

1 formula or otherwise shall be made at current fair market values unless the
2 governing trust instrument expressly provided that another value may be used. If
3 the governing trust instrument requires or permits a different value to be used, all
4 assets property available for distribution, including cash, shall, ~~unless otherwise~~
5 ~~expressly provided,~~ be so distributed so that the assets property, including cash,
6 ~~distributed as such an equivalent will be~~ is fairly representative of the net
7 appreciation or depreciation in the value of the available property on the date or
8 dates of distribution. A provision in the governing trust instrument that the trustee
9 may fix values for purposes of distribution or allocation does not of itself constitute
10 authorization to fix a value other than current fair market value.

11 **SECTION 258.** 701.23 of the statutes is repealed.

12 **SECTION 259.** 701.24 (title) of the statutes is renumbered 701.1205 (title).

13 **SECTION 260.** 701.24 (1) of the statutes is renumbered 701.1205 (1) and
14 amended to read:

15 701.1205 (1) Except as otherwise provided in sub. ~~(3)~~ (2) and s. ~~701.19 (9) (a),~~
16 ~~ss. 701.01 to 701.19, 701.21, 701.22, and 701.23~~ are ss. 701.0602, 701.0813, and
17 701.0903 (4), this chapter is applicable to a trust existing on July 1, 1971 the effective
18 date of this subsection [LRB inserts date], as well as a trust created after such
19 date, and shall govern trustees acting under such trusts. If application of any
20 provision of ss. ~~701.01 to 701.19, 701.21, 701.22, and 701.23~~ this chapter to a trust
21 in existence on ~~August 1, 1971~~ the effective date of this subsection [LRB inserts
22 date], is unconstitutional, it shall not affect application of the provision to a trust
23 created after that date.

24 **SECTION 261.** 701.24 (2) of the statutes is renumbered 701.1205 (2) and
25 amended to read:

1 701.1205 (2) ~~Section 701.20~~ Subchapter XI of this chapter applies to every a
2 trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this
3 subsection ... [LRB inserts date], and to every a trust or decedent's estate created or
4 coming into existence after that date, except as otherwise expressly provided in s.
5 ~~701.20 subch. XI~~ or by the decedent's will or the terms of the trust. With respect to
6 a trust or decedent's estate existing on ~~May 17, 2005~~, s. ~~701.20 (5) to (30)~~ the effective
7 date of this subsection ... [LRB inserts date], ss. ~~701.1110 to 701.1135~~ shall apply at
8 the beginning of the trust's or estate's first accounting period, as defined in s. ~~701.20~~
9 ~~701.1125 (2) (a)~~, that begins on or after ~~May 17, 2005~~ the effective date of this
10 subsection ... [LRB inserts date].

11 **SECTION 262.** 701.24 (3) of the statutes is repealed.

12 **SECTION 263.** 701.25 of the statutes is renumbered 701.1204.

13 **SECTION 264.** 701.26 of the statutes is repealed.

14 **SECTION 265.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

15 **SECTION 266.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended
16 to read:

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

19 **SECTION 267.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended
20 to read:

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

24 **SECTION 268.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended
25 to read:

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

8 **SECTION 269.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended
9 to read:

10 702.02 (6) “Power of appointment” means a power ~~of appointment over to~~
11 appoint legal or equitable interests in real or personal property. A power of
12 appointment is ~~a power~~ created or reserved by a person having property subject to
13 his or her disposition which enables the donee of the power of appointment to
14 designate, within such limits as may be prescribed, the transferees of the property
15 or the shares or the interests in which it shall be received; ~~it.~~ A power of appointment
16 does not include a power of sale, a power of attorney, a power of revocation, or a power
17 exercisable by a trustee ~~or other, a directing party,~~ as defined in s. 701.0103 (7),
18 another fiduciary in his or her fiduciary capacity, a trust protector, as defined in s.
19 701.0103 (28) (31)

20 **SECTION 270.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended
21 to read:

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

1 event of nonexercise of the power a court can make distribution to persons within the
2 class if the donor has failed to provide for this contingency that is not a general power
3 of appointment.

4 SECTION 271. 702.01 (6) of the statutes is repealed.

5 SECTION 272. 702.02 (1) of the statutes is created to read:

6 702.02 (1) "Appointee" means the person to whom an interest is appointed.

7 SECTION 273. 702.02 (3) of the statutes is created to read:

8 702.02 (3) "Donee" means the person in whom the power of appointment is
9 created or reserved.

10 SECTION 274. 702.03 of the statutes is amended to read:

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

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

1 wording interpreted in light of the circumstances surrounding its drafting and
2 execution manifests an intent to exercise the power of appointment. If there is a
3 general power of appointment exercisable by will with no gift in default in the
4 creating instrument, a residuary clause or other general language in the donee's will
5 purporting to dispose of all of the donee's estate or property operates to exercise the
6 power of appointment in favor of the donee's estate, but in all other cases such a
7 clause or language does not in itself manifest an intent to exercise a power of of
8 appointment exercisable by will.

9 SECTION 275. 702.05 of the statutes is amended to read:

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

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

22 (3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other
23 person is required by the donor for the exercise of a power of appointment, such
24 consent must be expressed in the creating instrument exercising the power of of
25 appointment or in a separate written instrument, signed in either case by the

1 persons whose consent is required. If any person whose consent is required dies or
2 becomes legally incapable of consenting, the power of appointment may be exercised
3 by the donee without the consent of that person unless the donor has manifested a
4 contrary intent in the creating instrument ~~creating the power~~.

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

11 **SECTION 276.** 702.05 (5) of the statutes is created to read:

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

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

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

22 **SECTION 277.** 702.07 of the statutes is amended to read:

23 **702.07 Powers Power of appointment to be construed as exclusive.** The
24 donee of any power of appointment may appoint the whole or any part of the
25 appointive assets to any one or more of the permissible appointees and exclude

1 others, except to the extent that the donor specifies either a minimum share or
2 amount to be appointed to each permissible appointee or to designated appointees,
3 or a maximum share or amount appointable to any one or more appointees.

4 **SECTION 278.** 702.08 of the statutes is amended to read:

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

8 **SECTION 279.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are
9 amended to read:

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

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

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

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

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

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

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

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

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

3 SECTION 280. 702.11 of the statutes is amended to read:

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

8 SECTION 281. 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes
9 are amended to read:

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

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

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

16 (c) A disclaimer;.

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

19 SECTION 282. 702.15 (intro.), (1) and (2) of the statutes are amended to read:

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

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

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

7 **SECTION 283.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and
8 amended to read:

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

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

18 **SECTION 284.** 702.17 (1), (2), (3) and (5) of the statutes are amended to read:

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

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

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

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

23 **SECTION 285.** 702.21 of the statutes is amended to read:

1 **702.21 Applicability of chapter.** The provisions of this chapter are
2 applicable to any power of appointment existing on May 16, 1965, as well as a power
3 of appointment created after such date.

4 **SECTION 286.** 766.575 (1) (e) of the statutes is amended to read:

5 766.575 (1) (e) "Trustee" has the meaning given under s. ~~701.01(8)~~ 701.0103

6

✓
25. (28)

7 **SECTION 287.** 840.01 (1) of the statutes is amended to read:

8 840.01 (1) Except as provided in sub. (2), "interest in real property" includes
9 estates in, powers of appointment under ch. 702 over, present and future rights to,
10 title to, and interests in real property, including, without limitation by enumeration,
11 security interests and liens on land, easements, profits, rights of appointees under
12 powers of appointment, rights under covenants running with the land, powers of
13 termination, and homestead rights. The interest may be an interest that was
14 formerly designated legal or equitable. The interest may be surface, subsurface,
15 suprasurface, riparian, or littoral.

16 **SECTION 288.** 853.17 (2) of the statutes is amended to read:

17 853.17 (2) This section does not prevent the court from requiring the contract
18 beneficiary to elect under s. 853.15 in order to take property under the will; ~~nor does~~
19 ~~it apply to naming a testamentary trustee as designated by a life insurance policy~~
20 ~~under s. 701.09.~~

21 **SECTION 289.** 853.32 (3) of the statutes is amended to read:

22 853.32 (3) **TRANSFERS TO LIVING TRUSTS.** The validity and implementation of a
23 will provision that purports to transfer or appoint property to a living trust are
24 governed by s. ~~701.08~~ 701.0606.

25 **SECTION 290.** 853.34 (3) of the statutes is created to read:

1 853.34 (3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust
2 created by a testator's will is designated as the beneficiary of a transfer under
3 another governing instrument, as defined in s. 854.01 (2), at the death of the testator
4 or at the death of a 3rd party, the transfer of any assets under that other governing
5 instrument to the trustee does not cause the transferred assets to be included in the
6 property administered as part of the testator's estate. The transferred assets are not
7 subject to taxes, debts, or charges enforceable against the testator's estate to any
8 greater extent than if the proceeds were payable to a beneficiary other than the
9 testator's estate.

10 **SECTION 291.** 853.61 (2) (a) of the statutes is amended to read:

11 853.61 (2) (a) In addition to any powers conferred upon trustees by law, the
12 trustee shall have all the powers listed in ~~s. 701.16~~ ss. 701.0815 and 701.0816.

13 **SECTION 292.** 854.13 (1) (c), (2) (a) 2. and (d), (4) (e), (5) (b), (7) (a) and (10) (a)
14 of the statutes are amended to read:

15 854.13 (1) (c) "Power of appointment" has the meaning given in s. ~~702.01~~ (4)
16 702.02 (6).

17 (2) (a) 2. A person who is an heir, recipient of property, or beneficiary under a
18 governing instrument, donee of a power of appointment created by a governing
19 instrument, appointee under a power of appointment exercised by a governing
20 instrument, taker in default under a power of appointment created by a governing
21 instrument, or person succeeding to disclaimed property may disclaim any property,
22 including contingent or future interests or the right to receive discretionary
23 distributions, by delivering a written instrument of disclaimer under this section.

24 (d) *Partial disclaimer.* Property may be disclaimed in whole or in part, except
25 that a partial disclaimer of property passing by a governing instrument or by the

1 exercise of a power of appointment may not be made if partial disclaimer is expressly
2 prohibited by the governing instrument or by the instrument exercising the power
3 of appointment.

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

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

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

24 (10) (a) *Subsequent interest not held by disclaimant.* Unless the governing
25 instrument provides otherwise, either expressly or as construed from extrinsic

1 evidence, upon the disclaimer of a preceding interest, a subsequent interest not held
2 by the disclaimant and limited to take effect in possession or enjoyment after the
3 termination of the interest that is disclaimed accelerates to take effect as if the
4 disclaimant had died immediately before the time when the disclaimed interest
5 would have taken effect in possession or enjoyment or, if the disclaimant is an
6 appointee under a power of appointment and that power of appointment has been
7 exercised by a power of appointment, as if the disclaimant had died before the
8 effective date of the exercise of the power of appointment.

9 **SECTION 293.** 854.23 (5) (b) of the statutes is amended to read:

10 854.23 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
11 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
12 705 a financial institution is not liable for having transferred an account to a
13 beneficiary designated in a governing instrument who, under this chapter, is not
14 entitled to the account, or for having taken any other action in reliance on the
15 beneficiary's apparent entitlement under the terms of a governing instrument,
16 regardless of whether the financial institution received written notice of a claimed
17 lack of entitlement under this chapter.

18 **SECTION 294.** 859.18 (5) (a) of the statutes is amended to read:

19 859.18 (5) (a) The availability of a trust described under s. ~~701.07 (3)~~ 701.0505
20 (1) is subject to s. ~~701.07 (3)~~ 701.0505 (1).

21 **SECTION 295.** 859.18 (5) (b) of the statutes is amended to read:

22 859.18 (5) (b) The availability of a spendthrift trust described under s. ~~701.06~~
23 subch. V of ch. 701 is subject to s. ~~701.06~~ subch. V of ch. 701.

24 **SECTION 296.** 861.015 (2) of the statutes is amended to read:

1 861.015 (2) For purposes of this section, property subject to a directive is valued
2 by its clear market value on the date of the decedent's death. Satisfaction of the
3 nonholding spouse's marital property interest in the property subject to the directive
4 shall be based on that value, plus any income from the property subject to the
5 directive after the death of the decedent and before satisfaction. For purposes of
6 determining the income from the property subject to a directive, such property shall
7 be treated as a legacy or devise of property other than money under s. ~~701.20~~
8 701.1115.

9 **SECTION 297.** 861.11 (5) (b) of the statutes is amended to read:

10 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
11 a financial institution under ss. ~~701.19 (11)~~ 701.1012 and 710.05 and chs. 112 and
12 705 a financial institution is not liable for having transferred an account included
13 in the augmented deferred marital property estate under s. 861.03 to a beneficiary
14 designated in a governing instrument, or for having taken any other action in
15 reliance on the beneficiary's apparent entitlement under the terms of a governing
16 instrument, regardless of whether the financial institution received written notice
17 of an intent to file, or the filing of, a petition for the deferred marital property elective
18 share amount.

19 **SECTION 298.** 865.08 (6) of the statutes is amended to read:

20 865.08 (6) If the will of the decedent provides for a testamentary trust, letters
21 of trust shall be issued by the probate registrar to the trustee upon admission of the
22 will to informal probate at the same time that letters are granted to the personal
23 representative. The probate registrar shall determine if bond shall be required and,
24 if so, the amount thereof, and for such purpose the probate registrar shall have the
25 authority granted to the court by, and shall proceed pursuant to s. ~~701.16 (2)~~

1 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and
2 beneficiaries of the testamentary trust shall cease to be interested in the estate
3 except under s. 851.21 (3). The trust shall be administered under supervision of the
4 court under ch. 701.

5 **SECTION 299.** 867.03 (2g) (a) of the statutes, as affected by 2013 Wisconsin Act
6 20, is amended to read:

7 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
8 trustee, or guardian assumes a duty to apply the property transferred for the
9 payment of obligations according to priorities established under s. 859.25 and to
10 distribute any balance to those persons designated in the appropriate governing
11 instrument, as defined in s. 854.01, of the decedent or if there is no governing
12 instrument, according to the rules of intestate succession under ch. 852, subject to
13 par. (b). An heir or guardian may publish a notice to creditors in the same manner
14 and with the same effect as a trustee under s. ~~701.065~~ 701.0605. This paragraph does
15 not prohibit any appropriate person from requesting administration of the
16 decedent's estate under s. 856.07 or ch. 865.

17 **SECTION 300.** 879.03 (2) (c) of the statutes is amended to read:

18 879.03 (2) (c) The attorney general where a charitable trust, as defined in s.
19 ~~701.01 (2)~~ 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

20 **SECTION 301.** 879.47 of the statutes is renumbered 879.47 (1) and amended to
21 read:

22 879.47 (1) The attorney for any person desiring to file any paper in court is
23 responsible for the preparation of the paper. Except as provided in s. ~~701.16 (4) (d)~~
24 sub. (2), all papers shall be legibly written on substantial paper and shall state the
25 title of the proceeding in which they are filed and the character of the paper. Either

1 uniform forms or computer-generated forms, if the forms exactly recreate the
2 original forms in wording, format and substance, shall be used. If papers are not so
3 written or if uniform forms or computer-generated forms that exactly recreate the
4 original forms in wording, format and substance are not used, the court may refuse
5 to receive and file them. The court shall show on all papers the date of their filing.

6 SECTION 302. 881.01 (1) (title) of the statutes is repealed and recreated to read:

7 881.01 (1) (title) DEFINITIONS.

8 SECTION 303. 881.01 (1) (a) of the statutes is renumbered 881.01 (1) (a) (intro.)
9 and amended to read:

10 881.01 (1) (a) (intro.) "Beneficiary," ~~with respect to a guardianship of the~~
11 ~~estate,~~ means any of the following:

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

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

16 SECTION 304. 881.01 (1) (a) 1. and 2. of the statutes are created to read:

17 881.01 (1) (a) 1. With respect to a will, a beneficiary, as defined in s. 851.03.

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

19 SECTION 305. 881.01 (1) (b) of the statutes is amended to read:

20 881.01 (1) (b) "Fiduciary" means a personal representative, trustee,
21 conservator, ~~or~~ guardian of the estate, a directing party, as defined in s. 701.0103 (7),
22 who has the power to direct the trustee's investment decisions, a trust protector, as
23 defined in s. 701.0103 (28), ⁽³¹⁾ who has a power over the investment of trust assets, and
24 any other person to whom a court appoints a power over the investment of the assets
25 of a decedent's estate, a trust, a conservatorship, or a guardianship of the estate.

1 **SECTION 306.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and
2 amended to read:

3 881.01 (4) (a) *General rule.* A fiduciary shall diversify investments unless the
4 fiduciary reasonably determines that, because of special circumstances, the
5 purposes of the estate, trust, conservatorship, or guardianship are better served
6 without diversifying.

7 **SECTION 307.** 881.01 (4) (b) of the statutes is created to read:

8 881.01 (4) (b) *Special rule for assets collected by a fiduciary.* 1. For purposes
9 of this paragraph, an “asset that is collected by the fiduciary” means an asset that
10 the fiduciary did not exercise discretion over to acquire or purchase.

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

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

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

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INSERT A1

~~NO~~
limits on provisions that limit a trustee's liability, periods of limitation for commencing a judicial proceeding related to a trust, and the power of the court to take certain actions. The Code also includes default rules that are not included in the UTC, including rules related to the trustee's power to appoint assets to another trust, trust protectors, directed trusts, and life insurance contracts owned by trusts. Under this bill, each article of the UTC is created as a subchapter of the Code. ~~NO~~
#

(END INSERT A1)

INSERT A2

~~NO~~
In addition to creating the Code, the bill clarifies the definitions of general power of appointment and special power of appointment and clarifies when a creditor can reach assets that are subject to a power of appointment. The bill also extends the prudent investor rule to directing parties and trust protectors who have a power over the investment of a trust, and clarifies rules relating to a trustee's retention of securities received by a trustee. A further explanation of these changes is provided after the overview of the Code.

The following is an overview of each subchapter of the Code, as created under the bill:

(END INSERT A2)

INSERT B1

~~NO~~
Subchapter 1 introduces a number of new terms and definitions, including the terms "qualified beneficiary," "directed trust property," and "trust protector." Under the Code, a qualified beneficiary is a person who is a current beneficiary of trust income or principal, a person who would be a beneficiary of trust income or principal if the current beneficiaries' interests in the trust terminate, or a person who will be a beneficiary when the trust terminates. Directed trust property is defined as property that is invested or managed by a directing party and for which the trustee has no investment or management responsibility. A trust protector is a person who is given a specified power over the trust in a capacity other than as a trustee or a directing party. The terms "directed trust property," "directing party," and "trust protector" are not included in the UTC. ~~NO~~
defined as

(END INSERT B1)

INSERT B2

~~NO~~
A person may be represented by a fiduciary, a parent, or by a representative chosen by the trustee or a court.

(END INSERT B2)

INSERT C1



~~NO~~ For example, under the Code, a noncharitable irrevocable trust may be modified or terminated without court approval with the consent of the settlor and all of the beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. Additionally, ~~NO~~

END INSERT C1

INSERT C2

~~NO~~ Upon providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living, the trustee of an uneconomic trust may terminate the trust without court approval. ✓

END INSERT C2

INSERT D

~~NO~~ Also, if the trustee's power to invade the principal of the first trust is not limited by a standard, the beneficiaries of the second trust do not have to include all of the beneficiaries of the first trust; otherwise, the beneficiaries of both trusts must be the same. A trustee may appoint assets to a second trust with or without court approval by providing notice to the qualified beneficiaries, every trust protector, every directing party, and the settlor, if living. ~~NO~~

END INSERT D

INS. E1

~~NO~~ , including exceptions for claims for child support and public support. The Code also preserves current law that allows a trustee to limit the claims of a creditor of a settlor upon the settlor's death by providing or publishing notice to the creditors and current law that, upon implementation, allows the Department of Health Services to recover medical assistance payments from certain trusts. Thus, the Code's treatment of spendthrift provisions and creditor's rights differs from the UTC. ~~NO~~

END INS. E1

INS E2

~~NO~~ Subchapter 5 ✓ also specifies that a beneficiary's use of real or tangible property owned by a trust does not subject the property to the claims of the beneficiary's creditors. The subchapter also treats trusts that give the trustee absolute discretion in making distributions and trusts that require the trustee to make distributions for purposes of support in a similar manner. Under the Code, a beneficiary's interest in



a trust that is subject to a trustee's discretion does not constitute an interest in property. ✓

END INS E2

INS F

* ¶ The Code provides that, while a trust is revocable, the trustee owes its duties exclusively to the settlor. Under the Code, a settlor's powers of revocation may be exercised by a properly authorized agent, or by a conservator or guardian with court approval. Therefore, a trust may remain revocable, even for an incapacitated settlor, until the settlor's death. When the settlor dies, the trust is no longer revocable and the duties of the trustee shift to the beneficiaries.

¶ Finally, subchapter 6 limits the period during which a person may challenge the validity of a revocable trust. Under the Code, to challenge the validity of a revocable trust, a person must commence a judicial proceeding no later than one year after the settlor's death or four months after the trustee sends the person a copy of the trust and notice of the time allowed for commencing a proceeding, whichever occurs first.

END INS F

INS G

20
¶ Subchapter 7 also provides that property is properly transferred to a trust by titling the property in the name of the trustee. However, property titled in the name of the trust also places legal title in the name of the trustee. ✓

END INS G

INS H1

¶ Under the Code, a trustee may delegate certain duties and powers but must exercise reasonable care, skill, and caution when selecting an agent, establishing the scope and terms of the delegation, and periodically reviewing the agent's actions. ✓ An agent who accepts a delegation of duty or power from a trustee has a duty to exercise reasonable care to comply with the terms of the delegation. A trustee who properly delegates to an agent is not liable to the beneficiaries for the agent's actions. ✓

END INS H1

INS H2

20
¶ , including presumptions concerning marital deduction transfers that are not included in the UTC. 20

END INS H2

INS H3



~~4~~ ^{NO} obligated to act in good faith, consistent with the terms and purposes of the trust, and the interests of the beneficiaries. A trustee has no duty to monitor the directing party, and a trustee who follows a directing party's directions is not liable for any resulting losses, unless the loss is a result of the trustee's willful misconduct. ✓

END INS H3

INS I

~~4~~ ^{NO} determine whether the life insurance contract is, or remains, a proper investment. This change applies to all trusts executed after the effective date of the bill and to trusts executed before that date if the trustee provides a notice to the qualified beneficiaries. ✓

END INS I

INS J1

~~4~~ Under the Code, a trustee is protected from liability for a loss in value of the trust property if there is no breach of trust. A trustee generally is not liable if the trustee acts in reasonable reliance on the express provisions of the trust, if the trustee exercises reasonable care but fails to ascertain unknown external facts, or if a beneficiary provides a consent, release, or ratification for the trustee's action. A trustee is also protected from personal liability on a contract entered into in a fiduciary capacity and for contracts and torts of a partnership in which the trustee holds a general partnership interest if the other party was on notice of the fiduciary relationship. ✓

~~4~~ In general, a trustee is entitled to payment from the trust of attorney fees incurred in good faith. However, if a claim against the trustee is based on a breach of trust, the trustee must provide notice to qualified beneficiaries of the trustee's intention to pay attorney fees from the trust. Any party to the action may seek a court order prohibiting payment of attorney fees from the trust by demonstrating to the court that there is a reasonable basis for the court to find that a breach of trust occurred. ✓

END INS J1

INS J2

~~4~~ ^{NO} A third party who receives a certification of trust and continues to demand a complete copy of a trust instrument may be liable for damages if the demand is not in good faith. ✓

END INS J2

INS K



The following provisions of the bill occur outside of the Code: ✓

Sub sub — ***Powers of Appointment***

The bill revises the definition of a "general power of appointment" to be a power exercisable in favor of any one or more of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Under the bill, a "special power of appointment" is defined as any power of appointment that is not a general power of appointment. The bill also clarifies the rights of a creditor of a person who holds a power of appointment. Under the bill, a donee's creditor can reach property that is subject to a general power of appointment during a donee's life if the general power is presently exercisable. Upon the death of the donee, a creditor can reach property that is subject to a general power of appointment, whether or not the donee exercised the general power of appointment.

→ ***Uniform Prudent Investor Act***

The bill modifies the definition of "fiduciary" in the Uniform Prudent Investor Act to include a directing party with the power to direct the trustee's investment decisions and a trust protector who has a power over the investment of the trust assets. Therefore, the default rule is that directing parties and trust protectors are subject to the prudent investor rule if the directing party or trust protector has a power over the trust investments. Finally, the bill provides that the general rule of diversification does not apply to assets collected by a fiduciary.

END INS K