

**BILL**

1           **SECTION 256.** 701.20 (11) of the statutes is renumbered 701.1116 and amended  
2 to read:

3           **701.1116 Distribution from trust or estate.** A trustee shall allocate to  
4 income an amount received as a distribution of income from a trust or an estate in  
5 which the trust has an interest other than a purchased interest, and shall allocate  
6 to principal an amount received as a distribution of principal from such a trust or  
7 estate. If a trustee purchases an interest in a trust that is an investment entity, or  
8 a decedent or donor transfers an interest in such a trust to a trustee, ~~sub. (10) s.~~  
9 701.1115 or ~~(24) 701.1129~~ applies to a receipt from the trust.

10           **SECTION 257.** 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117  
11 (3) (g), as renumbered, is amended to read:

12           701.1117 (3) (g) Activities to which ~~sub. (23) s. 701.1128~~ applies.

13           **SECTION 258.** 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118  
14 (1), (2), (3) and (6), as renumbered, are amended to read:

15           701.1118 (1) To the extent not allocated to income under this section  
16 subchapter, assets received from a transferor during the transferor's lifetime, a  
17 decedent's estate, a trust with a terminating income interest, or a payer under a  
18 contract naming the trust or its trustee as beneficiary.

19           (2) Money or other property received from the sale, exchange, liquidation, or  
20 change in form of a principal asset, including realized profit, subject to ~~subs. (10) ss.~~  
21 701.1115 to ~~(24) 701.1129~~.

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

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

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1           **SECTION 259.** 701.20 (14) of the statutes is renumbered 701.1119 and amended  
2 to read:

3           **701.1119 Rental property.** To the extent that a trustee accounts for receipts  
4 from rental property in accordance with this subsection ~~section~~, the trustee shall  
5 allocate to income an amount received as rent of real or personal property, including  
6 an amount received for cancellation or renewal of a lease. An amount received as a  
7 refundable deposit, including a security deposit or a deposit that is to be applied as  
8 rent for future periods, must be added to principal and held subject to the terms of  
9 the lease and is not available for distribution to a beneficiary until the trustee's  
10 contractual obligations have been satisfied with respect to that amount.

11           **SECTION 260.** 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120  
12 (3), as renumbered, is amended to read:

13           701.1120 (3) This ~~subsection~~ section does not apply to an obligation to which  
14 ~~sub. (18), (19), (20), (21), (23)~~ s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or  
15 ~~(24)~~ 701.1129 applies.

16           **SECTION 261.** 701.20 (16) of the statutes is renumbered 701.1121 and amended  
17 to read:

18           **701.1121 Insurance policies and similar contracts.** (1) Except as  
19 provided in ~~par. (b)~~ sub. (2), a trustee shall allocate to principal the proceeds of a life  
20 insurance policy or other contract in which the trust or its trustee is named as  
21 beneficiary, including a contract that insures the trust or its trustee against loss for  
22 damage to, destruction of, or loss of title to, a trust asset. The trustee shall allocate  
23 dividends on an insurance policy to income if the premiums on the policy are paid  
24 from income, and to principal if the premiums are paid from principal.

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

4           (3) This ~~subsection~~ section does not apply to a contract to which ~~sub. (18)~~ s.  
5 701.1123 applies.

6           **SECTION 262.** 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122  
7 (intro.), as renumbered, is amended to read:

8           **701.1122 Insubstantial allocations not required.** (intro.) If a trustee  
9 determines that an allocation between principal and income required by ~~sub. (15) (b),~~  
10 ~~(18), (19), (20), (21)~~ s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24)  
11 701.1129 is insubstantial, the trustee may allocate the entire amount to principal  
12 unless one of the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the  
13 allocation. This power may be exercised by a cotrustee in the circumstances  
14 described in ~~sub. (4) (d)~~ s. 701.1104 (4) and may be released for the reasons and in  
15 the manner described in ~~sub. (4) (e)~~ s. 701.1104 (5). An allocation is presumed to be  
16 insubstantial if:

17           **SECTION 263.** 701.20 (18) (title) of the statutes is renumbered 701.1123 (title).

18           **SECTION 264.** 701.20 (18) (a) of the statutes is repealed.

19           **SECTION 265.** 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and  
20 amended to read:

21           701.1123 (2) To the extent that a payment is characterized as interest or, a  
22 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate  
23 ~~it~~ the payment to income. The trustee shall allocate to principal the balance of the  
24 payment and any other payment received in the same accounting period that is not

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1 characterized as interest, a dividend, or ~~an equivalent~~ a payment in lieu of interest  
2 or a dividend.

3 **SECTION 266.** 701.20 (18) (c) 1. of the statutes is renumbered 701.1123 (1) (d)  
4 and amended to read:

5 701.1123 (1) (d) ~~In this paragraph “plan~~ “Plan income” means any of the  
6 following:

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

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

24 **SECTION 267.** 701.20 (18) (c) 2. of the statutes is renumbered 701.1123 (3) and  
25 amended to read:

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

8           **SECTION 268.** 701.20 (18) (d) of the statutes is renumbered 701.1123 (5) and  
9 amended to read:

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

14           **SECTION 269.** 701.20 (18) (e) of the statutes is renumbered 701.1123 (6) and  
15 amended to read:

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

18           **SECTION 270.** 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124  
19 (1), as renumbered, is amended to read:

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

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

5 **SECTION 271.** 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125  
6 (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

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

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

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

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

22 **SECTION 272.** 701.20 (21) (title) of the statutes is repealed.

23 **SECTION 273.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126  
24 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

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

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

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

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

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

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

20          **SECTION 274.** 701.20 (22) of the statutes is renumbered 701.1127 and amended  
21 to read:

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

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

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

10 **SECTION 275.** 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128  
11 (1) and (2), as renumbered, are amended to read:

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

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

20 **SECTION 276.** 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129  
21 (1), as renumbered, is amended to read:

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



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

4 **SECTION 277.** 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130  
5 (intro.), as renumbered, are amended to read:

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

9 **SECTION 278.** 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131  
10 (1) (a), (e) and (g), as renumbered, are amended to read:

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

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

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

23 **SECTION 279.** 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132  
24 (1) and (2) (c), as renumbered, are amended to read:

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

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

6           **SECTION 280.** 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133  
7 (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

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

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

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

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

19           **SECTION 281.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title).

20           **SECTION 282.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

21           **SECTION 283.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

22           **SECTION 284.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3)  
23 (intro.) and amended to read:

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

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1           **SECTION 285.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a)  
2 and amended to read:

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

5           **SECTION 286.** 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,  
6 renumbered 701.1134 (3) (b) and amended to read:

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

9           **SECTION 287.** 701.20 (29) (c) 2. b. of the statutes is repealed.

10          **SECTION 288.** 701.20 (29) (d) of the statutes is repealed.

11          **SECTION 289.** 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135  
12 (1) (a), as renumbered, is amended to read:

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

15          **SECTION 290.** 701.20 (31) of the statutes is repealed.

16          **SECTION 291.** 701.21 of the statutes is renumbered 701.1136, and 701.1136 (1),  
17 (2) and (4), as renumbered, are amended to read:

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

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

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

7           **SECTION 292.** 701.22 (title) of the statutes is repealed.

8           **SECTION 293.** 701.22 of the statutes is renumbered 701.0417 (4) and amended  
9 to read:

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

22           **SECTION 294.** 701.23 of the statutes is repealed.

23           **SECTION 295.** 701.24 (title) of the statutes is renumbered 701.1205 (title).

24           **SECTION 296.** 701.24 (1) of the statutes is renumbered 701.1205 (1) and  
25 amended to read:

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

10           **SECTION 297.** 701.24 (2) of the statutes is renumbered 701.1205 (2) and  
11       amended to read:

12           701.1205 (2) ~~Section 701.20~~ Subchapter XI of this chapter applies to every a  
13       trust or decedent's estate existing on ~~May 17, 2005~~ the effective date of this  
14       subsection .... [LRB inserts date], and to every a trust or decedent's estate created or  
15       coming into existence after that date, except as otherwise expressly provided in s.  
16       701.20 subch. XI or by the decedent's will or the terms of the trust. With respect to  
17       a trust or decedent's estate existing on ~~May 17, 2005, s. 701.20 (5) to (30)~~ the effective  
18       date of this subsection .... [LRB inserts date], ss. 701.1110 to 701.1135 shall apply at  
19       the beginning of the trust's or estate's first accounting period, as defined in s. 701.20  
20       701.1125 (2) (a), that begins on or after ~~May 17, 2005~~ the effective date of this  
21       subsection .... [LRB inserts date].

22           **SECTION 298.** 701.24 (3) of the statutes is repealed.

23           **SECTION 299.** 701.25 of the statutes is renumbered 701.1204.

24           **SECTION 300.** 701.26 of the statutes is repealed.

25           **SECTION 301.** 702.01 (intro.) of the statutes is renumbered 702.02 (intro.).

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1           **SECTION 302.** 702.01 (1) of the statutes is renumbered 702.02 (2) and amended  
2 to read:

3           702.02 (2) “Creating instrument” means the will, trust agreement, or other  
4 document which creates or reserves the power of appointment.

5           **SECTION 303.** 702.01 (2) of the statutes is renumbered 702.02 (4) and amended  
6 to read:

7           702.02 (4) “Donor” means the person who creates or reserves the power;  
8 “donee” means the person in whom the power is created or reserved; and “appointee”  
9 means the person to whom an interest is appointed of appointment.

10          **SECTION 304.** 702.01 (3) of the statutes is renumbered 702.02 (5) and amended  
11 to read:

12          702.02 (5) “General power of appointment” means a power exercisable in favor  
13 of the donee, the donee’s estate, the donee’s creditors, or the creditors of the donee’s  
14 estate, whether or not it is also exercisable in favor of others. A power to appoint to  
15 any person or a power ~~which~~ of appointment that is not expressly restricted as to  
16 appointees may be exercised in favor of the donee or the donee’s creditors if  
17 exercisable during lifetime, and in favor of the donee’s estate or the creditors of the  
18 donee’s estate if exercisable by will.

19          **SECTION 305.** 702.01 (4) of the statutes is renumbered 702.02 (6) and amended  
20 to read:

21          702.02 (6) “Power of appointment” means a power ~~of appointment over to~~  
22 appoint legal or equitable interests in real or personal property. A power of  
23 appointment is ~~a power~~ created or reserved by a person having property subject to  
24 his or her disposition which enables the donee of the power of appointment to  
25 designate, within such limits as may be prescribed, the transferees of the property

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1 or the shares or the interests in which it shall be received; ~~it. A power of appointment~~  
2 does not include a power of sale, a power of attorney, a power of revocation, or a power  
3 exercisable by a trustee ~~or other, a directing party, as defined in s. 701.0103 (7),~~  
4 another fiduciary in his or her fiduciary capacity, or a trust protector, as defined in  
5 s. 701.0103 (31).

6 **SECTION 306.** 702.01 (5) of the statutes is renumbered 702.02 (7) and amended  
7 to read:

8 702.02 (7) “Special power of appointment” means a power of appointment  
9 ~~exercisable only in favor of one or more persons not including the donee, the donee’s~~  
10 ~~estate, the donee’s creditors or the creditors of the donee’s estate and, when~~  
11 ~~exercisable in favor of a class, so limited in size by description of the class that in the~~  
12 ~~event of nonexercise of the power a court can make distribution to persons within the~~  
13 ~~class if the donor has failed to provide for this contingency that is not a general power~~  
14 ~~of appointment.~~

15 **SECTION 307.** 702.01 (6) of the statutes is repealed.

16 **SECTION 308.** 702.02 (1) of the statutes is created to read:

17 702.02 (1) “Appointee” means the person to whom an interest is appointed.

18 **SECTION 309.** 702.02 (3) of the statutes is created to read:

19 702.02 (3) “Donee” means the person in whom the power of appointment is  
20 created or reserved.

21 **SECTION 310.** 702.03 of the statutes is amended to read:

22 **702.03 Manifestation of intent to exercise powers a power of**  
23 **appointment.** (1) Unless the person who executed it had a contrary intention, if  
24 a governing creating instrument, ~~as defined in s. 854.01 (2), or an inter vivos~~  
25 ~~governing instrument, as defined in s. 700.27 (1) (c), creates a power of appointment~~

**BILL****SECTION 310**

1 that expressly requires that the power of appointment be exercised by any type of  
2 reference to the power of appointment or its source, the donor's intention in requiring  
3 the reference is presumed to be to prevent an inadvertent exercise of the power of  
4 appointment. Extrinsic evidence, as defined in s. 854.01 (1), may be used to construe  
5 the intent.

6 (2) In the case of other powers, ~~an~~ of appointment, a creating instrument  
7 manifests an intent to exercise the power of appointment if the creating instrument  
8 purports to transfer an interest in the appointive property which the donee would  
9 have no power to transfer except by virtue of the power of appointment, even though  
10 the power of appointment is not recited or referred to in the creating instrument, or  
11 if the creating instrument either expressly or by necessary implication from its  
12 wording interpreted in light of the circumstances surrounding its drafting and  
13 execution manifests an intent to exercise the power of appointment. If there is a  
14 general power of appointment exercisable by will with no gift in default in the  
15 creating instrument, a residuary clause or other general language in the donee's will  
16 purporting to dispose of all of the donee's estate or property operates to exercise the  
17 power of appointment in favor of the donee's estate, but in all other cases such a  
18 clause or language does not in itself manifest an intent to exercise a power of  
19 appointment exercisable by will.

20 **SECTION 311.** 702.05 of the statutes is amended to read:

21 **702.05 Exercise of powers a power of appointment.** (1) CAPACITY TO  
22 EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by  
23 a person who would have the capacity to transfer the property covered by the power  
24 of appointment.



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

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

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

23           **SECTION 312.** 702.05 (5) of the statutes is created to read:

24           702.05 (5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal  
25 representative, trustee, or other fiduciary who holds property subject to a power of

**BILL****SECTION 312**

1 appointment may administer that property as if the power of appointment was not  
2 exercised if the personal representative, trustee, or other fiduciary has no notice of  
3 the existence of any of the following within 6 months after the death of the donee of  
4 the power of appointment:

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

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

9 **SECTION 313.** 702.07 of the statutes is amended to read:

10 **702.07 Powers Power of appointment to be construed as exclusive.** The  
11 donee of any power of appointment may appoint the whole or any part of the  
12 appointive assets to any one or more of the permissible appointees and exclude  
13 others, except to the extent that the donor specifies either a minimum share or  
14 amount to be appointed to each permissible appointee or to designated appointees,  
15 or a maximum share or amount appointable to any one or more appointees.

16 **SECTION 314.** 702.08 of the statutes is amended to read:

17 **702.08 Disclaimer of ~~powers~~ a power of appointment.** The donee of any  
18 power of appointment may disclaim all or part of the power of appointment as  
19 provided under s. 700.27 or 854.13.

20 **SECTION 315.** 702.09 (title), (1) and (3) (a), (b) and (c) of the statutes are  
21 amended to read:

22 **702.09 (title) Release of ~~powers~~ a power of appointment.** (1) ~~Except as~~  
23 Unless the creating instrument expressly provides that the power of appointment  
24 cannot be released or expressly restricts the time, manner, or scope of release, the  
25 donee of any power of appointment may do any of the following:

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- 1 (a) At any time completely release the donee's power; of appointment.
- 2 (b) At any time or times release the donee's power of appointment in any one  
3 or more of the following respects:
- 4 1. As to the whole or any part of the property which is subject thereto;.
- 5 2. As to any one or more persons or objects, or classes of persons or objects, in  
6 whose favor such power of appointment is exercisable;.
- 7 3. So as to limit in any other respect the extent to or manner in which it the  
8 power of appointment may be exercised.
- 9 (3) (a) Delivery to any person specified in the creating instrument;.
- 10 (b) Delivery to a trustee or to one of several trustees of the property to which  
11 the power of appointment relates, or filing with the court having jurisdiction over the  
12 trust;.
- 13 (c) Delivery to any person, other than the donee, who could be adversely  
14 affected by an exercise of the power; ~~or~~ of appointment.

15 **SECTION 316.** 702.11 of the statutes is amended to read:

16 **702.11 Irrevocability of creation, exercise and release of powers a**  
17 **power of appointment**. The creation, exercise or release of a power of appointment  
18 is irrevocable unless the power to revoke is reserved in the creation, exercise or  
19 release of the power of appointment.

20 **SECTION 317.** 702.13 (title), (1) (intro.), (a), (b) and (c) and (2) of the statutes  
21 are amended to read:

22 **702.13 (title) Recording instruments relating to powers a power of**  
23 **appointment**. (1) (intro.) Any of the following instruments relating to powers a  
24 power of appointment is entitled to be recorded as a conveyance upon compliance  
25 with s. 706.05 (1):

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

2 (b) An instrument expressing consent to exercise;

3 (c) A disclaimer;

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

6 **SECTION 318.** 702.15 (intro.), (1) and (2) of the statutes are amended to read:

7 **702.15 Disposition when a special power of appointment is**  
8 **unexercised.** (intro.) If the donee of a special power of appointment fails to exercise  
9 effectively the special power of appointment, the interests which might have been  
10 appointed under the special power of appointment pass in one of the following ways:

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

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

19 **SECTION 319.** 702.15 (3) of the statutes is renumbered 702.15 (3) (a) and  
20 amended to read:

21 702.15 (3) (a) ~~If Except as provided in par. (b), if~~ the creating instrument  
22 contains no express gift in default and clearly indicates that the permissible  
23 appointees are to take only if the donee exercises the special power of appointment,  
24 then by reversion to the donor or the donor’s estate. ~~But if~~

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1           **(b)** If the creating instrument expressly states that there is no reversion in the  
2 donor, then any language in the creating instrument indicating or stating that the  
3 permissible appointees are to take only if the donee exercises the special power of  
4 appointment is to be disregarded and the interests shall pass in accordance with sub.  
5 (2).

6           **SECTION 320.** 702.17 (1), (2) and (5) of the statutes are amended to read:

7           702.17 (1) ~~GENERAL POLICY: GENERAL POWER OF APPOINTMENT.~~ If the donee has  
8 either a general power or an unclassified power which is unlimited as to permissible  
9 appointees except for exclusion of the donee, the donee's estate, the donee's creditors  
10 and the creditors of the donee's estate, or a substantially similar exclusion of  
11 appointment, any interest which the donee has power to appoint or has appointed  
12 is to be treated as property of the donee for purposes of satisfying claims of the donee's  
13 creditors, as provided in this section.

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

24           **(5) THIRD PARTIES IN GOOD FAITH PROTECTED.** Any person acting without actual  
25 notice of claims of creditors under this section incurs no liability to such creditors in

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1 transferring property which is subject to a power of appointment or which has been  
2 appointed; and a purchaser without actual notice and for a valuable consideration  
3 of any interest in property, legal or equitable, takes such interest free of any rights  
4 which a creditor of the donee might have under this section.

5 **SECTION 321.** 702.17 (3) of the statutes is renumbered 702.17 (3) (a) and  
6 amended to read:

7 702.17 (3) (a) If Except as provided in par. (b), if the donee has at the time of  
8 ~~his or her~~ the donee's death a general power of ~~the kinds specified in sub. (1)~~  
9 appointment, whether or not the donee exercises the general power of appointment,  
10 any creditor of the donee may reach any interest which the donee could have  
11 appointed or has appointed, to the extent that the claim of the creditor has been filed  
12 and allowed in the donee's estate or filed with and approved by the trustee of a trust  
13 that is revocable, as defined in s. 701.0103 (22), by the donee or jointly by the donee  
14 and the donee's spouse but not paid because the assets of the estate or revocable trust  
15 are insufficient.

16 **SECTION 322.** 702.17 (3) (b) of the statutes is created to read:

17 702.17 (3) (b) If the donee fails to exercise a general power of appointment, in  
18 whole or in part, that the donee has at the time of the donee's death and neither the  
19 donee nor the donee's spouse is the donor of the power, a creditor of the donee may  
20 not reach an interest subject to the power, to the extent the power was not exercised.

21 **SECTION 323.** 702.17 (6) of the statutes is created to read:

22 702.17 (6) GENERAL POLICY: SPECIAL POWER OF APPOINTMENT. If the donee has a  
23 special power of appointment, property subject to the donee's special power of  
24 appointment is exempt from a claim of a creditor of the donee or the donee's estate.

25 **SECTION 324.** 702.21 of the statutes is amended to read:

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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 325.** 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 (28).

7           **SECTION 326.** 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 327.** 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 328.** 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~~ 701.0419.

25           **SECTION 329.** 853.34 (3) of the statutes is created to read:

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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 330.** 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 331.** 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



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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

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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 332.** 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 333.** 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 334.** 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 335.** 861.015 (2) of the statutes is amended to read:

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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 336.** 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 337.** 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)~~

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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 338.** 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~~ 701.0508. 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 339.** 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 340.** 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

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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 341.** 881.01 (1) (title) of the statutes is repealed and recreated to read:

7 881.01 (1) (title) DEFINITIONS.

8 **SECTION 342.** 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 343.** 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 344.** 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 (31), who has a power exercisable in a fiduciary capacity over  
24 the investment of trust assets, and any other person to whom a court appoints a

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1 power over the investment of the assets of a decedent's estate, a trust, a  
2 conservatorship, or a guardianship of the estate.

3 **SECTION 345.** 881.01 (4) of the statutes is renumbered 881.01 (4) (a) and  
4 amended to read:

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

9 **SECTION 346.** 881.01 (4) (b) of the statutes is created to read:

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

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

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

22 4. If a beneficiary files an application under subd. 3., the court shall conduct  
23 a hearing after giving notice to all interested persons, as determined by the court.  
24 After the hearing, the court shall enter an order directing the fiduciary to retain or  
25 sell the asset that is being retained based on what the court finds to be in accordance

**BILL**

1 with the terms and purposes of the estate, trust, conservatorship, or guardianship  
2 of the estate and the interests of the beneficiaries.

3 **SECTION 347.** 881.05 of the statutes is repealed.

4 **SECTION 348.** 893.33 (4r) of the statutes, as created by 2013 Wisconsin Act 20,  
5 is amended to read:

6 893.33 (4r) This section applies to liens of the department of health services  
7 on real property under ss. 46.27 (7g), 49.496, 49.682, ~~49.848~~, and 49.849.

8 **SECTION 349. Initial applicability.**

9 (1) ESTATE RECOVERY CHANGES. The treatment of sections 46.27 (7g) (a) 5. a. and  
10 b., (c) 2m. b. and 6m. b., and (g), 49.496 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and  
11 (6m), 49.682 (1) (e) 1. and 2., (2) (bm) 2. and (fm) 2., and (5), and 49.849 (1) (d) 1. and  
12 2., (2) (c), and (7) of the statutes, the renumbering and amendment of section 49.849  
13 (4) (c) 2. of the statutes, and the creation of section 49.849 (4) (c) 2. a., b., and c. of the  
14 statutes first apply to the recovery of public assistance as defined in section 49.849  
15 (1) (e) of the statutes, provided to individuals who die on October 1, 2013.

16 (2) DIVESTMENT AND ASSET VERIFICATION CHANGES. The treatment of sections  
17 49.45 (4m) (a) 3. b. and d. and 49.453 (2) (a) (intro.) and (b) (intro.) and (4c) (c) of the  
18 statutes first applies to determinations of initial eligibility for Medical Assistance for  
19 individuals who apply for Medical Assistance on July 2, 2013.

20 **SECTION 350. Effective dates.** This act takes effect on the first day of the 7th  
21 month beginning after publication, except as follows:

22 (1) ESTATE RECOVERY CHANGES. The treatment of sections 20.435 (4) (im) and (in)  
23 and (7) (im), 46.27 (7g) (a) 5. a. and b., (c) 2m. b. and 6m. b., and (g), 46.286 (7), 49.496  
24 (1) (cm) 1. and 2., (3m) (aj) 2. and (dm) 2., and (6m), 49.4962, 49.682 (1) (e) 1. and 2.,  
25 (2) (bm) 2. and (fm) 2., and (5), 49.848, 49.849 (1) (d) 1. and 2., (2) (c), and (7), 59.43

**BILL****SECTION 350**

1 (1) (w), 701.065 (5), and 893.33 (4r) of the statutes, the renumbering and amendment  
2 of section 49.849 (4) (c) 2. of the statutes, the creation of section 49.849 (4) (c) 2. a.,  
3 b., and c. of the statutes, and SECTION 349 (1) of this act take effect on the day after  
4 publication.

5 (2) DIVESTMENT AND ASSET VERIFICATION CHANGES. The treatment of sections  
6 49.45 (4m) (a) 3. b. and d. and 49.453 (2) (a) (intro.) and (b) (intro.) and (4c) (c) of the  
7 statutes and SECTION 349 (2) of this act take effect on the day after publication.

8 (END)



**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0010/5insTD  
TJD:.....

1           INSERT 18-5

2           **SECTION 1.** 49.45 (4m) (a) 3. e. of the statutes, as created by 2013 Wisconsin Act

3           20, is repealed.

(END INSERT 18-5)

b-31 Matt from Sen. Farrow's office  
& Brian Larson from leg council

① get rid of second part of def of property  
of a decedent

② remove "including" & strike through "living trust"  
So → go back to current law for  
1st part of def of  
property of a decedent

③ ins. 766.55(2)(bm)

amend to get rid of  
reference to war-prop 5 yrs before

④ change analysis too!