

1 (3) LIMITATIONS ON EXERCISE OF POWER. A trustee may not appoint assets to a
2 2nd trust under sub. (2) if any of the following applies:

3 (a) The trust instrument creating the first trust expressly prohibits the trustee
4 from appointing assets of the first trust to a 2nd trust by reference to this section or
5 by using the term "decanting."

6 (b) A contribution to the first trust qualified for a marital or charitable
7 deduction for federal income, gift, or estate tax purposes under the Internal Revenue
8 Code and one of the following applies:

9 1. The 2nd trust contains a provision that, if included in the first trust, would
10 have prevented the first trust from qualifying for the deduction or would have
11 reduced the amount of the deduction.

12 2. The 2nd trust does not contain a provision that was contained in the first
13 trust that, if omitted from the first trust, would have prevented the first trust from
14 qualifying for the deduction or would have reduced the amount of the deduction.

15 (c) The trustee has a beneficial interest in the first trust unless the 2nd trust
16 is a trust for an individual with a disability and the trustee's only beneficial interest
17 in the first trust is as a remainder beneficiary, and the trustee's beneficial interest
18 in the 2nd trust is not greater than the trustee's beneficial interest in the first trust ✓

19 (d) The appointment of assets to a 2nd trust would impair currently exercisable
20 withdrawal rights of a beneficiary of the first trust and one of the following applies:

21 1. The withdrawal rights were granted to the beneficiary in a manner designed
22 to allow contributions subject to the withdrawal rights to qualify for the federal gift
23 tax annual exclusion.

24 2. The terms of the 2nd trust would impair gifts previously made to the first
25 trust from qualifying for the federal gift tax annual exclusion under section 2503 of
the Internal Revenue Code.

1 (e) The appointment of assets to the 2nd trust would violate a rule against
2 perpetuities applicable to the first trust or suspend a trustee's power of alienation
3 over assets of the first trust in a manner that would cause all or a portion of the 2nd
4 trust to be void.

5 (f) The appointment of assets to the 2nd trust under sub. (2) would impair the
6 essential purpose of a trust for an individual with a disability.

7 (4) PERMISSIBLE TERMS OF 2ND TRUST. (a) Subject to pars. (b) to (d) and subs. (2),
8 (3), and (5), the trustee of the first trust may create a 2nd trust instrument that
9 includes terms that are intended to achieve any purpose, including terms that are
10 intended to do any of the following:

- 11 1. Correct a drafting error in the first trust.
- 12 2. Clarify potentially ambiguous terms contained in the first trust.
- 13 3. Change the age of distribution to a beneficiary of the first trust.
- 14 4. Extend the duration of the first trust.
- 15 5. Protect the interests of a beneficiary of the first trust, including protecting
16 the beneficiary from self-destructive behavior.
- 17 6. Allow the trustee of the 2nd trust to transfer trust assets to a community
18 trust. In this subdivision, "community trust" means a master trust that is
19 established and managed by a nonprofit organization that maintains sub-accounts
20 for individual beneficiaries that each satisfy the definition of a trust for an individual
21 with a disability.
- 22 7. Add or remove a spendthrift trust provision to the first trust.
- 23 8. Modify investment provisions contained in the first trust, including those
24 relating to permissible investments, use of investment advisors, directed trust
25 property, or self-dealing transactions.

1 9. Change a present or future trustee of the first trust, including by defining
2 the method by which a trustee or cotrustee may be appointed or removed and
3 replaced.

4 10. Appoint a trust protector of the 2nd trust and define the powers of the trust
5 protector.

6 11. Appoint a directing party of the 2nd trust and define the powers of the
7 directing party.

8 12. Change the principal place of administration of the first trust.

9 13. Change the governing law of the first trust.

10 14. Allow for the division of the first trust into 2 or more trusts.

11 15. Allow for the merger of the first trust with one or more trusts.

12 16. Add or modify an exculpatory provision for a trustee, trust protector, or
13 directing party.

14 17. Obtain desirable tax treatment, as determined by the trustee of the first
15 trust, or to avoid adverse tax consequences, as determined by the trustee of the first
16 trust, including provisions relating to grantor trust status under sections 671 to 679
17 of the Internal Revenue Code.

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

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

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

24 (c) 1. The trust instrument of the 2nd trust may include terms that are intended
25 to change terms of the first trust that are applicable to a beneficiary who is an

1 individual with a disability only if the purpose of the change is to allow the
 2 beneficiary to qualify or continue to be qualified to receive ^{public assistance} ~~benefits under a~~
 3 government program.

4 2. Subdivision 1. applies regardless of whether the first trust includes specific
 5 or ascertainable standards for distribution.

6 (d) The trust instrument of the 2nd trust may include a term that adopts or
 7 expands an exculpatory provision relating to the trustee only if one of the following
 8 applies:

9 1. Any trustee of the first trust who would benefit from the adoption of the term
 10 in the 2nd trust abstains from the consideration and adoption of the term and the
 11 trustees of the first trust who would not benefit from the adoption of the term adopt
 12 the trust instrument of the 2nd trust.

13 2. A court approves the trust instrument of the 2nd trust.

14 (5) PROCEDURAL MATTERS. (a) A trustee shall appoint assets to a 2nd trust under
 15 sub. (2) by an instrument in writing that is signed and acknowledged by the trustee
 16 and shall include the written instrument with the records of the first and 2nd trusts.
 17 A trustee may appoint assets to a 2nd trust under sub. (2) upon notice, without court
 18 approval, under the procedure described in par. (b), or with court approval, under the
 19 procedure described in par. (c).

20 (b) 1. If a trustee chooses to proceed without a court order, the trustee shall give
 21 notice of the manner in which the trustee intends to appoint assets to a 2nd trust
 22 under sub. (2) to all of the following:

- 23 a. The qualified beneficiaries of the first trust.
- 24 b. Each trust protector appointed under the terms of the first trust.
- 25 c. Each directing party appointed under the terms of the first trust.

1 d. The settlor of the first trust, if living.

2 2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall
3 provide each person entitled to receive notice under subd. 1. all of the following:

4 a. A copy of the proposed written instrument under which the trustee will
5 appoint assets to a 2nd trust.

6 b. The proposed effective date of the appointment.

7 c. A copy of the trust instrument of the first trust.

8 d. A copy of the trust instrument of the 2nd trust.

9 3. A trustee may not appoint assets to the 2nd trust until 30 days after the
10 trustee provides notice as required under this paragraph unless every person who
11 is entitled to receive notice under subd. 1. waives the 30-day notice period by
12 delivering a signed written instrument to the trustee. A person's waiver of the
13 30-day notice period does not constitute that person's consent to the trustee's
14 appointment of assets to a 2nd trust.

15 4. If a person entitled to receive notice under subd. 1. delivers a written
16 objection to the trustee before the effective date of the appointment of assets to a 2nd
17 trust, the trustee may not appoint the assets to a 2nd trust, as specified in the
18 trustee's notice, without obtaining court approval under par. (c) unless the written
19 objection is withdrawn.

20 5. If the trustee does not receive a written objection from any person entitled
21 to receive notice under subd. 1. before the effective date of the appointment of assets
22 to the 2nd trust or all written objections to the proposed appointment of assets to the
23 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as
24 specified in the notice.

1 (c) 1. If a trustee chooses to proceed with court approval, including after
2 receiving a written objection to a proposed appointment of assets, the trustee shall
3 petition a court to approve a proposed appointment of assets to a 2nd trust under sub.
4 (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the
5 first trust, each trust protector appointed under the first trust, each directing party
6 appointed under the first trust, and to the settlor of the first trust, if living. The
7 trustee shall include in the notice of the petition the proposed effective date of the
8 appointment of assets to a 2nd trust. The trustee shall also provide to each person
9 who is entitled to receive notice under this paragraph a copy of the proposed
10 instrument under which the trustee will appoint assets to a 2nd trust, the proposed
11 effective date of the appointment, a copy of the trust instrument of the first trust, and
12 a copy of the trust instrument of the 2nd trust.

13 2. If a person who is entitled to receive notice under subd. 1. files an objection
14 with the court, in determining whether to grant or deny a petition under subd. 1., the
15 court shall consider all of the following:

16 a. The purpose of the proposed appointment of assets under sub. (2).

17 b. The reasons for any objection made by a person entitled to receive notice
18 under subd. 1.

19 c. Changes in circumstances that have occurred since the creation of the first
20 trust.

21 d. Whether the appointment of assets under sub. (2) complies with the
22 requirements of this section.

23 3. If no person who is entitled to receive notice under subd. 1. files an objection
24 with the court or any objection that has been filed with the court is withdrawn, the
25 court shall enter an order approving the appointment of assets under sub. (2) as set

1 forth in the trustee's notice unless the court determines that the appointment of
2 assets does not comply with the requirements of this section.

3 (6) SUBSEQUENTLY DISCOVERED ASSETS. (a) The appointment of all of the assets
4 of the first trust in favor of the trustee of the 2nd trust includes subsequently
5 discovered assets otherwise belonging to the first trust and assets paid to or acquired
6 by the first trust subsequent to the appointment in favor of the 2nd trust.

7 (b) Except as otherwise provided by the trustee of the first trust, the
8 appointment of part but not all of the assets of the first trust in favor of the 2nd trust
9 does not include subsequently discovered assets belonging to the first trust or assets
10 paid to or acquired by the first trust subsequent to the appointment in favor of the
11 2nd trust, which remain the assets of the first trust.

12 (7) LIABILITY. (a) This section does not create or imply a duty on a trustee to
13 appoint assets to a 2nd trust under sub. (2). A trustee that does not appoint assets
14 to a 2nd trust under sub. (2) is not liable for the failure to do so.

15 (b) A trustee who appoints assets to a 2nd trust under sub. (2) is not liable to
16 any beneficiary for any loss related to the appointment unless the trustee did not
17 appoint the assets in good faith. This paragraph applies regardless of whether the

18 trustee proceeds under sub. (5) (b) or (c).

19 (8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust
20 under sub. (2) is not an exercise of a general power of appointment.

21 (b) A trustee may appoint assets to a 2nd trust under sub. (2) even if the first
22 trust includes a spendthrift clause or a provision that prohibits amendment or
23 revocation of the trust.

24 (c) This section does not limit a trustee who has a power to invade principal to
25 appoint property in further trust to the extent the power arises under the terms of

1 the first trust or under any other section of this chapter or under another provision
2 of law or under common law.

3 (d) The restriction relating to a trustee under sub. (3) (c) does not preclude a
4 cotrustee who does not have a beneficial interest in the first trust from appointing
5 assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law,
6 or other circumstances would otherwise require the majority or unanimous action of
7 the trustees of the first trust.

8 (e) For purposes of this section, if beneficiaries of a first trust are defined as a
9 class of persons, the class shall include any person who falls within the class of
10 persons after the trustee appoints assets to the 2nd trust.

11 (f) Notwithstanding s. 701.0103 (23), a trustee of a first trust who appoints
12 assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4)
13 is not the settlor of the 2nd trust.

14

(g) ^{To the extent a directing party or trust protector has the power to invade the principal of a first trust, as described in sub. (2),}
This section applies to ^a directing party or trust protector as if the directing party or trust protector is a trustee.

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

16 SECTION 57. 701.05 of the statutes is repealed.

17 SECTION 58. Subchapter V (title) of chapter 701 [precedes 701.0501] of the
18 statutes is created to read:

19 CHAPTER 701

20 SUBCHAPTER V

21 CREDITOR'S CLAIMS; SPENDTHRIFT

22 AND DISCRETIONARY TRUSTS

23 SECTION 59. 701.0501 of the statutes is created to read:

1 **701.0501 Rights of beneficiary’s creditor or assignee.** (1) (a) To the
2 extent a beneficiary’s interest is not protected by a spendthrift provision, the court
3 may authorize a judgment creditor or an assignee of the beneficiary to reach the
4 beneficiary’s interest by attachment of present or future distributions to or for the
5 benefit of the beneficiary or other means. The court may limit the award to such
6 relief as is appropriate under the circumstances.

7 (b) This subsection does not apply to a trust for an individual with a disability.

8 **(2)** A trustee is not liable to any creditor of a beneficiary for any distributions
9 made to or for the benefit of the beneficiary if any of the following applies:

10 (a) The beneficiary’s interest is protected by a spendthrift provision.

11 (b) The trust is a trust for an individual with a disability.

12 **SECTION 60.** 701.0502 of the statutes is created to read:

13 **701.0502 Spendthrift provision.** (1) A spendthrift provision is valid only
14 if any of the following applies:

15 (a) The beneficiary is a person other than the settlor and is not treated as the
16 settlor under s. 701.0505 (2).

17 (b) The trust is a trust for an individual with a disability.

18 **(2)** Subject to sub. (1), a term of a trust providing that the interest of a
19 beneficiary is held subject to a spendthrift trust, or words of similar import, restrains
20 both a voluntary and involuntary transfer of the beneficiary’s interest.

21 **(3)** A beneficiary may not transfer an interest in a trust in violation of a valid
22 spendthrift provision and, except as otherwise provided in this subchapter, a creditor
23 or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach
24 the interest or a distribution by the trustee before its receipt by the beneficiary.

1 (4) Real property or tangible personal property that is owned by the trust but
2 that is made available for a beneficiary's occupancy or use in accordance with the
3 trustee's authority under the trust instrument may not be considered to have been
4 distributed by the trustee or received by the beneficiary for purposes of allowing a
5 creditor or assignee of the beneficiary to reach the property.

6 **SECTION 61.** 701.0503 (title) of the statutes is created to read:

7 **701.0503 (title) Exceptions to spendthrift provision.**

8 **SECTION 62.** 701.0504 of the statutes is created to read:

9 **701.0504 Discretionary trusts; effect of standard.** (1) For purposes of this
10 subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that
11 is subject to the trustee's discretion does not constitute an interest in property or an
12 enforceable right even if the discretion is expressed in the form of a standard of
13 distribution or the beneficiary is then serving as sole trustee or cotrustee.

14 (2) Except as provided in this subchapter, a creditor or other claimant may not
15 attach present or future distributions from a beneficiary's interest in property or an
16 enforceable right, obtain an order from a court forcing the judicial sale of the interest
17 or compelling the trustee to make distributions, or reach the interest or right by any
18 other means, even if the trustee has abused the trustee's discretion.

19 (3) Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee
20 of a trust for his or her benefit and his or her discretion to make distributions to
21 himself or herself is not limited by an ascertainable standard or the consent of a party
22 holding an adverse interest to the beneficiary.

23 (4) (a) Except as provided in par. (b), this section does not limit the right of a
24 beneficiary to maintain a judicial proceeding against a trustee for an abuse of
25 discretion or failure to comply with a standard for distribution.

1 (b) The right of a beneficiary described in par. (a) may not be exercised by a
2 creditor.

3 **SECTION 63.** 701.0505 of the statutes is created to read:

4 **701.0505 Creditor's claim against settlor.** (1) (a) Whether or not the terms
5 of a trust include a spendthrift provision and except as provided in par. (b), the
6 following rules apply to claims of a settlor's creditors:

7 1. During the lifetime of the settlor, the property of a revocable trust is subject
8 to claims of the settlor's creditors.

9 2. With respect to an irrevocable trust that is not a trust for an individual with
10 a disability, upon application of a judgment creditor of the settlor, the court may, if
11 the trust instrument requires or authorizes the trustee to make payments of income
12 or principal to or for the settlor, order the trustee to satisfy part or all of the judgment
13 out of part or all of the payments of income or principal as they are due, presently
14 or in the future, or which are payable in the trustee's discretion. If a trust has more
15 than one settlor, the amount the judgment creditor of a particular settlor may reach
16 may not exceed the settlor's interest in the trust.

17 3. After the death of a settlor, and subject to the settlor's right to direct the
18 source from which liabilities will be paid, the property of a trust that was revocable
19 at the settlor's death is subject to claims of the settlor's creditors, costs of
20 administration of the settlor's estate, the expenses of the settlor's funeral and
21 disposal of remains, and statutory allowances to a surviving spouse and children to
22 the extent the settlor's probate estate is inadequate to satisfy those claims, costs,
23 expenses, and allowances.

24 (b) Assets of a trust that are exempt from claims of creditors under other
25 statutes are not subject to par. (a).

1 (2) For purposes of this subchapter, all of the following apply:

2 (a) During the period the power may be exercised, the holder of a power of
3 withdrawal is treated in the same manner as the settlor of a revocable trust to the
4 extent of the property subject to the power.

5 (e) 1. Contributions to the following trusts are not considered to have been
6 contributed by the settlor:

7 a. An irrevocable living marital trust that is treated as qualified terminable
8 interest property under section 2523 (f) of the Internal Revenue Code if after the
9 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
10 trust that receives property from the trust.

11 b. An irrevocable living marital trust that is treated as a general power of
12 appointment trust under section 2523 (e) of the Internal Revenue Code if after the
13 death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable
14 trust that receives property from the trust.

15 c. An irrevocable living trust for the settlor's spouse if after the death of the
16 settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that
17 receives property from the trust.

18 d. An irrevocable trust for the benefit of a person, the settlor of which is the
19 person's spouse, regardless of whether or when the person was the settlor of an
20 irrevocable trust for the benefit of that spouse.

21 e. An irrevocable trust for the benefit of a person to the extent that the property
22 of the trust was subject to a general power of appointment in another person.

23 2. A person who would otherwise be treated as a settlor of a trust described in
24 subd. 1. a. to e. is not treated as a settlor of the trust.

1 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3),
 2 “beneficiary” means a person who satisfies s. 701.0103 (3) (a) or (b) and who is ^{designated} named
 3 in ~~the initial~~ ^{the} trust instrument or through the exercise of a special or general power
 4 of appointment.

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

5 (3) Any order entered by a court under this section is subject to modification
 6 upon application of an interested person.

7 **SECTION 64.** 701.0506 of the statutes is created to read:

8 **701.0506 Overdue distribution.** (1) In this section, “mandatory
 9 distribution” means a distribution of income or principal that the trustee is required
 10 to make to a beneficiary under the terms of the trust, including a distribution upon
 11 termination of the trust. “Mandatory distribution” does not include a distribution
 12 subject to the exercise of the trustee’s discretion even if any of the following applies:

- 13 (a) The discretion is expressed in the form of a standard of distribution.
- 14 (b) The terms of the trust authorizing a distribution couple language of
 15 discretion with language of direction.

16 (2) Whether or not a trust contains a spendthrift provision, a creditor or
 17 assignee of a beneficiary may reach a mandatory distribution of income or principal,
 18 including a distribution upon termination of the trust, if the trustee has not made
 19 the distribution to the beneficiary within a reasonable time after the designated
 20 distribution date.

21 **SECTION 65.** 701.0507 of the statutes is created to read:

22 **701.0507 Personal obligations of trustee.** Trust property is not subject to
 23 personal obligations of the trustee, even if the trustee becomes insolvent or
 24 bankrupt.

1 **SECTION 66.** 701.06 (title), (1), (2), (3) and (6) (title) and (a) of the statutes are
2 repealed.

3 **SECTION 67.** 701.06 (4) of the statutes is renumbered 701.0503 (1), and
4 701.0503 (1) (intro.) and (b), as renumbered, is amended to read:

5 701.0503 (1) CLAIMS FOR CHILD SUPPORT. (intro.) Notwithstanding any provision
6 ~~in the creating instrument or subs. (1) and (2) s. 701.0502~~, upon application of a
7 person having a valid order directing a beneficiary to make payment for support of
8 the beneficiary's child, the court may do any of the following:

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

14 **SECTION 68.** 701.06 (5) (intro.) and (a) of the statutes are renumbered 701.0503
15 (2) (intro.) and (a) and amended to read:

16 701.0503 (2) CLAIMS FOR PUBLIC SUPPORT. (intro.) Notwithstanding any
17 ~~provision in the creating instrument or subs. (1) and (2) s. 701.0502~~ and except as
18 ~~provided in sub. (3)~~, if the settlor is legally obligated to pay for the public support of
19 a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated
20 to pay for the beneficiary's public support or ~~that~~ for support furnished to the
21 beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon
22 application by the appropriate state department or county official, the court may do
23 any of the following:

1 (a) If ~~such~~ the beneficiary is entitled to receive income or principal under the
2 trust, order the trustee to satisfy part or all of the liability out of part or all of
3 payments of income or principal as they are due, presently or in the future;

4 **SECTION 69.** 701.06 (5) (b) of the statutes is renumbered 701.0503 (2) (b) 1. and
5 amended to read:

6 701.0503 (2) (b) 1. Except as ~~otherwise~~ provided in ~~par. (e)~~, ~~in the case of a~~
7 ~~beneficiary under a discretionary trust~~ subd. 2., if the beneficiary may receive income
8 or principal at the trustee's discretion under the trust, order the trustee to satisfy
9 part or all of the liability out of part or all of future payments of income or principal
10 which are to be made pursuant to the exercise of the trustee's discretion in favor of
11 ~~such~~ the beneficiary;

12 **SECTION 70.** 701.06 (5) (c) of the statutes is renumbered 701.0503 (2) (b) 2. and
13 amended to read:

14 701.0503 (2) (b) 2. In the case of a beneficiary ~~under a discretionary trust~~ who
15 may receive income or principal of the trust at the trustee's discretion and who is a
16 settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all
17 of the liability without regard to whether the trustee has then exercised or may
18 thereafter exercise the trustee's discretion in favor of the beneficiary.

19 **SECTION 71.** 701.06 (5m) of the statutes is renumbered 701.0503 (3) and
20 amended to read:

21 701.0503 (3) ~~TRUST FOR DISABLED~~ AN INDIVIDUAL WITH A DISABILITY. Subsection
22 (5) (2) does not apply to any trust ~~that is established for the benefit of an individual~~
23 ~~who has~~ with a disability ~~which has continued or can be expected to continue~~
24 ~~indefinitely, substantially impairs the individual from adequately providing for his~~
25 ~~or her own care or custody, and constitutes a substantial handicap to the afflicted~~

1 individual if the trust does not result in ineligibility for public assistance under ch.
2 49. A trustee of a trust which is exempt from claims for public support under this
3 subsection shall notify the county department under s. 46.215 or 46.22 in the county
4 where the disabled beneficiary resides of the existence of the trust.

5 **SECTION 72.** 701.06 (6) (b) of the statutes is renumbered 701.0505 (2) (b), and
6 701.0505 (2) (b) 2., as renumbered, is amended to read:

7 701.0505 (2) (b) 2. The beneficiary's right to withdraw part of the trust
8 property, to the extent that the value of the property affected by the lapse, waiver,
9 or release in any year does not exceed the greater of the amount in following:

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

12 b. ~~Section~~ The amount referenced in section 2503 (b), of the Internal Revenue
13 Code of 1986 for each individual other than the beneficiary who makes a transfer to
14 the trust or who is deemed to make a transfer to the trust pursuant to an election to
15 split gifts under section 2513 (a) of the Internal Revenue Code.

16 **SECTION 73.** 701.06 (6) (c) of the statutes is renumbered 701.0505 (2) (c), and
17 701.0505 (2) (c) (intro.), 1. a. and b. and 4., as renumbered, are amended to read:

18 701.0505 (2) (c) (intro.) A beneficiary of a trust is not a settlor, has not made a
19 voluntary or involuntary transfer of the beneficiary's interest in the trust, ~~or~~ and
20 does not have the power to make a voluntary or involuntary transfer of the
21 beneficiary's interest in the trust solely because the beneficiary holds ~~or~~, exercises,
22 or allows in any capacity, any of the following:

23 1. a. Exercisable only ~~on~~ with the consent of another person holding an interest
24 adverse to the beneficiary's interest.

1 b. Limited by an ascertainable standard, ~~such as health, education, support,~~
2 ~~or maintenance of the beneficiary.~~

****NOTE: Please confirm that this works with the definition of "ascertainable standard."

3 4. A presently exercisable right described in ~~par. (b) 2.~~ sub. (2) (b).

4 **SECTION 74.** 701.06 (6) (d) of the statutes is renumbered 701.0505 (2) (d).

5 **SECTION 75.** 701.06 (7) of the statutes is renumbered 701.0503 (4) and amended
6 to read:

7 701.0503 (4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by
8 a court under sub. (4), (5) (1) or ~~(6) (a)~~ is subject to modification (2) may be modified
9 upon application of an interested person.

10 **SECTION 76.** 701.06 (8) of the statutes is renumbered 701.0503 (5) and amended
11 to read:

12 701.0503 (5) EXEMPT ASSETS. Assets of a trust, ~~to the extent they that are~~
13 exempt from claims of creditors under other statutes, ~~shall~~ are not be subject to sub.
14 ~~(4), (5), (1) or (6) (a)~~ (2).

15 **SECTION 77.** Subchapter VI (title) of chapter 701 [precedes 701.0601] of the
16 statutes is created to read:

CHAPTER 701

SUBCHAPTER VI

REVOCABLE TRUSTS

20 **SECTION 78.** 701.0601 of the statutes is created to read:

21 **701.0601 Capacity of settlor of revocable trust.** The capacity required to
22 create, amend, revoke, or add property to a revocable trust, or to direct the actions
23 of the trustee of a revocable trust, is the same as that required to make a will.

1 **SECTION 79.** 701.0602 of the statutes is created to read:

2 **701.0602 Revocation or amendment of revocable trust.** (1) Unless the
3 terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke
4 or amend the trust. This subsection does not apply to a trust created under an
5 instrument executed before the effective date of this subsection [LRB inserts
6 date].

7 (2) If a revocable trust is created or funded by more than one settlor, all of the
8 following apply:

9 (a) To the extent the trust consists of marital or community property, the trust
10 may be revoked by either spouse acting alone but may be amended only by joint
11 action of both spouses.

12 (b) To the extent the trust consists of property other than marital or community
13 property, each settlor may revoke or amend the trust with regard to the portion of
14 the trust property attributable to that settlor's contribution.

15 (c) Upon the revocation or amendment of the trust by fewer than all of the
16 settlors, the trustee shall promptly notify the other settlors of the revocation or
17 amendment.

18 (3) A settlor may revoke or amend a revocable trust by any of the following
19 means:

20 (a) By substantial compliance with a method provided in the terms of the trust.

21 (b) If the terms of the trust do not provide a method, by any of the following
22 means:

23 1. A later will or codicil that expressly refers to the trust or specifically devises
24 property that would otherwise have passed according to the terms of the trust.

1 2. Any other method manifesting clear and convincing evidence of the settlor's
2 intent.

3 (4) Upon revocation of a revocable trust, the trustee shall transfer the trust
4 property as the settlor directs. However, with respect to marital or community
5 property, the trustee shall transfer the property to both spouses as marital or
6 community property.

7 (5) A settlor's powers with respect to revocation, amendment, or distribution
8 of trust property may be exercised by an agent under a power of attorney only to the
9 extent expressly authorized by the terms of the power of attorney.

10 (6) A guardian of the estate or a conservator of the settlor may exercise a
11 settlor's powers with respect to revocation, amendment, or distribution of trust
12 property only with the approval of the court supervising the guardianship or
13 conservatorship.

14 (7) A trustee who does not know that a trust has been revoked or amended is
15 not liable for distributions made and other actions taken on the assumption that the
16 trust had not been amended or revoked, or for distributions made pursuant to sub.
17 (5).

18 **SECTION 80.** 701.0603 of the statutes is created to read:

19 **701.0603 Settlor's powers; powers of withdrawal.** (1) While a trust is
20 revocable, the rights of the beneficiaries are subject to the control of, and the duties
21 of the trustee, a directing party, and a trust protector are owed exclusively to, the
22 settlor.

23 (2) If a revocable trust has more than one settlor, the duties of the trustee, a
24 directing party, and a trust protector are owed to all of the settlors.

1 (3) During the period in which a power of withdrawal may be exercised, the
2 holder of the power has the rights of a settlor of a revocable trust under this section
3 to the extent of the property subject to the power.

4 **SECTION 81.** 701.0604 of the statutes is created to read:

5 **701.0604 Limitation on action contesting validity of revocable trust;**
6 **distribution of trust property.** (1) A person must commence a judicial proceeding
7 to contest the validity of a trust that was revocable immediately before the settlor's
8 death within the earlier of the following:

9 (a) One year after the settlor's death.

10 (b) Four months after the trustee sent the person a copy of the trust instrument
11 and a notice informing the person of the trust's existence, of the trustee's name and
12 address, and of the time allowed for commencing a proceeding. Except as provided
13 in s. 701.0813 (2), a trustee is not liable to any person for not providing the
14 information described in this paragraph.

15 (2) Upon the death of the settlor of a trust that was revocable immediately
16 before the settlor's death, the trustee may proceed to distribute the trust property
17 in accordance with the terms of the trust. The trustee is not subject to liability for
18 doing so unless one of the following applies:

19 (a) The trustee knows of a pending judicial proceeding contesting the validity
20 of the trust.

21 (b) A potential contestant has notified the trustee of a possible judicial
22 proceeding to contest the trust and a judicial proceeding is commenced within 60
23 days after the contestant sent the notification.

24 (3) A beneficiary of a trust that is determined to have been invalid is liable to
25 return any distribution received.

X

1 **SECTION 82.** 701.065 of the statutes, as affected by 2013 Wisconsin Act 20, is
2 renumbered 701.0508, and 701.0508 (1) (a) 2. and (5) (b) (title), 1. and 2., as
3 renumbered, are amended to read:

4 701.0508 (1) (a) 2. Except as provided in pars. (b) and (c), if the trustee satisfies
5 the requirements for the publication of the notice under subd. 1., all claims, including
6 claims of the any state and any ~~subdivision thereof~~ of its subdivisions, whether due
7 or to become due, absolute or contingent, liquidated or unliquidated, are barred
8 against the trustee, the trust property and any recipient of trust property unless filed
9 with the trustee on or before the date specified in the notice under subd. 1.

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

21 2. After the death of a settlor who, or whose predeceased spouse, received
22 services, medical assistance, long-term community support services, or aid
23 described in subd. 1., the department may recover under s. 46.27 (7g), 49.496, 49.682,
24 or 49.849, from property held in the living revocable trust immediately before the
25 settlor's death, an amount equal to the medical assistance that is recoverable under

1 s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is
2 recoverable under s. 49.682 (2) (a), or an amount equal to long-term community
3 support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that
4 was paid on behalf of the settlor or the settlor's predeceased spouse. The deadline
5 for the department to file a claim for recovery under this subdivision shall be the date
6 that is 4 months after the date of the trustee's notice under subd. 1.

7 **SECTION 83.** 701.07 of the statutes is repealed.

8 **SECTION 84.** Subchapter VII (title) of chapter 701 [precedes 701.0701] of the
9 statutes is created to read:

10 **CHAPTER 701**

11 **SUBCHAPTER VII**

12 **OFFICE OF TRUSTEE**

13 **SECTION 85.** 701.0701 of the statutes is created to read:

14 **701.0701 Accepting or declining trusteeship.** (1) Except as provided in
15 sub. (3), a person designated as trustee accepts the trusteeship by doing any of the
16 following:

17 (a) Substantially complying with a method of acceptance provided in the terms
18 of the trust.

19 (b) If the terms of the trust do not provide a method or the method provided in
20 the terms is not expressly made exclusive, by accepting delivery of the trust property,
21 exercising powers or performing duties as trustee, or otherwise indicating
22 acceptance of the trusteeship.

23 (2) A person designated as trustee who has not yet accepted the trusteeship
24 may decline the trusteeship. A designated trustee who does not accept the

1 trusteehip within a reasonable time after knowing of the designation is considered
2 to have rejected the trusteeship.

3 (3) A person designated as trustee, without accepting the trusteeship, may do
4 any of the following:

5 (a) Act to preserve the trust property if, within a reasonable time after acting,
6 the person sends a declination of the trusteeship in writing to the settlor or, if the
7 settlor is dead or incapacitated, to the designated cotrustee, or, if none, to the
8 successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

9 (b) Inspect or investigate trust property to determine potential liability under
10 environmental or other law or for any other purpose.

11 **SECTION 86.** 701.0702 of the statutes is created to read:

12 **701.0702 Trustee's bond.** (1) A trustee shall give bond to secure performance
13 of the trustee's duties only if the court finds that a bond is needed to protect the
14 interests of the beneficiaries or is required by the terms of the trust and the court has
15 not dispensed with the requirement.

16 (2) The court may specify the amount of a bond, its liabilities, and whether
17 sureties are necessary. The court may modify or terminate a bond at any time.

18 (3) A court may not require a bond from a trust company bank, state bank, or
19 national bank that is authorized to exercise trust powers and that has complied with
20 s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or
21 educational corporation or society.

22 **SECTION 87.** 701.0703 of the statutes is created to read:

23 **701.0703 Cotrustees.** (1) Cotrustees may act only by majority decision.

24 (2) If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a
25 majority of the remaining cotrustees may act for the trust.

1 (3) A cotrustee shall participate in the performance of a trustee's function
2 unless the cotrustee is unavailable to perform the function because of absence,
3 illness, disqualification under other law, or the cotrustee is otherwise ^{temporarily} ~~temporary~~
4 incapacitated or the cotrustee has properly delegated the performance of the
5 function to another trustee.

6 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
7 disqualification under other law, or the cotrustee is otherwise temporarily
8 incapacitated, and prompt action is necessary to achieve the purposes of the trust or
9 to avoid injury to the trust property, the remaining cotrustee or a majority of the
10 remaining cotrustees may act for the trust.

11 (5) A trustee may delegate to a cotrustee a function unless the delegation is
12 expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a
13 trustee may revoke a delegation previously made.

14 (6) Except as provided in sub. (7), a trustee who does not join in an action of
15 another trustee is not liable for the action.

16 (7) Each trustee shall exercise reasonable care to do all of the following:

17 (a) Prevent a cotrustee from committing a material breach of trust.

18 (b) Compel a cotrustee to redress a material breach of trust.

19 (8) A dissenting trustee who joins in an action at the direction of the majority
20 of the trustees and who notified all cotrustees of the dissent at or before the time of
21 the action is not liable for the action unless the action is a material breach of trust.

22 **SECTION 88.** 701.0704 of the statutes is created to read:

23 **701.0704 Vacancy in trusteeship; appointment of successor.** (1) A
24 vacancy in a trusteeship exists if any of the following occurs:

25 (a) A person designated as trustee declines the trusteeship.

- 1 (b) A person designated as trustee cannot be identified or does not exist.
- 2 (c) A trustee resigns.
- 3 (d) A trustee is disqualified or removed.
- 4 (e) A trustee dies.
- 5 (f) A guardian or conservator is appointed for an individual serving as trustee.

6 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship does
7 not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no
8 remaining trustee.

9 (3) A vacancy in a trusteeship that is required to be filled shall be filled in the
10 following order of priority:

- 11 (a) By a person designated in the terms of the trust to act as successor trustee.
- 12 (b) By a person appointed by unanimous agreement of the qualified
13 beneficiaries, except that, if the trust is a trust for an individual with a disability, the
14 person appointed under this paragraph may not be the individual with a disability,
15 his or her spouse, or a relative of the individual with a disability who is legally
16 responsible for his or her support.

17 (c) By a person appointed by the court.

18 (4) Whether or not a vacancy in a trusteeship exists or is required to be filled,
19 the court may appoint an additional trustee, directing party, or trust protector
20 whenever the court considers the appointment necessary for the administration of
21 the trust.

22 **SECTION 89.** 701.0705 of the statutes is created to read:

23 **701.0705 Resignation of trustee.** (1) A trustee may resign in any of the
24 following manners:

1 (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if
2 living, each cotrustee, each trust protector, and each directing party.

3 (b) With the approval of the court.

4 (2) In approving a resignation, the court may issue orders and impose
5 conditions reasonably necessary for the protection of the trust property.

6 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond
7 for acts or omissions of the trustee is not discharged or affected by the trustee's
8 resignation.

9 **SECTION 90.** 701.0706 of the statutes is created to read:

10 **701.0706 Removal of trustee.** (1) The settlor, a cotrustee, or a qualified
11 beneficiary may request the court to remove a trustee, or a trustee may be removed
12 by the court on its own initiative.

13 (2) The court may remove a trustee if any of the following applies:

14 (a) The trustee has committed a material breach of trust.

15 (b) A lack of cooperation among cotrustees substantially impairs the
16 administration of the trust.

17 (c) The court determines that removal of the trustee best serves the interests
18 of the beneficiaries because of unfitness, unwillingness, or persistent failure of the
19 trustee to administer the trust effectively.

20 (d) There has been a substantial change of circumstances or removal is
21 requested by all of the qualified beneficiaries, the court finds that removal of the
22 trustee best serves the interests of all of the beneficiaries and is not inconsistent with
23 a material purpose of the trust, and a suitable cotrustee or successor trustee is
24 available.

1 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in
2 addition to removing a trustee, the court may order such appropriate relief under s.
3 701.1001 (2) as may be necessary to protect the trust property or the interests of the
4 beneficiaries.

5 **SECTION 91.** 701.0707 of the statutes is created to read:

6 **701.0707 Delivery of property by former trustee.** (1) Unless a cotrustee
7 remains in office or the court otherwise orders, and until the trust property is
8 delivered to a successor trustee or other person entitled to it, a trustee who has
9 resigned or been removed has the duties of a trustee and the powers necessary to
10 protect the trust property.

11 (2) A trustee who has resigned or been removed shall proceed expeditiously to
12 deliver the trust property within the trustee's possession to the cotrustee, successor
13 trustee, or other person entitled to it.

14 **SECTION 92.** 701.0708 of the statutes is created to read:

15 **701.0708 Compensation of trustee.** (1) If the terms of a trust do not specify
16 the trustee's compensation, a trustee is entitled to compensation that is reasonable
17 under the circumstances.

18 (2) If the terms of a trust specify the trustee's compensation or refer to another
19 ascertainable source for determining that compensation, the trustee is entitled to be
20 compensated as specified, but the court may allow more or less compensation if any
21 of the following applies:

22 (a) The duties of the trustee are substantially different from those
23 contemplated when the trust was created.

24 (b) The compensation specified by the terms of the trust would be unreasonably
25 low or high.

1 (3) If the trustee has rendered other services in connection with the
2 administration of the trust, the trustee may receive reasonable compensation for the
3 other services rendered, in addition to reasonable compensation as trustee.

4 SECTION 93. 701.0709 of the statutes is created to read:

5 701.0709 Reimbursement of expenses. (1) A trustee is entitled to be
6 reimbursed out of the trust property, with interest as appropriate, for all of the
7 following:

8 (a) Expenses that were properly incurred in the administration of the trust.

9 (b) To the extent necessary to prevent unjust enrichment of the trust, expenses
10 that were not properly incurred in the administration of the trust.

11 (2) An advance by the trustee of money for the protection of the trust gives rise
12 to a lien against trust property to secure reimbursement with reasonable interest.

13 SECTION 94. 701.0710 of the statutes is created to read:

14 701.0710 Title of trust property. A settlor or transferor may effectively
15 transfer property to a trust by placing legal title of the property in the name of the
16 trustee, which shall include any successor trustee regardless of whether a successor
17 trustee is referenced in the transfer document. A transfer that places legal title in
18 the name of the trust itself places legal title in the name of the trustee.

19 SECTION 95. 701.08 of the statutes is renumbered ~~701.0606~~ and amended to
20 read:

21 ~~701.0606~~ Transfers to living ~~revocable~~ trusts. (1) VALIDITY AND EFFECT.
22 The order of execution of a living ~~revocable~~ trust instrument and a will or other
23 instrument purporting to transfer or appoint property to the trust evidenced by the
24 trust instrument shall be disregarded in determining the validity of the transfer or
25 appointment. No reference in any will to a living ~~revocable~~ trust shall cause assets

Handwritten annotations on the left margin: circled numbers 19, 20, 21, 22, 23, 24, 25; a circled letter 'B' with an arrow pointing to the renumbered section number; and a circled '701.0419' with an arrow pointing to the renumbered section number.

Handwritten annotations on the right margin: '701.0419' with an arrow pointing to the renumbered section number.

1 in such trust to be included in property administered as part of the testator's estate;
2 ~~nor shall it cause the trust or any portion thereof to be treated as a testamentary~~
3 ~~trust.~~

4 (2) GOVERNING TERMS. Property transferred or appointed by a will or by a
5 beneficiary designation under an employee benefit plan, life insurance policy, or
6 other instrument permitting designation of a beneficiary to a living revocable trust,
7 the terms of which the testator or designator was the sole holder of a power to modify,
8 shall be administered in accordance with the terms of the revocable trust as they the
9 terms of the revocable trust may have been modified prior to the testator's or
10 designator's death, even though the will or, beneficiary designation, or other
11 instrument was not reexecuted or republished after exercise of the power to modify,
12 unless the will or, beneficiary designation, or other instrument expressly provides
13 otherwise. ~~Such property transferred or appointed to a living trust, which is subject~~
14 ~~to a power of modification requiring action or consent of a person other than the~~
15 ~~testator or designator, shall be administered in accordance with the terms of the~~
16 ~~trust instrument as they exist at the execution of the will or beneficiary designation,~~
17 ~~unless expressly otherwise provided. If the will or beneficiary designation expressly~~
18 ~~provides that the property shall be administered in accordance with the terms of the~~
19 ~~trust instrument as they may be modified thereafter, the will or beneficiary~~
20 ~~designation need not be reexecuted or republished after exercise of the power to~~
21 ~~modify.~~

22 (3) DISPOSITION WHEN NO EXISTING LIVING REVOCABLE TRUST. If at the death of a
23 testator a living revocable trust has been completely revoked, or otherwise
24 terminated, a provision in the testator's will purporting to transfer or appoint

1 property to such the trust shall have the following effect, unless the will provides
2 otherwise:

3 (a) If the testator was a necessary party to the revocation or other termination
4 of such the revocable trust, the provision in the testator's will shall be invalid;

5 (b) If the testator was not a necessary party to the revocation or other
6 termination of such trust, the provision in the testator's will shall be deemed to
7 create a testamentary trust upon the terms of the living revocable trust instrument
8 at the time the will was executed or as otherwise provided where sub. (2) is
9 applicable.

10 **SECTION 96.** Subchapter VIII (title) of chapter 701 [precedes 701.0801] of the
11 statutes is created to read:

12 **CHAPTER 701**

13 **SUBCHAPTER VIII**

14 **DUTIES AND POWERS OF TRUSTEES,**

15 **DIRECTING PARTIES, AND**

16 **TRUST PROTECTORS**

17 **SECTION 97.** 701.0801 of the statutes is created to read:

18 **701.0801 Duty to administer trust.** Upon acceptance of a trusteeship, the
19 trustee shall administer the trust in good faith, in accordance with its terms and
20 purposes and the interests of the beneficiaries, and in accordance with this chapter.

21 **SECTION 98.** 701.0802 of the statutes is created to read:

22 **701.0802 Duty of loyalty. (1)** A trustee shall administer the trust solely in
23 the interests of the beneficiaries.

24 **(2)** Subject to the rights of persons dealing with or assisting the trustee as
25 provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the

1 investment or management of trust property and is entered into by the trustee for
2 the trustee's own personal account or that is otherwise affected by a conflict between
3 the trustee's fiduciary and personal interests is voidable by a beneficiary affected by
4 the transaction unless any of the following applies:

5 (a) The transaction was authorized by the terms of the trust.

6 (b) The transaction was approved by the court.

7 (c) The beneficiary did not commence a judicial proceeding within the time
8 allowed by s. 701.1005.

9 (d) The beneficiary consented to the trustee's conduct, ratified the transaction,
10 or released the trustee in compliance with s. 701.1009.

11 (e) The transaction involves a contract entered into or claim acquired by the
12 trustee before the person became trustee.

13 **(3)** A sale, encumbrance, or other transaction involving the investment or
14 management of trust property is presumed to be affected by a conflict between
15 personal and fiduciary interests if it is entered into by the trustee with any of the
16 following:

17 (a) The trustee's spouse.

18 (b) The trustee's descendants, siblings, parents, or their spouses.

19 (c) An agent or attorney of the trustee.

20 (d) A corporation or other person or enterprise in which the trustee, or a person
21 that owns a significant interest in the trustee, has an interest that might affect the
22 trustee's best judgment.

23 **(4)** A transaction not concerning trust property in which the trustee engages
24 in the trustee's individual capacity involves a conflict between personal and fiduciary
25 interests if the transaction concerns an opportunity properly belonging to the trust.

1 (5) An investment by a trustee in securities of an investment company or
2 investment trust to which the trustee, or its affiliate, provides services in a capacity
3 other than as trustee is not presumed to be affected by a conflict between personal
4 and fiduciary interests if the investment otherwise complies with the prudent
5 investor rule in s. 881.01. In addition to receiving compensation for acting as trustee,
6 the trustee may be compensated by the investment company or investment trust for
7 providing those services out of fees charged to the trust. If the trustee receives
8 compensation from the investment company or investment trust for providing
9 investment advisory or investment management services, the trustee shall at least
10 annually notify the persons entitled to receive a copy of the trustee's report under s.
11 701.0813 (3) of the rate and method by which that compensation was determined.

12 (6) In voting shares of stock or in exercising powers of control over similar
13 interests in other forms of enterprise, the trustee shall act in the best interests of the
14 beneficiaries. If the trust is the sole owner of a corporation or other form of
15 enterprise, the trustee shall elect or appoint directors or other managers who will
16 manage the corporation or enterprise in the best interests of the beneficiaries.

17 (7) This section does not preclude the following transactions, if fair to the
18 beneficiaries:

19 (a) An agreement between a trustee and a beneficiary relating to the
20 appointment or compensation of the trustee.

21 (b) Payment of reasonable compensation to the trustee.

22 (c) A transaction between a trust and another trust, a decedent's estate, a
23 guardianship of the estate, a conservatorship, or a custodianship of which the trustee
24 is a fiduciary or in which a beneficiary has an interest.

1 (d) A deposit of trust money in a regulated financial–service institution
2 operated by the trustee.

3 (e) An advance by the trustee of money for the protection of the trust.

4 (8) The court may appoint a trustee, trust protector, or directing party to make
5 a decision with respect to any proposed transaction that might violate this section
6 if entered into by the trustee.

7 **SECTION 99.** 701.0803 of the statutes is created to read:

8 **701.0803 Impartiality.** If a trust has 2 or more beneficiaries, the trustee shall
9 act impartially in investing, managing, and distributing the trust property, giving
10 due regard to the beneficiaries' respective interests and the purposes and terms of
11 the trust.

12 **SECTION 100.** 701.0804 of the statutes is created to read:

13 **701.0804 Prudent administration.** A trustee shall administer the trust as
14 a prudent person would, by considering the purposes, terms, distributional
15 requirements, and other circumstances of the trust. In satisfying this standard, the
16 trustee shall exercise reasonable care, skill, and caution.

17 **SECTION 101.** 701.0805 of the statutes is created to read:

18 **701.0805 Costs of administration.** In administering a trust, the trustee may
19 incur only costs that are reasonable in relation to the trust property, the purposes of
20 the trust, the skills of the trustee, and the complexity of the trust administration.

21 **SECTION 102.** 701.0806 of the statutes is created to read:

22 **701.0806 Trustee's skills.** A trustee who has special skills or expertise, or is
23 named trustee in reliance upon the trustee's representation that the trustee has
24 special skills or expertise, shall use those special skills or expertise.

25 **SECTION 103.** 701.0807 of the statutes is created to read:

1 **701.0807 Delegation by trustee.** (1) A trustee may delegate duties and
2 powers that a prudent trustee of comparable skills could properly delegate under the
3 circumstances. The trustee shall exercise reasonable care, skill, and caution in each
4 of the following:

5 (a) Selecting an agent.

6 (b) Establishing the scope and terms of the delegation, consistent with the
7 purposes and terms of the trust.

8 (c) Periodically reviewing the agent's actions in order to monitor the agent's
9 performance and compliance with the terms of the delegation.

10 (2) In performing a delegated function, an agent owes a duty to the trust to
11 exercise reasonable care to comply with the terms of the delegation.

12 (3) A trustee who complies with sub. (1) is not liable to the beneficiaries or to
13 the trust for an action of the agent to whom the function was delegated.

14 (4) By accepting a delegation of powers or duties from the trustee of a trust that
15 is subject to the law of this state, an agent submits to the jurisdiction of the courts
16 of this state even if the terms of the delegation provide for a different jurisdiction or
17 venue.

18 (5) This section does not apply to a trustee's delegation of investment and
19 management functions. A trustee's delegation of investment and management
20 functions is governed by s. 881.01 (10).

21 **SECTION 104.** 701.0808 of the statutes is created to read:

22 **701.0808 Powers to direct; directing parties.** (1) While a trust is
23 revocable, the trustee may follow a direction of the settlor that is contrary to the
24 terms of the trust.

1 (2) A settlor, in a trust instrument, or a court, in a trust instrument or court
2 order, ^{or of interested persons in a nonjudicial settlement agreement} may appoint a directing party to direct the trustee on investment or
3 distribution decisions or to make investment or distribution decisions regarding
4 directed trust property. If a trustee acts in accordance with the direction of a
5 directing party or fails to act due to lack of direction from a directing party, the
6 trustee is not liable for any loss resulting directly or indirectly from any action taken
7 or omitted with respect to the ^{direction or lack of direction} ~~specified action~~ except for acts or omissions that are
8 a result of the trustee's willful misconduct.

9 (3) A trustee does not have a duty to do any of the following:

10 (a) Provide advice to, consult with, monitor, or evaluate a directing party's
11 conduct.

12 (b) Inform or warn a beneficiary, a 3rd party, or a directing party that the
13 trustee disagrees with any of the directing party's actions or directions.

14 (c) Prevent a directing party from giving a direction or taking any action.

15 (d) Compel a directing party to redress a breach of the directing party's duties.

16 (4) The administrative actions of a trustee related to matters within the scope
17 of a directing party's power, including confirming that the directing party's directions
18 have been carried out and recording and reporting actions taken pursuant to the
19 directing party's direction, do not constitute either monitoring the directing party's
20 actions or participating in the actions of the directing party.

21 (5) A directing party is a fiduciary and is required to act in good faith with
22 regard to the terms of the trust and the interests of the beneficiaries. A directing
23 party is liable for any loss that results from a breach of any of the directing party's
24 fiduciary duties.

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

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

NOTE: Please confirm this is consistent with you intent.

Ins.
87-12
13
14
15
16

13 (7) Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005
 14 to 701.1010 apply to a directing party as if the directing party was a trustee.

15 (8) A person who accepts an appointment as a directing party of a trust submits
 16 to the jurisdiction of the courts of this state as provided in s. 701.0202 (1).

17 SECTION 105. 701.0809 of the statutes is created to read:

18 **701.0809 Control and protection of trust property.** A trustee shall take
 19 reasonable steps to take control of and protect the trust property.

20 SECTION 106. 701.0810 of the statutes is created to read:

21 **701.0810 Record keeping and identification of trust property.** (1) A
 22 trustee shall keep adequate records of the administration of the trust.

23 (2) A trustee shall keep trust property separate from the trustee's own
 24 property.

1 (3) Except as otherwise provided in sub. (4), a trustee shall cause the trust
2 property to be designated so that the interest of the trust, to the extent feasible,
3 appears in records maintained by a party other than a trustee or beneficiary.

4 (4) If the trustee maintains records clearly indicating the respective interests,
5 a trustee may invest as a whole the property of 2 or more separate trusts.

6 SECTION 107. 701.0811 of the statutes is created to read:

7 701.0811 Enforcement and defense of claims. A trustee shall take
8 reasonable steps to enforce claims of the trust known to the trustee and to defend
9 claims against the trust known to the trustee.

10 SECTION 108. 701.0812 of the statutes is created to read:

11 701.0812 Collecting trust property; duties of successor trustees. (1) A
12 trustee shall take reasonable steps to compel a former trustee or other person to
13 deliver trust property to the trustee, and to redress a breach of trust known to the
14 trustee to have been committed by a ^{trustee or} former trustee, a directing party, or a trust
15 protector. ^{or former trust protector}

16 (2) A successor trustee does not have a duty to examine the accounts of a former
17 trustee.

18 SECTION 109. 701.0813 of the statutes is created to read:

19 701.0813 Duty to inform and report. (1) A trustee shall keep the
20 distributees or permissible distributees of trust income or principal, and other
21 qualified beneficiaries who so request, reasonably informed about the
22 administration of the trust. Unless unreasonable under the circumstances, a trustee
23 shall promptly respond to a qualified beneficiary's request for information related to
24 the administration of the trust.

25 (2) A trustee shall do all of the following:

1 (a) Upon the request of a qualified beneficiary for a copy of the trust
2 instrument, promptly furnish to the qualified beneficiary either a copy of the
3 portions of the trust instrument relating to the interest of the qualified beneficiary
4 or a copy of the trust instrument.

5 (b) Within a reasonable period of time after accepting a trusteeship, notify the
6 qualified beneficiaries of the acceptance and of the trustee's name, address, and
7 telephone number.

8 (c) Within a reasonable period of time after the date on which the trustee
9 acquires knowledge of the creation of an irrevocable trust, or the date on which the
10 trustee acquires knowledge that a formerly revocable trust has become irrevocable,
11 whether by the death of the settlor or otherwise, notify the qualified beneficiaries of
12 all of the following:

- 13 1. The trust's existence.
- 14 2. The identity of the settlor or settlors.
- 15 3. The name, address, and telephone number of each directing party and trust
16 protector.
- 17 4. The right to request a copy of the documentation referred to in par. (a).
- 18 5. The right to request information under sub. (1).
- 19 6. The right to a trustee's report as provided in sub. (3).

20 (d) Notify the distributees or permissible distributees of trust income or
21 principal, and other qualified beneficiaries who so request, of any change in the
22 method or rate of the trustee's compensation.

23 (e) Upon receiving a petition to the court for action under ss. 701.0411 to
24 701.0416 that does not identify each trust protector and each directing party of the
25 trust, notify the petitioning party of the identity of each trust protector and directing

1 party, including the name, address, and telephone number of each trust protector
2 and directing party, who is serving at the time the petition is filed.

3 (3) (a) At least annually and upon the termination of a trust, a trustee shall
4 send to the distributees or permissible distributees of trust income or principal, and
5 to other qualified beneficiaries who request it, all of the following:

6 1. A report of the trust property, liabilities, receipts, and disbursements,
7 including the source and amount of the trustee's compensation.

8 2. A listing of the trust assets and, if feasible, their respective market values.

9 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the
10 former trustee shall send a report containing the information described under par.

11 (a) 1. to the qualified beneficiaries. A personal representative or guardian may send
12 the qualified beneficiaries a report containing the information described in par. (a)
13 1. on behalf of a deceased or incapacitated trustee.

14 (4) A qualified beneficiary may waive the right to a trustee's report or other
15 information otherwise required to be furnished under this section. A qualified
16 beneficiary, with respect to future reports and other information, may withdraw a
17 waiver previously given.

18 (5) Subsections (2) (b) and (c) and (3) do not apply to a trustee who accepts a
19 trusteeship before the effective date of this subsection [LRB inserts date], to an
20 irrevocable trust created before the effective date of this subsection [LRB inserts
21 date], or to a revocable trust that becomes irrevocable before the effective date of this
22 subsection [LRB inserts date].

23 **SECTION 110.** 701.0814 of the statutes is created to read:

24 **701.0814 Discretionary powers; tax savings.** (1) Notwithstanding the
25 breadth of discretion granted to a trustee in the terms of the trust, including the use

1 of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a
2 discretionary power in good faith and in accordance with the terms and purposes of
3 the trust and the interests of the beneficiaries. A court may not determine that a
4 trustee abused its discretion merely because the court would have exercised the
5 discretion in a different manner or would not have exercised the discretion.

6 (2) Subject to sub. (4), and unless the terms of the trust expressly indicate that
7 a provision of this subsection does not apply, all of the following apply:

8 (a) A person other than a settlor who is a beneficiary and a trustee, directing
9 party, or trust protector of a trust that confers on the trustee, directing party, or trust
10 protector a power to make discretionary distributions to or for the trustee’s, directing
11 party’s, or trust protector’s personal benefit may exercise the power only in
12 accordance with an ascertainable standard.

13 (b) A trustee, directing party, or trust protector may not exercise a power to
14 make discretionary distributions to satisfy a legal obligation of support that the
15 trustee, directing party, or trust protector personally owes another person.

16 (3) A power whose exercise is limited or prohibited by sub. (2) may be exercised
17 by a majority of the remaining trustees, directing parties, or trust protectors whose
18 exercise of the power is not so limited or prohibited. If the power of all trustees,
19 directing parties, or trust protectors is so limited or prohibited, the court may appoint
20 a trustee, directing party, or trust protector with authority to exercise the power.

21 (4) Subsection (2) does not apply to any of the following:

22 (a) A power held by the settlor’s spouse who is the trustee, directing party, or
23 trust protector of a trust for which a marital deduction, as defined in section 2056 (b)
24 (5) or 2523 (e) of the Internal Revenue Code, was previously allowed.

1 (b) A trust during a period when the trust may be revoked or amended by its
2 settlor.

3 (c) A trust if contributions to the trust qualify for the annual exclusion under
4 section 2503 (c) of the Internal Revenue Code.

5 **SECTION 111.** 701.0815 of the statutes is created to read:

6 **701.0815 General powers of trustee.** (1) A trustee, without authorization
7 by the court, may exercise the following powers:

8 (a) Powers conferred by the terms of the trust.

9 (b) Except as limited by the terms of the trust, all of the following powers:

10 1. All powers over the trust property that an unmarried, competent owner has
11 over individually owned property.

12 2. Any other powers appropriate to achieve the proper investment,
13 management, and distribution of the trust property.

14 3. Any other powers conferred by this chapter.

15 (2) The exercise of a power is subject to the fiduciary duties prescribed by this
16 chapter.

17 **SECTION 112.** 701.0816 of the statutes is created to read:

18 **701.0816 Specific powers of trustee.** Without limiting the authority
19 conferred by s. 701.0815, a trustee may do all of the following:

20 (1) Collect trust property and accept or reject additions to the trust property
21 from a settlor or any other person.

22 (2) Acquire or sell property, for cash or on credit, at public or private sale.

23 (3) Exchange, partition, or otherwise change the character of trust property.

24 (4) Deposit trust money in an account in a regulated financial-service
25 institution.

1 (5) Borrow money, with or without security, and mortgage or pledge trust
2 property for a period within or extending beyond the duration of the trust.

3 (6) With respect to an interest in a proprietorship, partnership, limited liability
4 company, business trust, corporation, or other form of business or enterprise,
5 continue the business or other enterprise and take any action that may be taken by
6 shareholders, members, or property owners, including merging, dissolving, or
7 otherwise changing the form of business organization or contributing additional
8 capital.

9 (7) With respect to a stock or other security, exercise the rights of an absolute
10 owner, including the right to do any of the following:

11 (a) Vote, or give proxies to vote, with or without power of substitution, or enter
12 into or continue a voting trust agreement.

13 (b) Hold a stock or other security in the name of a nominee or in other form
14 without disclosure of the trust so that title may pass by delivery.

15 (c) Pay calls, assessments, and other sums chargeable or accruing against the
16 stock or other security, and sell or exercise stock subscription or conversion rights.

17 (d) Deposit the stock or other security with a depository or other regulated
18 financial-service institution.

19 (8) With respect to an interest in real property, construct, or make ordinary or
20 extraordinary repairs to, alterations to, or improvements in, buildings or other
21 structures, demolish improvements, raze existing or erect new party walls or
22 buildings, subdivide or develop land, dedicate land to public use or grant public or
23 private easements, and make or vacate plats and adjust boundaries.

24 (9) Enter into a lease for any purpose as lessor or lessee, including a lease or
25 other arrangement for exploration and removal of natural resources, with or without

1 the option to purchase or renew, for a period within or extending beyond the duration
2 of the trust.

3 (10) Grant an option involving a sale, lease, or other disposition of trust
4 property or acquire an option for the acquisition of property, including an option
5 exercisable beyond the duration of the trust, and exercise an option so acquired.

6 (11) Insure the property of the trust against damage or loss and insure the
7 trustee, the trustee's agents, any directing party, any trust protector, and the
8 beneficiaries against liability arising from the administration of the trust.

9 (12) Abandon or decline to administer property of no value or of insufficient
10 value to justify its collection or continued administration.

11 (13) With respect to possible liability for violation of environmental law, do any
12 of the following:

13 (a) Inspect or investigate property the trustee holds or has been asked to hold,
14 or property owned or operated by an organization in which the trustee holds or has
15 been asked to hold an interest, for the purpose of determining the application of
16 environmental law with respect to the property.

17 (b) Take action to prevent, abate, or otherwise remedy any actual or potential
18 violation of any environmental law affecting property held directly or indirectly by
19 the trustee, whether taken before or after the assertion of a claim or the initiation
20 of governmental enforcement.

21 (c) Decline to accept property into trust or disclaim any power with respect to
22 property that is or may be burdened with liability for violation of environmental law.

23 (d) Compromise claims against the trust that may be asserted for an alleged
24 violation of environmental law.

1 (e) Pay the expense of any inspection, review, abatement, or remedial action to
2 comply with environmental law.

3 **(14)** Pay or contest any claim, settle a claim by or against the trust, and release,
4 in whole or in part, a claim belonging to the trust.

5 **(15)** Pay taxes; assessments; compensation of the trustee, a directing party, a
6 trust protector, and employees and agents of the trust; and other expenses incurred
7 in the administration of the trust.

8 **(16)** Exercise elections with respect to federal, state, and local taxes.

9 **(17)** Select a mode of payment under any employee benefit or retirement plan,
10 annuity, or life insurance payable to the trustee, exercise rights thereunder,
11 including exercise of the right to indemnification for expenses and against liabilities,
12 and take appropriate action to collect the proceeds.

13 **(18)** Make loans out of trust property, including loans to a beneficiary on terms
14 and conditions the trustee considers to be fair and reasonable under the
15 circumstances. The trustee has a lien on future distributions for repayment of loans
16 under this subsection.

17 **(19)** Pledge trust property to guarantee loans made by others to the beneficiary.

18 **(20)** Appoint a trustee to act in another jurisdiction with respect to trust
19 property located in the other jurisdiction, confer upon the appointed trustee all of the
20 powers and duties of the appointing trustee, require that the appointed trustee
21 furnish security, and remove any trustee so appointed.

22 **(21)** Pay an amount distributable to a beneficiary who is under a legal
23 disability or who the trustee reasonably believes is incapacitated, by paying it
24 directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any
25 of the following:

1 (a) Paying the amount to the beneficiary’s conservator or the beneficiary’s
2 guardian of the estate.

3 (b) Paying the amount to the beneficiary’s custodian under the Uniform
4 Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust
5 Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or
6 custodial trust.

7 (c) If the trustee does not know of a conservator, guardian of the estate,
8 custodian, or custodial trustee, paying the amount to an adult relative or other
9 person having legal or physical care or custody of the beneficiary or to the guardian
10 of the person of the beneficiary, to be expended on the beneficiary’s behalf.

11 (d) Managing the amount as a separate fund on the beneficiary’s behalf, subject
12 to the beneficiary’s continuing right to withdraw the distribution.

13 **(22)** On distribution of trust property or the division or termination of a trust,
14 make distributions in divided or undivided interests, allocate particular assets in
15 proportionate or disproportionate shares, value the trust property for those
16 purposes, and adjust for resulting differences in valuation.

17 **(23)** Resolve a dispute concerning the interpretation of the trust or its
18 administration by mediation, arbitration, or other procedure for alternative dispute
19 resolution.

20 **(24)** Prosecute or defend an action, claim, or judicial proceeding in any
21 jurisdiction to protect trust property or the trustee, a directing party, or a trust
22 protector in the performance of the trustee’s, directing party’s or trust protector’s
23 duties.

1 (25) Sign and deliver contracts and other instruments that are useful to
2 achieve or facilitate the exercise of the trustee’s, directing party’s or trust protector’s
3 powers.

4 (26) On termination of the trust, exercise the powers appropriate to wind up
5 the administration of the trust and distribute the trust property to the persons
6 entitled to it.

7 (27) Create or fund a plan under section 529 of the Internal Revenue Code, or
8 other college savings vehicle, for a beneficiary’s benefit.

9 **SECTION 113.** 701.0817 of the statutes is created to read:

10 **701.0817 Distribution upon termination.** (1) Upon termination or partial
11 termination of a trust, the trustee may send a proposal for distribution to the
12 beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent
13 to object to the proposed distribution terminates if the beneficiary does not notify the
14 trustee of an objection within 30 days after the proposal was sent but only if the
15 proposal informed the beneficiary of the right to object and of the time allowed for
16 objection.

17 (2) Upon the occurrence of an event terminating or partially terminating a
18 trust, the trustee shall proceed within a reasonable time to distribute the trust
19 property to the persons entitled to it, subject to the right of the trustee to retain a
20 reasonable reserve for the payment of debts, expenses, and taxes.

21 (3) A release by a beneficiary of a trustee from liability for breach of trust is
22 invalid to the extent any of the following applies:

23 (a) The release was induced by improper conduct of the trustee.

24 (b) The beneficiary, at the time of the release, did not know of the beneficiary’s
25 rights or of the material facts relating to the breach.

1 SECTION 114. 701.0818 of the statutes is created to read:

2 **701.0818 Trust protectors.** (1) APPOINTMENT. A settlor, in a trust
3 instrument, ^{or} a court, ⁱⁿ a trust instrument or court order, ^{or interested persons in} may provide for the ^{a nonjudicial}
4 appointment of a trust protector, whether referred to as a trust protector, another ^{settlement}
5 title, or no title. A trust protector has the powers granted to the trust protector in ^{agreement}
6 the trust instrument.

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

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

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

- 17 a. Interpret or enforce the terms of the trust at the request of the trustee.
18 b. Review and approve the trustee's reports or accounting.
19 c. Resolve disputes between the trustee or a directing party and a beneficiary.
20 d. Consent to or veto distributions to a beneficiary.
21 e. Consent to or veto investment actions.

22 2. If it is not a power described in subd. 1. a. to e., the trust protector shall
23 exercise the power in a nonfiduciary capacity including a power to do any of the
24 following:

1 a. Modify or amend the trust instrument to respond to opportunities related
2 to, or changes in, restraints on alienation or other state laws restricting the terms
3 of a trust, the distribution of trust property, or the administration of the trust.

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

6 c. Change the principal place of administration, the tax situs of the trust, or the
7 governing law of the trust.

8 d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or
9 class of beneficiaries, or select a beneficiary from an indefinite class.

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

11 f. Remove, replace, or appoint a trustee, trust protector, or directing party or
12 a successor trustee, trust protector, or directing party.

13 g. Terminate the trust.

14 h. Appoint assets to a new trust under s. 701.0418.

15 i. Advise the trustee on matters concerning a beneficiary, including whether to
16 provide information to a beneficiary under s. 701.0813.

17 j. Correct errors or ambiguities in the terms of the trust that might otherwise
18 require court construction or defeat the settlor's intent.

19 3. Notwithstanding subs. 1. and 2., a trust protector who is also the settlor
20 may exercise any power granted to the trust protector in the trust protector's
21 personal interests.

22 4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary
23 may exercise any power granted to the trust protector that is exercisable in a
24 nonfiduciary capacity in the trust protector's personal interests.

1 (c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument
2 to the contrary, a trust protector who is also serving as the trustee or a directing party
3 shall exercise any power granted to the trust protector in a fiduciary capacity.

4 (3) TRUST PROTECTOR ~~(POWERS, DUTIES)~~. (a) If a power is exercisable in a fiduciary
5 capacity, the trust protector shall act in good faith and shall exercise the power in a
6 manner that is consistent with the terms and purposes of the trust instrument or
7 court order and the interests of the beneficiaries.

8 (b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall
9 act in good faith unless the trust instrument or court order provides otherwise.

10 (c) A trust protector does not have a duty to exercise its powers, to monitor the
11 conduct of the trustee or ~~any~~ directing party, or to monitor changes in the law or
12 circumstances of the beneficiaries.

13 (4) LIABILITY. A trust protector is liable for any loss that results from a breach
14 of the trust protector's duties, except as follows:

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

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

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

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

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

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

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

10 2. Reduce or eliminate an income interest of an income beneficiary of any of the
11 following trusts:

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

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

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

20 d. A trust for which an election as a qualified Subchapter S Trust under section
21 1361(d) of the Internal Revenue Code is in place.

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