
7 trust.

8 (b) The trust instrument of the 2nd trust may include terms granting a
9 beneficiary a general or special power of appointment only if the trustee of the first
10 trust has the absolute power to invade income and principal.

END INS 52-20

INS 55-3

11 11 NO before the effective date of the appointment of assets to the 2nd trust or all
12 written objections to the proposed appointment of assets to the 2nd trust are
13 withdrawn, the trustee may appoint the assets to a 2nd trust, as specified in the
14 notice.

END INS 55-3

INS 57-22

15 (f) Notwithstanding s. 701.0103 (13), a trustee of a first trust who appoints
16 assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4)
17 is not the settlor of the 2nd trust.



1 (g) This section applies to a directing party or trust protector as if the directing
2 party or trust protector is a trustee.

****NOTE: Is there a reason not to add this to the lists in ss. 701.0808 (7) and 701.0818
(11)? ✓

END INS 57-22

INS 65-1

3 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3),
4 "beneficiary" means a person who satisfies s. 701.0103 (a) or (b) and who is named
5 in the initial trust instrument or through the exercise of a special or general power
6 of appointment.

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

END INS 65-1

(title) INS 65-23

7 SECTION 3. 701.06 (1), (2), (3) and (6) (title) and (a) of the statutes are repealed.

8 SECTION 4. 701.06 (4) of the statutes is renumbered 701.0503 (1) and 701.0503

9 (1) (intro) and (b), as renumbered, is amended to read:

10 701.0503 (1) (intro.) CLAIMS FOR CHILD SUPPORT. Notwithstanding any provision
11 in the creating instrument or subs. (1) and (2) s. 701.0502, upon application of a
12 person having a valid order directing a beneficiary to make payment for support of
13 the beneficiary's child, the court may do any of the following:

14 (b) In If the case of a beneficiary under a discretionary may receive income or
15 principal at the trustee's discretion under the trust, order the trustee to satisfy part
16 or all of the claim out of part or all of future payments of income or principal which
17 that are to be made pursuant to the exercise of the trustee's discretion in favor of such
18 beneficiary.

1

SECTION 5. 701.06 (5) (intro) and (a) of the statutes are renumbered 701.0503

2

(2) (intro) and (a) and amended to read:

3

701.0503 (2) (intro.) CLAIMS FOR PUBLIC SUPPORT. Notwithstanding any

4

provision in the creating instrument or subs. (1) and (2) s. 701.0502 and except as

5

provided in sub. (3), if the settlor is legally obligated to pay for the public support of

6

a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated

7

to pay for the beneficiary's public support or that for support furnished to the

8

beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon

9

application by the appropriate state department or county official, the court may do

10

any of the following:

11

(a) If such the beneficiary is entitled to receive income or principal under the

12

trust, order the trustee to satisfy part or all of the liability out of part or all of

13

payments of income or principal as they are due, presently or in the future;

14

SECTION 6. 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and

15

amended to read:

16

701.0503 (2) (b) 1. Except as otherwise provided in par. (e), in the case of a

17

beneficiary under a discretionary trust subd. 2., if the beneficiary may receive income

18

or principal at the trustee's discretion under the trust, order the trustee to satisfy

19

part or all of the liability out of part or all of future payments of income or principal

20

which are to be made pursuant to the exercise of the trustee's discretion in favor of

21

such the beneficiary;

22

SECTION 7. 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and

23

amended to read:

24

701.0503 (2) (b) 2. In the case of a beneficiary under a discretionary trust who

25

may receive income or principal of the trust at the trustee's discretion and who is a



1 settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all
2 of the liability without regard to whether the trustee has then exercised or may
3 thereafter exercise the trustee's discretion in favor of the beneficiary.

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

4 **SECTION 8.** 701.06 (5m) of the statutes is renumbered 701.0503 (3) and
5 amended to read:

6 701.0503 (3) TRUST FOR ~~DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection
7 (5) (2) does not apply to any trust that is established for the benefit of an individual
8 who has with a disability which has continued or can be expected to continue
9 indefinitely, substantially impairs the individual from adequately providing for his
10 or her own care or custody, and constitutes a substantial handicap to the afflicted
11 individual if the trust does not result in ineligibility for public assistance under ch.
12 49. A trustee of a trust which is exempt from claims for public support under this
13 subsection shall notify the county department under s. 46.215 or 46.22 in the county
14 where the disabled beneficiary resides of the existence of the trust.

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

15 **SECTION 9.** 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and
16 701.0505 (2) (b) 2., as renumbered, is amended to read:

17 701.0505 (2) (b) 2. The beneficiary's right to withdraw part of the trust
18 property, to the extent that the value of the property affected by the lapse, waiver,
19 or release in any year does not exceed the greater of the amount in following:

20 a. ~~Section~~ The amount referenced in section 2041 (b) (2) or 2514 (e), of the
21 Internal Revenue Code of 1986.

22 b. ~~Section~~ The amount referenced in section 2503 (b), of the Internal Revenue
23 Code of 1986 for each individual other than the beneficiary who makes a transfer to



1 the trust or who is deemed to make a transfer to the trust pursuant to an election to
2 split gifts under section 2513 (a) of the Internal Revenue Code.

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

3 SECTION 10. 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and
4 701.0505 (2) (c) (intro), 1. a. and b. and 4., as renumbered,
are amended to read:

5 701.0505 (2) (c) (intro.) A beneficiary of a trust is not a settlor, has not made a
6 voluntary or involuntary transfer of the beneficiary's interest in the trust, or and
7 does not have the power to make a voluntary or involuntary transfer of the
8 beneficiary's interest in the trust solely because the beneficiary holds or, exercises,
9 or allows in any capacity, any of the following:

- 10 1. a. Exercisable only on with the consent of another person holding an interest
11 adverse to the beneficiary's interest.
- 12 b. Limited by an ascertainable standard, ~~such as health, education, support,~~
13 ~~or maintenance~~ of the beneficiary.

****NOTE: Does this work with the definition of "ascertainable standard?"

14 4. A presently exercisable right described in ~~par. (b) 2~~ sub. (2) (b). ← strike

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

15 SECTION 11. 701.06 (6) (d) of the statutes is renumbered 701.0505 (2) (d). ↗ score

16 SECTION 12. 701.06 (7) of the statutes is renumbered 701.0503 (4) and amended
17 to read:

18 701.0503 (4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
19 a court under sub. (4), (5) (1) or (6) (a) is subject to modification (2) may be modified
20 upon application of an interested person.

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

21 SECTION 13. 701.06 (8) of the statutes is renumbered 701.0503 (5) and amended
22 to read:



1 701.0503 (5) EXEMPT ASSETS. Assets of a trust, ~~to the extent they that~~ are
2 exempt from claims of creditors under other statutes, ~~shall~~ are not be subject to sub.
3 ~~(4), (5), (1) or (6) (a) (2).~~ ✓

History: 1971 c. 66; 1977 c. 309, 418; 1985 a. 176; 1991 a. 316; 1997 a. 237; 2005 a. 216; 2007 a. 20.

END INS 65-23

INS 69-9

4 SECTION 14. 701.065 of the statutes, [✓] as affected by 2013 Wisconsin Act 20, is
5 renumbered 701.0508, and 701.0508 (1) (a) 2. and (5) (b) (title), 1. and 2. [✓] are amended
6 to read: L, as renumbered,

7 701.0508 (1) (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies
8 the requirements for the publication of the notice under subd. 1., all claims, including
9 claims of the any state and any ~~subdivision thereof of its subdivisions,~~ [✓] whether due
10 or to become due, absolute or contingent, liquidated or unliquidated, are barred
11 against the trustee, the trust property and any recipient of trust property unless filed
12 with the trustee on or before the date specified in the notice under subd. 1.

History: 1997 a. 188; 1999 a. 9.

13 ^(title) (5) (b) Living Revocable [✓] trusts. 1. Notwithstanding sub. (1) (a), if a settlor of
14 a living revocable [✓] trust, or if the predeceased spouse of a settlor of a living revocable
15 trust, at any time received any services provided as a benefit under a long-term care
16 program, medical assistance under subch. IV of ch. 49, long-term community
17 support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685,
18 the trustee shall provide written notice to the department by registered or certified
19 mail, within 30 days after the death of the settlor and before any property held in the
20 trust is distributed. The notice shall include demographic information about the
21 settlor and the settlor's predeceased spouse, if any, information about how to file a



1 claim, a copy of the trust document, and documentation supporting the value of the
2 trust on the settlor's date of death.


3 2. After the death of a settlor who, or whose predeceased spouse, received
4 services, medical assistance, long-term community support services, or aid
5 described in subd. 1., the department may recover under s. 46.27 (7g), 49.496, 49.682,
6 or 49.849, from property held in the living revocable trust immediately before the
7 settlor's death, an amount equal to the medical assistance that is recoverable under
8 s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is
9 recoverable under s. 49.682 (2) (a), or an amount equal to long-term community
10 support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that
11 was paid on behalf of the settlor or the settlor's predeceased spouse. The deadline
12 for the department to file a claim for recovery under this subdivision shall be the date
13 that is 4 months after the date of the trustee's notice under subd. 1.

History: 2013 a. 20.

END INS 69-9

INS 83-7

14 (6) (a) A directing party may request information about the trust from the
15 trustee and, if the requested information is related to a power granted to the
16 directing party, the trustee shall provide the requested information to the directing
17 party. If a trustee is bound by any confidentiality restrictions with respect to
18 information requested by a directing party, the trustee may require that the
19 directing party agree to be bound by the confidentiality restrictions before delivering
20 such information to the directing party. A trustee is not liable to any beneficiary for
21 any loss or damages resulting from the trustee providing information to the directing
22 party that is related to the power granted to the directing party.



1 (b) Except as otherwise provided in this chapter, a trustee does not have a duty
2 to provide any information to the directing party that the directing party does not
3 request.

→ ~~XXXX~~ NOTE: Please confirm this is consistent with your intent
END INS 83-7

INS 85-16

4 (e) Upon receiving a petition to the court for action under ss. 701.0411 to
5 701.0416 that does not identify each trust protector and each directing party of the
6 trust, notify the petitioning party of the identity of each trust protector and directing
7 party, including the name, address, and phone number of each trust protector and
8 directing party, who is serving at the time the petition is filed.

END INS 85-16

INS 93-15

9 (1) APPOINTMENT. A settlor, in a trust instrument, or a court, in a trust
10 instrument or court order, may provide for the appointment of a trust protector
11 trust instrument, whether referred to as a trust protector, another title, or no title.
12 A trust protector has the powers granted to the trust protector in the trust
13 instrument.

14 (2) TRUST PROTECTOR POWERS; LEGAL CAPACITY. (a) A settlor, in a trust
15 instrument, or a court, in a trust instrument or court order, may specify that a
16 particular power granted to a trust protector is exercisable in a fiduciary or
17 nonfiduciary capacity and whether a power granted to the trust protector in a
18 nonfiduciary capacity is required to be exercised in good faith.



1 (b) If a settlor or the court does not specify in a trust instrument that a
2 particular power granted to a trust protector is exercisable in a fiduciary or
3 nonfiduciary capacity, all of the following apply: ✓

4 1. The trust protector shall exercise the power in a fiduciary capacity if it is a
5 power to do any of the following: ✓

6 a. Interpret or enforce the terms of the trust at the request of the trustee. ✓

7 b. Review and approve the trustee's reports or accounting. ✓

8 c. Resolve disputes between the trustee or a directing party and a beneficiary. ✓

9 d. Consent to or veto distributions to a beneficiary. ✓

10 e. Consent to or veto investment actions. ✓

11 2. The trust protector shall exercise the power in a nonfiduciary capacity if it
12 is not a power described in subd. 1.a. to ^e1.e., including a power to do all of the
13 following: ✓

14 a. Modify or amend the trust instrument to respond to opportunities related
15 to, or changes in, restraints on alienation or other state laws restricting the terms
16 of a trust, the distribution of trust property, or the administration of the trust. ✓

17 b. Modify or amend the trust instrument to achieve a different tax status or to
18 respond to changes in federal or state law. ✓

19 c. Change the principal place of administration, the tax situs of the trust, or the
20 governing law of the trust. ✓

21 d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or
22 class of beneficiaries, or select a beneficiary from an indefinite class. ✓

23 e. Modify the terms of a power of appointment granted under the trust. ✓

24 f. Remove, replace, or appoint a trustee, trust protector, ^{or} directing party, ^{or} a
25 successor trustee, trust protector, or directing party. ✓



- 1 g. Terminate the trust. ✓
- 2 h. Appoint assets to a new trust under s. 701.0418. ✓
- 3 i. Advise the trustee on matters concerning a beneficiary, including whether to
- 4 provide information to a beneficiary under s. 701.0813. ✓
- 5 j. Correct errors or ambiguities in the terms of the trust that might otherwise
- 6 require court construction or defeat the settlor's intent.
- 7 3. Notwithstanding subs. 1. and 2., a trust protector who is also the settlor ✓
- 8 may exercise any power in the trust protector's personal interests. ✓
- 9 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary ✓
- 10 may exercise any power that is exercisable in a nonfiduciary capacity in the trust
- 11 protector's personal interests.
- 12 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument ✓
- 13 to the contrary, a trust protector who is also serving as the trustee or a directing party
- 14 shall exercise any power granted to the trust protector in a fiduciary capacity. ✓
- 15 (3) TRUST PROTECTOR POWERS; DUTIES. (a) If a power is exercisable in a fiduciary ✓
- 16 capacity, the trust protector shall act in good faith and shall exercise the power in a
- 17 manner that is consistent with the terms and purposes of the trust instrument or
- 18 court order and the interests of the beneficiaries. ✓
- 19 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall ✓
- 20 act in good faith unless the trust instrument or court order provides otherwise. ✓
- 21 (c) A trust protector does not have a duty to exercise its powers, to monitor the ✓
- 22 conduct of the trustee or any directing party, or to monitor changes in the law or
- 23 circumstances of the beneficiaries. ✓
- 24 (4) LIABILITY. A trust protector is liable for any loss that results from a breach ✓
- 25 of the trust protector's duties, except as follows:



1 (a) If the trust protector is also the settlor, the trust protector is not liable for
2 any loss that results from a breach of the trust protector's duties.✓

3 (b) If the trust protector is also a qualified beneficiary, the trust protector is not
4 liable for any loss that results from a breach of the trust protector's duties for a power
5 that is exercised in a nonfiduciary capacity.✓

6 (5) RESIGNATION AND RELEASE OF POWERS.✓ A trust protector may resign or
7 release a power granted to the trust protector by giving written notice to the trustee
8 and to any successor trust protector.

9 (6) PROHIBITED ACTIONS.✓ A trust protector may not exercise a power granted to
10 the trust protector to do any of the following:

11 (a) Except as provided in sub. (2) (b) 3. and 4.,✓ create or expand any beneficial
12 interest, power of appointment, right of withdrawal, or right to receive trust property
13 as a result of the exercise of a power of appointment if the creation or expansion
14 would benefit the trust protector, the trust protector's estate, the trust protector's
15 creditors, or creditors of the trust protector's estate.✓

16 (b) Modify or amend a trust to do any of the following:✓

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

20 2. Reduce or eliminate an income interest of an income beneficiary of any of the
21 following trusts:

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



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

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

5 d. A trust for which an election as a qualified Subchapter S Trust under section
6 1361(d) of the Internal Revenue Code is in place.

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

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

Justified

15 (8) DUTIES OF A TRUSTEE AND A DIRECTING PARTY. (a) A trustee and a directing
16 party shall act in accordance with a trust protector's exercise of a power granted to
17 the trust protector. A trustee and a directing party are not liable for acting in
18 accordance with the trust protector's exercise of a power granted to the trust
19 protector unless the attempted exercise is manifestly contrary to the power granted
20 to the trust protector or the trustee or the directing party knows that the attempted
21 exercise would constitute a breach of a duty that the trust protector owes to the
22 beneficiaries of the trust.

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



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

4 (9) RIGHT TO INFORMATION. ✓ (a) A trust protector may request information about
5 the trust from the trustee and, if the requested information is related to a power
6 granted to the trust protector, the trustee shall provide the requested information to
7 the trust protector. ✓ If a trustee is bound by any confidentiality restrictions with
8 respect to information requested by a trust protector, the trustee may require that
9 the trust protector agree to be bound by the confidentiality restrictions before
10 delivering such information to the trust protector. ✓ A trustee is not liable to any
11 beneficiary for any loss or damages resulting from the trustee providing information
12 to the trust protector that is related to the power granted to the trust protector.

13 (b) Except as otherwise provided in this chapter, ✓ a trustee does not have to
14 provide any information to the trust protector that the trust protector does not
15 request. ✓

16 (10) PAYMENT OR REIMBURSEMENT OF ATTORNEY FEES AND COSTS. ✓ A trustee shall,
17 in accordance with s. 701.1004, ✓ pay or reimburse a trust protector for attorney fees
18 and costs to defend any claim made against the trust protector. ✓

19 (11) APPLICATION OF OTHER SECTIONS TO TRUST PROTECTORS. ✓ Sections 701.0701,
20 701.0708, ✓ 701.0709, ✓ 701.1001 to 701.1003, and 701.1005 to 701.1010 ✓ apply to a trust
21 protector as if the trust protector is the trustee. ✓

