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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

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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 147.** 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

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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.

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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 148.** 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 149.** 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.

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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

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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.

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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:

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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.

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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 150.** 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.

BILL**SECTION 151**

1 **SECTION 151.** 701.0818 of the statutes is created to read:

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

8 **(2) TRUST PROTECTOR POWERS; LEGAL CAPACITY.** (a) A settlor in a trust instrument,
9 a court in a trust instrument or court order, or interested persons in a nonjudicial
10 settlement agreement may specify the legal capacity in which a particular power is
11 exercisable by a trust protector and whether a power granted to the trust protector
12 in a capacity other than a fiduciary capacity must be exercised in good faith.

13 (b) If the settlor, court, or interested persons do not specify the legal capacity
14 in which a particular power is exercisable by the trust protector, all of the following
15 apply:

16 1. The power is exercisable in a fiduciary capacity if it is a power to do any of
17 the following:

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

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

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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.

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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 DUTIES.** (a) If a power is exercisable in a fiduciary capacity,
5 the trust protector shall act in good faith and shall exercise the power in a manner
6 that is consistent with the terms and purposes of the trust instrument, court order,
7 or nonjudicial settlement agreement 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, court order, or nonjudicial settlement
10 agreement provides otherwise.

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

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

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

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

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

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

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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 or state
13 estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code
14 or any comparable provision of applicable state law, during the life of the settlor's
15 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 trust in which the settlor has a qualified interest under section 2702 (b)
19 of the Internal Revenue 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 in 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.

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1 (7) **SETTLOR RIGHTS.** A trust protector is not subject to the direction of the settlor
2 and the settlor may not bring a cause of action against the trust protector. A trust
3 protector may consider a settlor’s goals, objectives, and philosophies in establishing
4 the trust and the trust’s structure when exercising the powers granted to the trust
5 protector and may do so regardless of whether the settlor is deceased.

6 (8) **DUTIES OF A TRUSTEE AND A DIRECTING PARTY.** (a) A trustee and a directing
7 party shall act in accordance with a trust protector’s exercise of a power granted to
8 the trust protector. A trustee and a directing party are not liable for acting in
9 accordance with the trust protector’s exercise of a power granted to the trust
10 protector unless the attempted exercise is manifestly contrary to the power granted
11 to the trust protector or the trustee or the directing party knows that the attempted
12 exercise would constitute a serious breach of a duty that the trust protector owes to
13 the beneficiaries of the trust.

14 (b) A trustee and a directing party do not have a duty to monitor the conduct
15 of the trust protector, provide advice to or consult with the trust protector, or
16 communicate with, warn, or apprise any beneficiary concerning instances in which
17 the trustee or the directing party would or might have exercised the trustee’s or the
18 directing party’s discretion in a manner different from the manner in which the trust
19 protector exercised its discretion.

20 (9) **RIGHT TO INFORMATION.** (a) A trust protector may request information about
21 the trust from the trustee and, if the requested information is related to a power
22 granted to the trust protector, the trustee shall provide the requested information to
23 the trust protector. If a trustee is bound by any confidentiality restrictions with
24 respect to information requested by a trust protector, the trustee may require that
25 the trust protector agree to be bound by the confidentiality restrictions before

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1 delivering such information to the trust protector. A trustee is not liable to any
2 beneficiary for any loss or damages resulting from the trustee providing information
3 to the trust protector that is related to the power granted to the trust protector.

4 (b) Except as otherwise provided in this chapter, a trustee does not have to
5 provide any information to the trust protector that the trust protector does not
6 request.

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

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

13 **(12) JURISDICTION.** A person who accepts an appointment as a trust protector
14 of a trust submits to the jurisdiction of the courts of this state, as provided in s.
15 701.0202 (1).

16 **SECTION 152.** 701.0819 of the statutes is created to read:

17 **701.0819 Marital deduction transfers.** (1) For purposes of this section,
18 “marital deduction transfer” means a lifetime or testamentary transfer of property
19 that is intended to qualify for the marital deduction as indicated by the terms of the
20 trust.

21 (2) In interpreting, construing, or administering a trust instrument, absent a
22 clear expression of intent by the settlor to the contrary, a trustee shall apply the
23 following presumptions that may only be rebutted by clear and convincing evidence:

24 (a) The settlor intended to take advantage of tax deductions, exemptions,
25 exclusions, and credits.

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1 (b) The settlor intended that any transfer made to a spouse outright and free
2 of trust qualify for the gift or estate tax marital deduction and is a marital deduction
3 transfer.

4 (c) If the trust instrument refers to a trust as a marital trust, qualified
5 terminable interest property trust, or spousal trust, or refers to qualified terminable
6 interest property, section 2044, 2056, 2056A, or 2523 of the Internal Revenue Code,
7 or a similar provision of applicable state law, the settlor intended that the trust and
8 property passing to the trust qualify for the applicable gift or estate tax marital
9 deduction and that the transfer qualifies for the marital deduction for federal and
10 state gift or estate tax purposes.

11 (3) If a trust receives a marital deduction transfer, the trust instrument shall
12 be construed to comply with the marital deduction provisions of the Internal
13 Revenue Code.

14 (4) If a trust receives a marital deduction transfer, the trustee has all the
15 powers, duties, and discretionary authority necessary to comply with the marital
16 deduction provisions of the Internal Revenue Code. The trustee may not take any
17 action or have any power that may impair the availability of the marital deduction,
18 but this does not require the trustee to make the election under either section 2056
19 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal Revenue Code.

20 **SECTION 153.** 701.09 (title), (1) and (2) of the statutes are renumbered 853.34
21 (title), (1) and (2).

22 **SECTION 154.** 701.09 (3), (4) and (5) of the statutes are repealed.

23 **SECTION 155.** Subchapter IX (title) of chapter 701 [precedes 701.0901] of the
24 statutes is created to read:

25 **CHAPTER 701**

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SUBCHAPTER IX

INVESTMENT MANAGEMENT OF TRUSTS

SECTION 156. 701.0901 of the statutes is created to read:

701.0901 Application of the Wisconsin Prudent Investor Act. Except as provided in this subchapter, the investment management of the property of a trust is governed by ch. 881.

SECTION 157. 701.0902 of the statutes is created to read:

701.0902 Directed trust property. (1) A directing party who has power over directed trust property shall do all of the following:

(a) Direct the trustee on the retention, purchase, sale, exchange, tender, encumbrance, or any other investment transaction of the directed trust property and the investment and reinvestment of principal and income.

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

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

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

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

(a) Prepare or review investment policy statements.

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

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

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

4 **SECTION 158.** 701.0903 of the statutes is created to read:

5 **701.0903 Nonapplication of prudent investor rule to life insurance**
6 **contracts owned by trusts.** (1) Notwithstanding s. 881.01, if a principal purpose
7 of a trust is to hold a life insurance contract or to purchase a life insurance contract
8 from contributions made to the trust, the trustee does not have a duty to determine
9 whether the life insurance contract is or remains a proper investment of the trust.
10 For purposes of this subsection, determining whether a life insurance contract is or
11 remains a proper investment includes all of the following:

12 (a) Investigating the financial strength or changes in the financial strength of
13 the life insurance company maintaining the life insurance contract.

14 (b) Determining whether to exercise any policy option, right, or privilege
15 available under the life insurance contract.

16 (c) Diversifying the life insurance contract relative to any other life insurance
17 contracts or any other assets of the trust.

18 (d) Inquiring about or investigating the health or financial condition of an
19 insured.

20 (e) Preventing the lapse of a life insurance contract if the trust does not receive
21 contributions or hold other readily marketable assets to pay the life insurance
22 contract premiums.

23 (2) A trustee is not liable for a loss that arises because the trustee did not take
24 an action specified in sub. (1).

BILL**SECTION 161**

- 1 (a) Compel the trustee to perform the trustee's duties.
- 2 (b) Enjoin the trustee from committing a breach of trust.
- 3 (c) Compel the trustee to redress a breach of trust by paying money, restoring
4 property, or other means.
- 5 (d) Order a trustee to account.
- 6 (e) Appoint an additional trustee, a directing party, or a trust protector having
7 the duties and authority ordered by the court, including, in the case of an additional
8 trustee, the authority to take possession of the trust property and administer the
9 trust.
- 10 (f) Suspend the trustee.
- 11 (g) Remove the trustee as provided in s. 701.0706.
- 12 (h) Reduce the compensation of or deny compensation to the trustee.
- 13 (i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a
14 constructive trust on trust property, or trace trust property wrongfully disposed of
15 and order recovery of the property or its proceeds.
- 16 (j) Order any other appropriate relief, whether provided elsewhere in this
17 chapter, available at common law, or under equity principles.

18 **SECTION 162.** 701.1002 of the statutes is created to read:

19 **701.1002 Damages for breach of trust; liability of successor trustee. (1)**

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

- 22 (a) The amount required to restore the value of the trust property and trust
23 distributions to what they would have been had the breach not occurred.
- 24 (b) The profit the trustee made by reason of the breach.

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

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

12 **SECTION 163.** 701.1003 of the statutes is created to read:

13 **701.1003 Damages in absence of breach.** Absent a breach of trust, a trustee
14 is not liable to a beneficiary for a loss or depreciation in the value of trust property
15 or for not having made a profit.

16 **SECTION 164.** 701.1004 of the statutes is created to read:

17 **701.1004 Attorney fees and costs.** (1) In a judicial proceeding involving the
18 administration of a trust, the court, as justice and equity may require, may award
19 costs and expenses, including reasonable attorney fees, to any party, to be paid by
20 another party or from the trust that is the subject of the controversy.

21 (2) Subject to sub. (3), if a trustee, directing party, or trust protector defends
22 or prosecutes any proceeding in good faith, whether successful or not, the trustee,
23 directing party, or trust protector is entitled to receive from the trust the necessary
24 expenses and disbursements, including reasonable attorney fees, incurred. This

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1 subsection does not preclude a court from ordering another party to reimburse the
2 trust for these expenses and disbursements as provided in sub. (1).

3 (3) (a) A trustee may pay costs or attorney fees incurred in any proceeding from
4 the trust property without the approval of any person and without court
5 authorization, unless the court orders otherwise as provided in par. (c).

6 (b) If a claim or defense based upon a breach of trust is made against a trustee,
7 directing party, or trust protector in a proceeding, the trustee shall provide notice to
8 each qualified beneficiary, directing party, and trust protector of the trustee's
9 intention to pay costs or attorney fees incurred in the proceeding from the trust prior
10 to making payment. The notice shall inform each qualified beneficiary, directing
11 party, and trust protector of the right to apply to the court for an order prohibiting
12 the trustee from paying attorney fees or costs from trust property. If a trustee is
13 served with a motion for an order prohibiting the trustee from paying from the trust
14 attorney fees or costs in the proceeding and the trustee pays attorney fees or costs
15 from the trust before an order is entered on the motion, the trustee, directing party,
16 or trust protector and their respective attorneys who have been paid attorney fees
17 or costs from trust property are subject to the remedies in pars. (c) and (d).

18 (c) 1. If a claim or defense based upon breach of trust is made against a trustee,
19 directing party, or trust protector in a proceeding, a party may move the court for an
20 order to prohibit the trustee from paying costs or attorney fees from trust property.

21 2. Except as provided in subd. 3., if the moving party demonstrates to the court
22 that there is a reasonable basis for the court to find that a breach of trust occurred,
23 the court shall enter an order prohibiting the payment of further attorney fees and
24 costs from trust property and shall order attorney fees or costs previously paid from
25 trust property in such proceeding to be refunded, unless the court finds good cause

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1 to allow attorney fees and costs to be paid from the trust. A trustee, directing party,
2 or trust protector may offer evidence to rebut the evidence submitted to the court by
3 the moving party.

4 3. The court may defer ruling on a motion to prohibit a trustee from paying costs
5 or attorney fees from trust property until discovery is taken by the parties.

6 4. An order entered under this paragraph does not limit a trustee's, directing
7 party's, or trust protector's right to seek an order allowing the payment of some or
8 all of the attorneys fees or costs incurred in the proceeding from trust property,
9 including any fees required to be refunded, after the claim or defense is finally
10 determined by the court. If a claim or defense based upon a breach of trust is
11 withdrawn, dismissed, or resolved without a determination by the court that the
12 trustee committed a breach of trust, after the entry of an order prohibiting payment
13 of attorney fees and costs pursuant to this paragraph, the trustee may pay costs or
14 attorney fees incurred in the proceeding from the trust property without further
15 court authorization.

16 (d) If the court orders a refund under par. (c), the court may enter sanctions as
17 are appropriate if a refund is not made as directed by the court, including striking
18 defenses or pleadings filed by the trustee, directing party, or trust protector. Nothing
19 in this paragraph limits other remedies and sanctions the court may employ for the
20 failure to refund the trust in a timely manner.

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

24 (f) Notice under par. (b) is not required if the action or defense is later
25 withdrawn or dismissed by the party that is alleging a breach of trust or resolved

BILL**SECTION 164**

1 without a determination by the court that the trustee has not committed a breach
2 of trust.

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

11 **SECTION 165.** 701.1005 of the statutes is created to read:

12 **701.1005 Limitation of action against trustee.** (1) A beneficiary may not
13 commence a proceeding against a trustee for breach of trust more than one year after
14 the date on which the beneficiary or a representative of the beneficiary was sent a
15 report that adequately disclosed the existence of a potential claim for breach of trust.

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

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

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

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

24 (c) The termination of the trust.

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

3 **SECTION 166.** 701.1006 of the statutes is created to read:

4 **701.1006 Reliance on trust instrument.** A trustee who acts in reasonable
5 reliance on the terms of the trust as expressed in the trust instrument is not liable
6 to a beneficiary for a breach of trust to the extent the breach resulted from the
7 reliance.

8 **SECTION 167.** 701.1007 of the statutes is created to read:

9 **701.1007 Event affecting administration or distribution.** If the
10 happening of an event, including marriage, divorce, performance of educational
11 requirements, or death, affects the administration or distribution of a trust, a trustee
12 who has exercised reasonable care to ascertain the happening of the event is not
13 liable for a loss resulting from the trustee's lack of knowledge.

14 **SECTION 168.** 701.1008 of the statutes is created to read:

15 **701.1008 Exculpation of trustee.** (1) A term of a trust relieving a trustee
16 of liability for breach of trust is unenforceable to the extent that it does any of the
17 following:

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

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

23 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid
24 as an abuse of a fiduciary or confidential relationship unless the trustee proves that
25 the exculpatory term was fair under the circumstances existing at the time the trust

BILL**SECTION 168**

1 instrument was signed and that the existence and contents of the exculpatory term
2 were adequately communicated to the settlor.

3 **SECTION 169.** 701.1009 of the statutes is created to read:

4 **701.1009 Beneficiary's consent, release, or ratification.** A trustee is not
5 liable to a beneficiary for breach of trust if the beneficiary consented to the conduct
6 constituting the breach, released the trustee from liability for the breach, or ratified
7 the transaction constituting the breach, unless any of the following applies:

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

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

13 **SECTION 170.** 701.1010 of the statutes is created to read:

14 **701.1010 Limitation on personal liability of trustee.** (1) Except as
15 otherwise provided in the contract, a trustee is not personally liable on a contract
16 properly entered into in the trustee's fiduciary capacity in the course of
17 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

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

22 **SECTION 171.** 701.1011 of the statutes is created to read:

23 **701.1011 Interest as general partner.** (1) Unless personal liability is
24 imposed in the contract, a trustee who holds an interest as a general partner in a
25 general or limited partnership is not personally liable on a contract entered into by

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1 the partnership after the trust's acquisition of the interest if the fiduciary capacity
2 was disclosed in the contract.

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

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

9 **SECTION 172.** 701.1012 of the statutes is created to read:

10 **701.1012 Protection of person dealing with trustee.** (1) A person other
11 than a beneficiary who in good faith assists a trustee, or who in good faith and for
12 value deals with a trustee, without knowledge that the trustee is exceeding or
13 improperly exercising the trustee's powers is protected from liability as if the trustee
14 properly exercised the power.

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

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

20 (4) A person other than a beneficiary who in good faith assists a former trustee,
21 or who in good faith and for value deals with a former trustee, without knowledge
22 that the trusteeship has terminated is protected from liability as if the former trustee
23 were still a trustee.

BILL**SECTION 172**

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

4 **SECTION 173.** 701.1013 of the statutes is created to read:

5 **701.1013 Certification of trust.** (1) Instead of furnishing a copy of the trust
6 instrument to a person other than a beneficiary, the trustee may furnish to the
7 person a certification of trust containing the following information:

8 (a) That the trust exists and the date on which the trust instrument was
9 executed.

10 (b) The identity of the settlor.

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

12 (d) The powers of the trustee.

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

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

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

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

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

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

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

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

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

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

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

21 **SECTION 174.** 701.105 (title), (1), (2) and (3) of the statutes are renumbered
22 701.1201 (title), (1), (2) and (3), and 701.1201 (1), (2) and (3), as renumbered, are
23 amended to read:

24 701.1201 (1) (a) In the administration of any trust ~~which~~ that is a private
25 foundation, as defined in section 509 of the ~~internal revenue code~~ Internal Revenue

BILL**SECTION 174**

1 ~~Code~~, a charitable trust, as ~~defined~~ described in section 4947 (a) (1) of the ~~internal~~
2 ~~revenue code~~ Internal Revenue Code, or a split-interest trust as ~~defined~~ described
3 in section 4947 (a) (2) of the ~~internal revenue code~~ Internal Revenue Code, all of the
4 following acts shall be prohibited:

5 1. Engaging in any act of self-dealing, as defined in section 4941 (d) of the
6 ~~internal revenue code~~, which Internal Revenue Code, that would give rise to any
7 liability for the tax imposed by section 4941 (a) of the ~~internal revenue code~~ Internal
8 Revenue Code.

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

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

17 4. Making any taxable expenditures, as defined in section 4945 (d) of the
18 ~~internal revenue code~~, which Internal Revenue Code, that would give rise to any
19 liability for the tax imposed by section 4945 (a) of the ~~internal revenue code~~ Internal
20 Revenue Code.

21 (b) This subsection ~~shall~~ does not apply either to those split-interest trusts or
22 to amounts thereof which ~~that~~ are not subject to the prohibitions applicable to
23 private foundations by reason of the provisions of section 4947 of the ~~internal~~
24 ~~revenue code~~ Internal Revenue Code.

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

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

12 **SECTION 175.** 701.105 (4) of the statutes is repealed.

13 **SECTION 176.** 701.11 of the statutes is repealed.

14 **SECTION 177.** Subchapter XI (title) of chapter 701 [precedes 701.1101] of the
15 statutes is created to read:

CHAPTER 701

SUBCHAPTER XI

UNIFORM PRINCIPAL AND INCOME ACT

16 **SECTION 178.** 701.1101 of the statutes is created to read:

17 **701.1101 Short title and scope.** This subchapter may be cited as the
18 Wisconsin Uniform Principal and Income Act. Subject to s. 701.1206 (2), this
19 subchapter applies to a trust described in s. 701.0102 and an estate that is
20 administered in this state.
21
22
23

24 **SECTION 179.** 701.1102 (intro.) of the statutes is created to read:

25 **701.1102 Definitions.** (intro.) In this subchapter:

BILL**SECTION 180**

1 **SECTION 180.** 701.1102 (1g) of the statutes is created to read:

2 701.1102 (1g) “Asset” has the meaning given for property under s. 701.0103
3 (20).

4 **SECTION 181.** 701.1106 (6) of the statutes is created to read:

5 701.1106 (6) Sections 701.0410 to 701.0418 do not apply to a conversion of a
6 trust to a unitrust under this section.

7 **SECTION 182.** 701.1123 (1) of the statutes is created to read:

8 701.1123 (1) In this section:

9 (a) “Marital deduction trust” means a trust for which an election to qualify for
10 a marital deduction under section 2056 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal
11 Revenue Code has been made or a trust that qualified for the marital deduction
12 under other provisions of section 2056 or 2523 of the Internal Revenue Code.

13 (b) “Payment” means an amount of money or property received by a trustee that
14 is any of the following:

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

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

20 (c) “Plan” means a contractual, custodial, trust, or other arrangement that
21 provides for distributions to a trust. “Plan” includes a private or commercial annuity,
22 an individual retirement account, a Roth individual retirement account, a qualified
23 retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership
24 plan, or any nonqualified deferred compensation plan.

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1 (e) “Separate account” means an account established or maintained under a
2 plan under which income, gains, and losses, whether or not realized, from assets
3 allocated to the account, are credited to or charged against the account without
4 regard to other income, gains, or losses of the plan.

5 **SECTION 183.** 701.1123 (4) of the statutes is created to read:

6 701.1123 (4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust
7 shall determine plan income for an accounting period as if the plan were a trust
8 subject to this subchapter. If the trustee of a marital deduction trust cannot
9 determine the plan income, the plan income is 4 percent of the total present value
10 of the trust’s income in the plan on the first day of the accounting period, based on
11 reasonable actuarial assumptions as determined by the trustee of the marital
12 deduction trust.

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

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

23 **SECTION 184.** 701.1126 (title) of the statutes is created to read:

24 **701.1126 (title) Timber.**

25 **SECTION 185.** 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

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1 **701.1203 Uniformity of application and construction.** This chapter shall
2 be applied and construed to effectuate its general purpose to make uniform the law
3 with respect to the subject of this chapter among states enacting it.

4 **SECTION 191.** 701.1205 (3) of the statutes is created to read:

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

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

16 **SECTION 192.** 701.13 of the statutes is repealed.

17 **SECTION 193.** 701.14 (title) and (1) of the statutes are repealed.

18 **SECTION 194.** 701.14 (2) of the statutes is renumbered 701.0205 and amended
19 to read:

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

BILL**SECTION 194**

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

10 **SECTION 195.** 701.14 (3) of the statutes is renumbered 701.0206 and amended
11 to read:

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

22 **SECTION 196.** 701.14 (4) of the statutes is repealed.

23 **SECTION 197.** 701.15 of the statutes is repealed.

24 **SECTION 198.** 701.16 (title), (1), (2), (3), (4) (title) and (a) to (c), (5) and (6) of the
25 statutes are repealed.

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1 **SECTION 199.** 701.16 (4) (d) of the statutes is renumbered 879.47 (2) and
2 amended to read:

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

7 **SECTION 200.** 701.17 of the statutes is repealed.

8 **SECTION 201.** 701.18 of the statutes is repealed.

9 **SECTION 202.** 701.19 of the statutes is repealed.

10 **SECTION 203.** 701.20 (title) of the statutes is repealed.

11 **SECTION 204.** 701.20 (2) (intro.) of the statutes is repealed.

12 **SECTION 205.** 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

13 **SECTION 206.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and
14 amended to read:

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

19 **SECTION 207.** 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

20 **SECTION 208.** 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and
21 amended to read:

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

BILL**SECTION 209**

1 **SECTION 209.** 701.20 (2) (e) of the statutes is renumbered 701.1102 (4).

2 **SECTION 210.** 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

3 **SECTION 211.** 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

4 **SECTION 212.** 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and
5 amended to read:

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

10 **SECTION 213.** 701.20 (2) (i) of the statutes is repealed.

11 **SECTION 214.** 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

12 **SECTION 215.** 701.20 (2) (k) of the statutes is renumbered 701.1102 (9) and
13 amended to read:

14 701.1102 (9) "Remainder beneficiary" means a person entitled to receive
15 ~~principal when an income interest ends who is a beneficiary under s. 701.0103 (21)~~
16 (b).

17 **SECTION 216.** 701.20 (2) (L), (m) and (n) of the statutes are repealed.

18 **SECTION 217.** 701.20 (3) of the statutes is renumbered 701.1103, and 701.1103
19 (1) and (2), as renumbered, are amended to read:

20 701.1103 (1) In allocating receipts and disbursements to income or principal
21 or between income and principal, and with respect to any matter within the scope of
22 ~~subs. (5) ss. 701.1110 to (9) 701.1114~~, a fiduciary:

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

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

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

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

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

19 **SECTION 218.** 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104
20 (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to read:

21 701.1104 (1) A trustee may adjust between principal and income to the extent
22 the trustee considers necessary if the trustee invests and manages trust assets as a
23 prudent investor, the terms of the trust describe the amount that may or must be
24 distributed to a beneficiary by referring to the trust's income, and the trustee

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1 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee
2 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

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

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

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

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

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

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

24 **SECTION 219.** 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title).

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1 **SECTION 220.** 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)
2 (intro.) and amended to read:

3 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of
4 a proposed action under ~~sub. (4) (a)~~ s. 701.1104 (1) by providing a written notice that
5 complies with all of the following:

6 **SECTION 221.** 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

7 **SECTION 222.** 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

8 **SECTION 223.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105
9 (1) (c) and amended to read:

10 701.1105 (1) (c) Is given to all sui-juris qualified beneficiaries ~~who are any of~~
11 ~~the following:~~

12 **SECTION 224.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

13 **SECTION 225.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),
14 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

15 701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~
16 section and discloses the following information:

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

19 **SECTION 226.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and
20 amended to read:

21 701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~
22 section, the trustee is not required to give notice to a sui-juris qualified beneficiary
23 who consents to the proposed action in writing at any time before or after the
24 proposed action is taken.

BILL**SECTION 227**

1 **SECTION 227.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and
2 amended to read:

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

6 **SECTION 228.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and
7 amended to read:

8 701.1105 (4) A trustee may decide not to take a proposed action after the
9 trustee receives a written objection to the proposed action or at any other time for any
10 other reason. In that case, the trustee shall give written notice to the ~~sui-juris~~
11 qualified beneficiaries of the decision not to take the proposed action.

12 **SECTION 229.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and
13 amended to read:

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

22 **SECTION 230.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and
23 amended to read:

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1 701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under
2 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under
3 ~~sub. (4) s. 701.1104~~.

4 **SECTION 231.** 701.20 (4g) (title) of the statutes is renumbered 701.1106 (title).

5 **SECTION 232.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)
6 (intro.) and amended to read:

7 701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a
8 unitrust in any of the following ways:

9 **SECTION 233.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106
10 (1) (a) (intro.) and amended to read:

11 701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the
12 request of a qualified beneficiary, if all of the following apply:

13 **SECTION 234.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1)
14 (a) 1.

15 **SECTION 235.** 701.20 (4g) (a) 1. b. of the statutes is renumbered 701.1106 (1)
16 (a) 2. and amended to read:

17 701.1106 (1) (a) 2. The trustee provides notice in the same manner as provided
18 in ~~sub. (4e) (b) s. 701.1105 (1)~~ of the trustee's intention to convert the trust to a
19 unitrust, and the notice advises how the unitrust will operate, including the fixed
20 percentage under ~~par. (e) 1.~~ sub. (3) (a) and any other initial determinations under
21 ~~par. (e) 4.~~ sub. (3) (d) that the trustee intends to follow.

22 **SECTION 236.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

23 **SECTION 237.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1)
24 (a) 3. and amended to read:

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

3 **SECTION 238.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a)
4 4.

5 **SECTION 239.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106
6 (1) (b) (intro.) and amended to read:

7 701.1106 (1) (b) (intro.) By a court on the petition of the trustee or a qualified
8 beneficiary, if all of the following apply:

9 **SECTION 240.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1)
10 (b) 1. and amended to read:

11 701.1106 (1) (b) 1. The trustee or qualified beneficiary has provided notice
12 under ~~sub. (4e) s. 701.1105~~ of the intention to request the court to convert the trust
13 to a unitrust, and the notice advises how the unitrust will operate, including the fixed
14 percentage under ~~par. (e) 1. sub. (3) (a)~~ and any other initial determinations under
15 ~~par. (e) 4. sub. (3) (d)~~ that will be requested.

16 **SECTION 241.** 701.20 (4g) (a) 2. b. of the statutes is renumbered 701.1106 (1)
17 (b) 2.

18 **SECTION 242.** 701.20 (4g) (b), (c), (d) and (e) of the statutes are renumbered
19 701.1106 (2), (3), (4) and (5), and 701.1106 (2), (3) (a), (b), (c), (d) 7., (f) (intro.) and 2.,
20 (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and 1. and (b) and (5), as renumbered, are
21 amended to read:

22 701.1106 (2) In deciding whether to convert the trust to a unitrust under ~~par.~~
23 ~~(a) 1. sub. (1) (a) and in determining the fixed percentage under sub. (3) (b) 1.~~, the
24 trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s. 701.1104 (2) (a)~~
25 to (i).

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1 (3) (a) If a trust is converted to a unitrust under this ~~subsection~~ section by the
2 trustee or a court, notwithstanding ~~sub. (3) (a) 1. s. 701.1103 (1) (a) and 4. (d) and~~
3 ~~s. 701.21~~ 701.1136 (4) the trustee shall make distributions in accordance with the
4 ~~creating trust~~ instrument, except that any reference in the ~~creating trust~~ instrument
5 to “income” means a fixed percentage of the net fair market value of the unitrust’s
6 assets, whether such assets otherwise would be considered income or principal under
7 this ~~section~~ subchapter, averaged over a preceding period determined by the trustee,
8 which is at least 3 years but not more than 5 years, or the period since the original
9 trust was created, whichever is less.

10 (b) 1. Subject to subd. 2. ~~b.~~, if the trust is converted to a unitrust under ~~par. (a)~~
11 ~~1. sub. (1) (a)~~, the trustee shall determine the fixed percentage to be applied under
12 ~~subd. 1. par. (a)~~, and the notice under ~~par. (a) 1. b. sub. (1) (a) 2.~~ must state the fixed
13 percentage. If the trust is converted to a unitrust under ~~par. (a) 2. sub. (1) (b)~~, the
14 court shall determine the fixed percentage to be applied under ~~subd. 1. par. (a)~~.

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

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

20 1. Convert the unitrust back to the original trust under the ~~creating trust~~
21 instrument.

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

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

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SECTION 242

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

4 2. Ordinary income for federal income tax purposes that is not net income
5 under ~~subd. 6-a.~~ 1.

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

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

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

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

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

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

19 (b) Notwithstanding ~~subd. 1.~~ par. (a), if a trust may not be converted to a
20 unitrust solely because ~~subd. 1-g.~~ par. (a) 7. applies to a trustee, a cotrustee, if any,
21 to whom ~~subd. 1-g.~~ par. (a) 7. does not apply may convert the trust to a unitrust under
22 ~~par. (a) 1.~~ sub. (1) (a), unless prohibited by the creating instrument, or a court may
23 convert the trust to a unitrust under ~~par. (a) 2.~~ sub. (1) (b) on the petition of a trustee
24 or qualified beneficiary.

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

8 **SECTION 243.** 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107
9 (1) and (2) (a), (e), (f) 2., (g) and (h), as renumbered, are amended to read:

10 701.1107 (1) In this subsection section, “express unitrust” means any trust that
11 by its ~~governing~~ trust instrument requires the distribution at least annually of a
12 unitrust amount equal to a fixed percentage of the net fair market value of the trust’s
13 assets, valued at least annually, other than a trust solely for charitable purposes or
14 a charitable split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal
15 Revenue Code.

16 (2) (a) To the extent not otherwise provided for in the ~~governing~~ trust
17 instrument, the unitrust amount of not less than 3 percent nor more than 5 percent
18 may be determined by reference to the net fair market value of the trust’s assets
19 averaged over a preceding period determined by the trustee, which is at least 3 years
20 but not more than 5 years.

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

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

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

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

10 **SECTION 244.** 701.20 (4k) of the statutes is renumbered 701.1108 and amended
11 to read:

12 **701.1108 Power to treat capital gains as part of a distribution.** Unless
13 prohibited by the ~~governing instrument~~ will or trust instrument, a trustee fiduciary
14 may cause gains from the sale or exchange of estate or trust assets property, as
15 determined for federal income tax purposes, to be taxed for federal income tax
16 purposes as part of a distribution of income that has been increased by an adjustment
17 from principal to income under sub. ~~(4)~~ s. 701.1104, of a unitrust distribution, of a
18 fixed annuity distribution, or of a principal distribution to a beneficiary.

19 **SECTION 245.** 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title).

20 **SECTION 246.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and
21 amended to read:

22 701.1109 (1) Nothing in this section subchapter creates a duty to make an
23 adjustment under sub. ~~(4)~~ s. 701.1104 or to convert a trust to a unitrust under sub.
24 ~~(4g)~~ s. 701.1106. Unless it determines that the decision to make an adjustment or
25 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not

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1 grant relief from any decision a fiduciary makes regarding the exercise of a
2 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~.

3 **SECTION 247.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and
4 amended to read:

5 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not
6 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed
7 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to
8 the notice. It is not an abuse of discretion not to exercise the power to adjust under
9 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

10 **SECTION 248.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

11 **SECTION 249.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and
12 701.1109 (4) (c), as renumbered, is amended to read:

13 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subds. 1.~~
14 ~~pars. (a) and 2. (b)~~, to place the beneficiaries, the trust, or both in the positions that
15 they would have occupied had the discretion not been abused, the court may order
16 the fiduciary to pay an appropriate amount from its own funds to one or more of the
17 beneficiaries, the trust, or both.

18 **SECTION 250.** 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

19 **SECTION 251.** 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110
20 (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

21 701.1110 (1) A fiduciary of an estate or of a terminating income interest shall
22 determine the amount of net income and net principal receipts received from
23 property specifically given to a beneficiary under the rules in ~~subs. (7) ss. 701.1112~~
24 to ~~(30) 701.1135~~ that apply to trustees and the rules in ~~par. (e) sub. (5)~~. The fiduciary

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1 shall distribute the net income and net principal receipts to the beneficiary who is
2 to receive the specific property.

3 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's
4 estate or a terminating income interest under the rules in subs. ~~(7)~~ ss. 701.1112 to
5 ~~(30)~~ 701.1135 that apply to trustees and by:

6 (3) A fiduciary shall distribute to a beneficiary, including a trustee, who
7 receives a pecuniary amount not determined by a pecuniary formula related to a
8 transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of
9 the pecuniary amount for the period commencing one year after the decedent's death
10 or after the income interest in the trust ends. The interest under this ~~paragraph~~
11 subsection shall be distributed from net income determined under ~~par. (b)~~ sub. (2) or
12 from principal to the extent that net income is insufficient. For purposes of this
13 ~~paragraph~~ subsection, the deferred marital property elective share amount elected
14 by a surviving spouse under s. 861.02 (1) is a bequest of a ~~specific~~ pecuniary amount
15 ~~of money~~ not determined by a pecuniary formula related to a transfer tax.

16 (4) A fiduciary shall distribute the net income remaining after distributions
17 required by ~~par. (e)~~ under subs. (1) to (3) in the manner described in ~~sub. (6)~~ s.
18 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary
19 amount determined by a pecuniary formula related to a transfer tax.

20 (5) A fiduciary may not reduce principal or income receipts from property
21 described in ~~par. (a)~~ sub. (1) because of a payment described in ~~sub. (25)~~ s. 701.1130
22 or ~~(26)~~ 701.1131 to the extent that the will, the terms of the trust, or applicable law
23 requires the fiduciary to make the payment from assets other than the property or
24 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd
25 party. The net income and principal receipts from the property are determined by

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1 including all of the amounts the fiduciary receives or pays with respect to the
2 property, whether those amounts accrued or became due before, on, or after the date
3 of a decedent's death or an income interest's terminating event, and by making a
4 reasonable provision for amounts that the fiduciary believes the estate or
5 terminating income interest may become obligated to pay after the property is
6 distributed.

7 **SECTION 252.** 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111
8 (1), (2) (d) and (4), as renumbered, are amended to read:

9 701.1111 (1) Each beneficiary described in ~~sub. (5) (d)~~ s. 701.1110 (4) is entitled
10 to receive a portion of the net income equal to the beneficiary's fractional interest in
11 undistributed principal assets, using values as of the distribution date. If a fiduciary
12 makes more than one distribution of assets to beneficiaries to whom this subsection
13 section applies, each beneficiary, including one who does not receive part of the
14 distribution, is entitled, as of each distribution date, to the net income the fiduciary
15 has received after the date of death or terminating event or earlier distribution date
16 but has not distributed as of the current distribution date.

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

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

24 **SECTION 253.** 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112
25 (3), as renumbered, is amended to read:

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1 701.1112 (3) An asset becomes subject to a successive income interest on the
2 day after the preceding income interest ends, as determined under ~~par. (d)~~ sub. (4),
3 even if there is an intervening period of administration to wind up the preceding
4 income interest.

5 **SECTION 254.** 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113
6 (1) and (3), as renumbered, are amended to read:

7 701.1113 (1) A trustee shall allocate to principal an income receipt or
8 disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due date
9 occurs before a decedent dies in the case of an estate or before an income interest
10 begins in the case of a trust or successive income interest.

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

19 **SECTION 255.** 701.20 (9) (a) of the statutes is renumbered 701.1114, and
20 701.1114 (1), as renumbered, is amended to read:

21 **701.1114 (1)** In this ~~subsection~~ section, “undistributed income” means net
22 income received before the date on which an income interest ends. “Undistributed
23 income” does not include an item of income or expense that is due or accrued or net
24 income that has been added or is required to be added to principal under the terms
25 of the trust.