




State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment III

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-2788 (For: Senator Risser)


has been transferred to the drafting file for

2013 LRB-0010 (For: Senator Risser)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 10/09/2012 (Per: FFK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

COMPARISON OF THE UNIFORM TRUST CODE AND
WISCONSIN TRUST LAW (CHAP. 701)

Received by TRK
8/31/2011 from
Lit Henry

Uniform Trust Code	Wisconsin
ARTICLE 1	
SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Trust Code.	
SECTION 102. SCOPE. This [Code] applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.	
SECTION 103. DEFINITIONS. In this [Code]: (1) "Action," with respect to an act of a trustee, includes a failure to act.	701.01. Definitions As used in this chapter, unless the context indicates otherwise:
(2) "Beneficiary" means a person that: (A) has a present or future beneficial interest in a trust, vested or contingent; or (B) in a capacity other than that of trustee, holds a power of appointment over trust property.	(1) Beneficiary. "Beneficiary" means a person who has a beneficial interest in a trust.
(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 405(a).	(2) Charitable and private trust. To the extent that trust income or principal presently or in the future must be used by the trustee exclusively for a charitable purpose as defined in s. 701.10(1), the trust is a "charitable trust"; any other trust is a "private trust", provided it is for the benefit of a person sufficiently identifiable to enforce the trust.
(4) "[Conservator]" means a person appointed by the court to administer the estate of a minor or adult individual.	
(5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.	
(6) "[Guardian]" means a person appointed by the court [, a parent, or a spouse] to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.	
(7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.	
(8) "Jurisdiction," with respect to a geographic area, includes a State or country.	
(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.	
(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.	
(11) "Property" means anything that may be the subject of ownership,	(4) Property. "Property" means an interest in real or personal property.

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whether real or personal, legal or equitable, or any interest therein.	
(12) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined: (A) is a distributee or permissible distributee of trust income or principal; (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date; or (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.	
(13) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.	
(14) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.	(5) Settlor. "Settlor" means a person who directly or indirectly creates a living or testamentary trust or adds property to an existing trust.
(15) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.	
(16) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.	
(17) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.	
(18) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.	
(19) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.	(8) Trustee. "Trustee" means a person holding in trust title to or holding in trust a power over property. "Trustee" includes an original, added or successor trustee.
	(3) Court. "Court" means the court having jurisdiction.
	(6) Testamentary and living trust. "Testamentary trust" means a trust subject to the continuing jurisdiction of the court assigned to exercise probate jurisdiction; "living trust" means any other trust, including a testamentary trust removed to this state from another state.
	(7) Trust. "Trust" means an express living or testamentary, private or charitable trust in property which arises as a result of a manifestation of intention to create it.
SECTION 4. KNOWLEDGE. (a) Subject to subsection (b), a person has knowledge of a fact if the person:	

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- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.
- (b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

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SECTION 105. DEFAULT AND MANDATORY RULES.

- (a) Except as otherwise provided in the terms of the trust, this [Code] governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
- (b) The terms of a trust prevail over any provision of this [Code] except:
 - (1) the requirements for creating a trust;
 - (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
 - (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
 - (4) the power of the court to modify or terminate a trust under Sections 410 through 416;
 - (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in [Article] 5;
 - (6) the power of the court under Section 702 to require, dispense with, or modify or terminate a bond;
 - (7) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
 - (8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;
 - (9) the duty under Section 813(a) to respond to the request of a beneficiary of

<p>Uniform Trust Code</p> <p>an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;</p> <p>(10) the effect of an exculpatory term under Section 1008;</p> <p>(11) the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary;</p> <p>(12) periods of limitation for commencing a judicial proceeding; [and]</p> <p>(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice [; and</p> <p>(14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 203 and 204].</p>	<p>Wisconsin</p>
<p>SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY. The common law of trusts and principles of equity supplement this [Code], except to the extent modified by this [Code] or another statute of this State.</p>	
<p>SECTION 107. GOVERNING LAW. The meaning and effect of the terms of a trust are determined by:</p> <p>(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or</p> <p>(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.</p>	
<p>SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION.</p> <p>(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:</p> <p>(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or</p> <p>(2) all or part of the administration occurs in the designated jurisdiction.</p> <p>(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.</p> <p>(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States.</p> <p>(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:</p> <p>(1) the name of the jurisdiction to which the principal place of administration is to be transferred;</p>	<p>701.23. Removal of trusts</p> <p>(1) Removal to foreign jurisdiction. Unless the creating instrument contains an express prohibition or provides a method of removal, a circuit court having jurisdiction of a trust created by a will admitted to probate in such court may, upon petition of a trustee or a beneficiary with the consent of the trustee and after a hearing as to which notice has been given to the trustee and other interested persons, order removal of such trust to another state where the court finds that such removal is in accord with the express or implied intention of the settlor, would aid the efficient administration of the trust or is otherwise in the best interests of the beneficiaries. Such order may be conditioned on the appointment of a trustee in the state to which the trust is to be removed and shall be subject to such other terms and conditions as the court deems appropriate for protection of the trust property and the interests of the beneficiaries. Upon receipt of satisfactory proof of compliance with all terms and conditions of the order, the court may discharge the local trustee from further responsibility in the administration of the trust.</p> <p>(2) Removal to this state. Unless the creating instrument contains an express prohibition against removal or provides a method for removal, a court may, upon the petition of a foreign trustee or beneficiary with the consent of the</p>

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<p>(2) the address and telephone number at the new location at which the trustee can be contacted;</p> <p>(3) an explanation of the reasons for the proposed transfer;</p> <p>(4) the date on which the proposed transfer is anticipated to occur; and</p> <p>(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.</p> <p>(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.</p> <p>(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 704.</p>	<p>trustee, appoint a local trustee to receive and administer trust property presently being administered in another state. The local trustee may be required to give bond conditioned on the faithful performance of his or her duties or to meet any other conditions required by a court in the other state before permitting removal of the trust to this state.</p>
<p>SECTION 109. METHODS AND WAIVER OF NOTICE.</p> <p>(a) Notice to a person under this [Code] or the sending of a document to a person under this [Code] must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.</p> <p>(b) Notice otherwise required under this [Code] or a document otherwise required to be sent under this [Code] need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.</p> <p>(c) Notice under this [Code] or the sending of a document under this [Code] may be waived by the person to be notified or sent the document.</p> <p>(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.</p>	
<p>SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES. (a) Whenever notice to qualified beneficiaries of a trust is required under this [Code], the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.</p> <p>(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this [Code].</p> <p>(c) The [attorney general of this State] has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in</p>	

<p>Uniform Trust Code this State.</p>	<p>Wisconsin</p>
<p>SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS. (a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. (b) Except as otherwise provided in subsection (c), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. (c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this [Code] or other applicable law. (d) Matters that may be resolved by a nonjudicial settlement agreement include: (1) the interpretation or construction of the terms of the trust; (2) the approval of a trustee's report or accounting; (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power; (4) the resignation or appointment of a trustee and the determination of a trustee's compensation; (5) transfer of a trust's principal place of administration; and (6) liability of a trustee for an action relating to the trust. (e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in [Article] 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.</p>	<p>[SECTION 112. RULES OF CONSTRUCTION. The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.]</p>
<p>ARTICLE 2 SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUST.</p>	<p>(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law. (b) A trust is not subject to continuing judicial supervision unless ordered by the court. (c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.</p>
<p>SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFI</p>	<p>RY.</p>

<p>Uniform Trust Code</p> <p>(a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.</p> <p>(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.</p> <p>(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.</p> <p>[SECTION 203. SUBJECT-MATTER JURISDICTION.]</p> <p>(a) The [designate] court has exclusive jurisdiction of proceedings in this State brought by a trustee or beneficiary concerning the administration of a trust.</p> <p>(b) The [designate] court has concurrent jurisdiction with other courts of this State of other proceedings involving a trust.]</p> <p>[SECTION 204. VENUE.]</p> <p>(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the [county] of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the [county] in which the decedent's estate is being administered.</p> <p>(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a [county] of this State in which a beneficiary resides, in a [county] in which any trust property is located, and if the trust is created by will, in the [county] in which the decedent's estate was or is being administered.]</p> <p>ARTICLE 3</p> <p>SECTION 301. REPRESENTATION: BASIC EFFECT.</p> <p>(a) Notice to a person who may represent and bind another person under this [article] has the same effect as if notice were given directly to the other person.</p> <p>(b) The consent of a person who may represent and bind another person under this [article] is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.</p> <p>(c) Except as otherwise provided in Sections 411 and 602, a person who under this [article] may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.</p>	<p>Wisconsin</p>
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<p>Uniform Trust Code</p> <p>SECTION 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.</p> <p>SECTION 303. REPRESENTATION BY FIDUCIARIES AND PARENTS. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:</p> <p>(1) a [conservator] may represent and bind the estate that the [conservator] controls;</p> <p>(2) a [guardian] may represent and bind the ward if a [conservator] of the ward's estate has not been appointed;</p> <p>(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;</p> <p>(4) a trustee may represent and bind the beneficiaries of the trust;</p> <p>(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and</p> <p>(6) a parent may represent and bind the parent's minor or unborn child if a [conservator] or [guardian] for the child has not been appointed.</p> <p>SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.</p> <p>SECTION 305. APPOINTMENT OF REPRESENTATIVE.</p> <p>(a) If the court determines that an interest is not represented under this [article], or that the otherwise available representation might be inadequate, the court may appoint a [representative] to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A [representative] may be appointed to represent several persons or interests.</p> <p>(b) A [representative] may act on behalf of the individual represented with respect to any matter arising under this [Code], whether or not a judicial proceeding concerning the trust is pending.</p> <p>(c) In its decisions, a [representative] may consider general benefit</p>	<p>Wisconsin</p> <p>701.15. Representation of others Except as otherwise provided in ss. 701.12 and 701.13(1), in a trust proceeding in the circuit court:</p> <p>(1) Power to create or extinguish. The sole holder or all coholders of a power of revocation or a general power of appointment as defined in s. 702.01(3) may represent any or all persons whose interests are subject to such power.</p>
	<p>701.15</p> <p>(2) Guardian ad litem; virtual representation. Subject to sub. (1), the court may appoint a guardian ad litem for any person interested who is legally incapacitated, unascertained or unborn if such person is not already represented by a fiduciary having no adverse interest in the proceeding. A guardian ad litem may represent 2 or more such persons where they have a substantially identical interest in the proceeding. The court may dispense with or terminate the appointment of a guardian ad litem for such person if there is a legally competent person who is a party to the proceeding and has a substantially identical interest in it.</p>

<p>Uniform Trust Code accruing to the living members of the individual's family ARTICLE 4</p>	<p>Wisconsin</p>
<p>SECTION 401. METHODS OF CREATING TRUST. A trust may be created by:</p> <ol style="list-style-type: none"> (1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death; (2) declaration by the owner of property that the owner holds identifiable property as trustee; or (3) exercise of a power of appointment in favor of a trustee. 	<p>701.09. Transfers to testamentary trusts</p> <p>(1) Testamentary transfer to trust of another. A transfer or appointment by will shall not be held invalid because it is made to a trust created, or to be created, under the will of another person if the will of such other person was executed, or was last modified with respect to the terms of such trust, prior to the death of the person making the transfer or appointment and such other person's will is admitted to probate prior to, or within 2 years after, the death of the person making the transfer or appointment. Property included in such a transfer or appointment shall not be considered property subject to administration as part of the other person's estate but shall pass directly to that other person's testamentary trustee, be added to the designated trust and administered as a part thereof.</p> <p>(2) Invalid testamentary transfer. If such a transfer or appointment by will is not accepted by the testamentary trustee of such other person or if no will of such other person which meets the conditions specified in sub. (1) is admitted to probate within the period therein limited, and if the will containing such transfer or appointment by will makes no alternative disposition of the assets, the will shall be construed as creating a trust upon the terms contained in the documents constituting the will of such other person as of the date of death of the person making the transfer or appointment by will.</p> <p>(3) Life insurance proceeds transferred to trust of insured. A trustee named or to be named in the will of an insured person may be designated beneficiary of an insurance policy on the life of the insured if the designation is made in accordance with the terms of the policy. After admission of the insured's will to probate and issuance of letters to such trustee, the insurance proceeds shall be paid to the trustee to be administered in accordance with the terms of the trust as they exist at the death of the insured, and the proceeds may be commingled with other assets passing to the trust. Insurance proceeds paid to a testamentary trustee because of his or her designation as life insurance beneficiary shall not be subject to death tax to any greater extent than if the proceeds were payable to a beneficiary other than the insured's estate. The proceeds shall be inventoried for tax purposes only and shall not</p>

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be subject to taxes, debts or charges enforceable against the estate or otherwise considered assets of the insured's estate to any greater extent than if the proceeds were payable to a beneficiary other than the insured's estate.

(4) Employee benefits transferred to trust of employee. A trustee named or to be named in the will of an employee covered by any employee benefit plan or contract described in s. 815.18(3)(j) or any annuity or insurance contract purchased by an employer that is a religious, scientific, educational, benevolent or other corporation or association not organized or conducted for pecuniary profit may be designated payee of any benefits payable after the death of the employee if the designation is made in accordance with the terms of the plan or contract. After admission of the employee's will to probate and issuance of letters to the trustee, the death benefits shall be paid to the trustee to be administered in accordance with the terms of the trust as they exist at the death of the employee, and the benefits may be commingled with other assets passing to the trust. Death benefits paid to a testamentary trustee because of his or her designation as payee are not subject to the death tax to any greater extent than if the benefits were payable to a beneficiary other than the employee's estate. The benefits shall be inventoried for tax purposes only and are not subject to taxes, debts or charges enforceable against the estate or otherwise considered assets of the employee's estate to any greater extent than if the benefits were payable to a beneficiary other than the employee's estate.

(5) Transfer of other property. Property other than that described in subs. (3) and (4) may be made payable to or transferred to a trustee named or to be named in the will of the transferor.

SECTION 402. REQUIREMENTS FOR CREATION.

- (a) A trust is created only if:
 - (1) the settlor has capacity to create a trust;
 - (2) the settlor indicates an intention to create the trust;
 - (3) the trust has a definite beneficiary or is:
 - (A) a charitable trust;
 - (B) a trust for the care of an animal, as provided in Section 408; or
 - (C) a trust for a noncharitable purpose, as provided in Section 409;
 - (4) the trustee has duties to perform; and
 - (5) the same person is not the sole trustee and sole beneficiary.
- (b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

SECTION 3. TRUSTS CREATED IN OTHER JURISDICTIONS. A

<p>Uniform Trust Code</p> <p>trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:</p> <p>(1) the settlor was domiciled, had a place of abode, or was a national;</p> <p>(2) a trustee was domiciled or had a place of business; or</p> <p>(3) any trust property was located.</p> <p>SECTION 404. TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.</p> <p>SECTION 405. CHARITABLE PURPOSES; ENFORCEMENT.</p> <p>(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.</p> <p>(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.</p> <p>(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.</p>	<p>Wisconsin</p>
<p>701.02. Purposes for which trusts may be created</p> <p>A trust may be created for any lawful purpose.</p>	
<p>701.10. Charitable trusts</p> <p>(1) Validity. A charitable trust may be created for any of the following charitable purposes: relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes or any other purpose the accomplishment of which is beneficial to the community. No gift to charity, in trust or otherwise, is invalid because of indefiniteness. If a particular charitable purpose is not indicated and the trustee is not expressly authorized by the creating instrument to select such a purpose, the trustee has an implied power to select one or more charitable purposes. If a particular charitable purpose is not indicated and no trustee is named in the creating instrument, the court may appoint a trustee with such an implied power to select or may direct that the property be transferred outright to one or more established charitable entities.</p> <p>(2) Modification and termination. (a) If a purpose of a charitable trust is or becomes impractical, unlawful or impossible, the court may order the trust continued for one or more other charitable purposes designated by the settlor or, in the absence of such designation, order the property devoted to one or more other charitable purposes either by continuing the trust or by distributing the property to one or more established charitable entities. In determining the alternative plan for disposition of the property, the court shall take into account current and future community needs in the general field of charity within which the original charitable purpose falls, other charitable interest of the settlor, the amount of principal and income available under the trust and other relevant factors. The provisions of this subsection do not apply insofar as the settlor expressly provides in the creating instrument for an alternative disposition if the original trust fails; nor do they apply to gifts by several persons to a charitable entity on a subscription basis if the court finds that the donors intended their gifts to be limited to the original purpose and such purpose fails initially.</p> <p>(b) If any administrative provision of a charitable trust or part of a plan set forth by the settlor to achieve the settlor's charitable purpose is or becomes impractical, unlawful, inconvenient or undesirable, and a modification of such</p>	

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provision or plan will enable the trustee to achieve more effectively the basic charitable purpose, the court may by appropriate order modify the provision or plan.

(c) If a charitable trust is or becomes uneconomic when principal and probable income, cost of administration and other relevant factors are considered, or in any event if the trust property is valued at less than \$50,000, the court may terminate the trust and order outright distribution to an established charitable entity in the general field of charity within which the charitable purpose falls.

(d) It is the purpose of this subsection to broaden the power of the courts to make charitable gifts more effective. In any situation not expressly covered the court shall liberally apply the cy pres doctrine.

(e) The settlor if living, the trustee, the attorney general and an established charitable entity to which income or principal must be paid under the terms of the trust shall be persons interested in any proceeding under this subsection.

(3) Enforcement; notice to attorney general. (a) A proceeding to enforce a charitable trust may be brought by:

1. An established charitable entity named in the governing instrument to which income or principal must or may be paid under the terms of the trust;
2. The attorney general in the name of the state upon the attorney general's own information or, in the attorney general's discretion, upon complaint of any person;

3. Any settlor or group of settlors who contributed half or more of the principal; or
4. A cotrustee.

(b) In a proceeding affecting a charitable trust, notice must be given to the attorney general, but, except as provided in sub. (2), notice need not be given where the income or principal must be paid exclusively to one or more established charitable entities named in the governing instrument.

(4) Established charitable entity. As used in this section, "established charitable entity" means a corporation, unincorporated association or trust operated exclusively for a charitable purpose defined in sub. (1).

701.105. Private foundations

(1)(a) In the administration of any trust which is a private foundation, as defined in section 509 of the internal revenue code, a charitable trust, as defined in section 4947(a)(1) of the internal revenue code, or a split-interest trust as defined in section 4947(a)(2) of the internal revenue code, all of the following acts shall be prohibited:

1. Engaging in any act of self-dealing as defined in section 4941(d) of the internal revenue code, which would give rise to any liability for the tax imposed by section 4941(a) of the internal revenue code.

retaining any excess business holdings as defined in section 4f of the

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	<p><u>internal revenue code</u>, which would give rise to any liability for the tax imposed by <u>section 4943(a) of the internal revenue code</u>.</p> <p>3. Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of <u>section 4944 of the internal revenue code</u>, so as to give rise to any liability for the tax imposed by <u>section 4944(a) of the internal revenue code</u>.</p> <p>4. Making any taxable expenditures as defined in <u>section 4945(d) of the internal revenue code</u>, which would give rise to any liability for the tax imposed by <u>section 4945(a) of the internal revenue code</u>.</p> <p>(b) This subsection shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of <u>section 4947 of the internal revenue code</u>.</p> <p>(2) In the administration of any trust which is a private foundation as defined in <u>section 509 of the internal revenue code</u>, or which is a charitable trust as defined in <u>section 4947(a)(1) of the internal revenue code</u>, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by <u>section 4942(a) of the internal revenue code</u>.</p> <p>(3) Subsections (1) and (2) shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such subsections.</p> <p>(4) Nothing in this section shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.</p>
<p>SECTION 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.</p> <p>SECTION 407. EVIDENCE OF ORAL TRUST. Except as required by a statute other than this [Code], a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence</p> <p>SECTION 408. TRUST FOR CARE OF ANIMAL.</p> <p>(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.</p> <p>(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person</p>	

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<p>appointed.</p> <p>(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest</p> <p>SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as otherwise provided in Section 408 or by another statute, the following rules apply:</p> <p>(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than [21] years.</p> <p>(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.</p> <p>(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest</p>	<p>701.11. Honorary trusts; cemetery trusts</p> <p>(1) Except under sub. (2), where the owner of property makes a testamentary transfer in trust for a specific noncharitable purpose, and there is no definite or definitely ascertainable human beneficiary designated, no enforceable trust is created; but the transferee has power to apply the property to the designated purpose, unless the purpose is capricious. If the transferee refuses or neglects to apply the property to the designated purpose within a reasonable time and the transferor has not manifested an intention to make a beneficial gift to the transferee, a resulting trust arises in favor of the transferor's estate and the court is authorized to order the transferee to retransfer the property.</p> <p>(2) A trust may be created for maintaining, keeping in repair and preserving any grave, tomb, monument, gravestone or any cemetery. Any cemetery company, association or corporation may receive property in trust for any of those purposes and apply the income from the trust to the purpose stated in the creating instrument.</p> <p>(3)(a) A trust described in sub. (2) is invalid to the extent it was created for a capricious purpose or the purpose becomes capricious.</p> <p>(b) If the assets of any trust described in sub. (2) are valued at less than \$5,000 and the court finds that the cost of operating the trust will probably defeat the intent of the settlor or if the trustee, including a cemetery company, association or corporation, named in the creating instrument is improperly described, the court may order distribution of the assets on terms which will as nearly as possible carry out the settlor's intention.</p> <p>701.03. Passive trusts abolished</p> <p>Except as provided in <u>s. 706.08(4)</u>, every trust, to the extent it is private and passive, vests no title or power in the trustee, but the beneficiary takes a title corresponding in extent to the beneficial interest given the beneficiary. A trust is passive if the title or power given the trustee is merely nominal and the creating instrument neither expressly nor by implication from its terms imposes active management duties on the trustee.</p> <p>701.04. Purchase money resulting trusts abolished</p> <p>(1) If title to property is transferred to one person and all or part of the purchase price is furnished by another, the latter may not enforce a purchase money resulting trust.</p>

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<p>SECTION 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.</p> <p>(a) In addition to the methods of termination prescribed by Sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.</p> <p>(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 411 through 416, or trust combination or division under Section 417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413</p>	<p>(2) Creditors of the person furnishing all or part of the purchase price may enforce a resulting trust, in proportion to the amount of purchase price furnished, to the extent necessary to satisfy their demands, unless an intent to defraud creditors is disproved.</p> <p>(3) Nothing in this section shall affect the right to enforce a valid express trust or to establish a constructive trust based on fraud, undue influence, breach of confidential relationship or other appropriate grounds.</p>
<p>SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.</p> <p>(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's [conservator] with the approval of the court supervising the [conservatorship] if an agent is not so authorized; or by the settlor's [guardian] with the approval of the court supervising the [guardianship] if an agent is not so authorized and a conservator has not been appointed.</p> <p>(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.</p> <p>(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.</p>	

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<p>(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.</p> <p>(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:</p> <p>(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and</p> <p>(2) the interests of a beneficiary who does not consent will be adequately protected.</p>	<p>701.13. Modification and termination of trusts by court action</p> <p>(3) Termination. In the case of a living trust whose settlor is deceased and in the case of any testamentary trust, regardless in either case of spendthrift or similar protective provisions, a court with the consent of the trustee may order termination of the trust, in whole or in part, and the distribution of the assets that it considers appropriate if the court is satisfied that because of any substantial reason existing at the inception of a testamentary trust or, in the case of any trust, arising from a subsequent change in circumstances, including but not limited to the amount of principal in the trust, income produced by the trust and the cost of administering the trust, continuation of the trust, in whole or in part, is impractical. In any event, if the trust property is valued at less than \$50,000, the court may order termination of the trust and the distribution of the assets that it considers appropriate.</p>
<p>SECTION 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.</p> <p>(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.</p> <p>(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.</p> <p>(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.</p>	<p>SECTION 413. CY PRES.</p> <p>(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:</p> <p>(1) the trust does not fail, in whole or in part;</p> <p>(2) the trust property does not revert to the settlor or the settlor's successors in interest; and</p> <p>(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.</p> <p>(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:</p> <p>(1) the trust property is to revert to the settlor and the settlor is still living; or</p> <p>(2) fewer than 21 years have elapsed since the date of the trust's creation.</p>
<p>701.13. Modification and termination of trusts by court action</p> <p>(5) Charitable trusts. (a) In this subsection, "participate or intervene in any political campaign" includes the publishing or distributing of statements.</p> <p>Subsections (2) and (3) do not apply to a trust under which a fiduciary has an interest</p>	<p>701.13. Modification and termination of trusts by court action</p> <p>(5) Charitable trusts. (a) In this subsection, "participate or intervene in any political campaign" includes the publishing or distributing of statements.</p> <p>Subsections (2) and (3) do not apply to a trust under which a fiduciary has an interest</p>

<p>Uniform Trust Code</p>	<p>Wisconsin</p> <p>is indefeasibly vested in any of the following:</p> <ol style="list-style-type: none"> 1. The United States or a political subdivision for exclusively public purposes. 2. A corporation that is organized exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and that does not participate or intervene in any political campaign on behalf of any candidate for public office. 3. A trustee or a fraternal society, order or association operating under the lodge system, provided the principal or income of such trust is to be used by such trustee or by such fraternal society, order or association exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children and animals, and no substantial part of the activities of such trustee or of such fraternal society, order or association is carrying on propaganda or otherwise attempting to influence legislation, and such trustee or such fraternal society, order, or association does not participate or intervene in any political campaign on behalf of any candidate for public office. 4. Any veteran's organization incorporated by act of congress, or of its departments or local chapters or post, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
<p>SECTION 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.</p> <p>(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than [\$50,000] may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.</p> <p>(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.</p> <p>(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.</p> <p>(d) This section does not apply to an easement for conservation or preservation.</p>	<p>701.13. Modification and termination of trusts by court action</p> <p>(3) Termination. In the case of a living trust whose settlor is deceased and in the case of any testamentary trust, regardless in either case of spendthrift or similar protective provisions, a court with the consent of the trustee may order termination of the trust, in whole or in part, and the distribution of the assets that it considers appropriate if the court is satisfied that because of any substantial reason existing at the inception of a testamentary trust or, in the case of any trust, arising from a subsequent change in circumstances, including but not limited to the amount of principal in the trust, income produced by the trust and the cost of administering the trust, continuation of the trust, in whole or in part, is impractical. In any event, if the trust property is valued at less than \$50,000, the court may order termination of the trust and the distribution of the assets that it considers appropriate.</p>
<p>SECTION 415. REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.</p>	

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<p>SECTION 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect</p> <p>SECTION 417. COMBINATION AND DIVISION OF TRUSTS. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust</p>	
	<p>701.13. Modification and termination of trusts by court action</p> <p>(1) Anticipation of directed accumulation of income. When an accumulation of income is directed for the benefit of a beneficiary without other sufficient means to support or educate himself or herself, the court on the application of the beneficiary or the beneficiary's guardian may direct that a suitable sum from the income accumulated or to be accumulated be applied for the support or education of such person.</p> <p>(2) Application of principal to income beneficiary. Unless the creating instrument provides to the contrary, if a beneficiary is entitled to income or to have it applied for the beneficiary's benefit, the court may make an allowance from principal to or for the benefit of such beneficiary if the beneficiary's support or education is not sufficiently provided for, taking into account all other resources available to the beneficiary.</p> <p>(4) Marital deduction trusts. In a trust where the income beneficiary also has a general power of appointment as defined in s. 702.01(3) or where all accumulated income and principal are payable to such beneficiary's estate, any termination, in whole or in part, of the trust under sub. (3) can only be ordered in favor of such beneficiary.</p> <p>(6) Other applicable law. Nothing in this section shall prohibit modification or termination of any trust pursuant to its terms or limit the general equitable power of a court to modify or terminate a trust in whole or in part.</p>
<p>ARTICLE 5</p> <p>SECTION 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE. To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances</p> <p>SECTION 502. SPENDTHRIFT PROVISION. (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.</p>	
	<p>701.06. Spendthrift provisions and rights of creditors of beneficiaries</p> <p>(1) Income beneficiaries. A settlor may expressly provide in the creating instrument that the interest in income of a beneficiary other than the [] or is</p>

<p>Uniform Trust Code</p> <p>(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.</p> <p>(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary</p>	<p>Wisconsin</p> <p>not subject to voluntary or involuntary alienation. The income interest of such a beneficiary cannot be assigned and is exempt from claims against the beneficiary until paid over to the beneficiary pursuant to the terms of the trust.</p> <p>(2) Principal beneficiaries. A settlor may expressly provide in the creating instrument that the interest in principal of a beneficiary other than the settlor is not subject to voluntary or involuntary alienation. The interest in principal of such a beneficiary cannot be assigned and is exempt from claims against the beneficiary, but a judgment creditor, after any payments of principal have become due or payable to the beneficiary pursuant to the terms of the trust, may apply to the court for an order directing the trustee to satisfy the judgment out of any such payments and the court in its discretion may issue an order for payment of part or all of the judgment.</p> <p>(3) Disclaimer or renunciation not an assignment. A disclaimer or renunciation by a beneficiary of part or all of his or her interest under a trust shall not be considered an assignment under sub. (1) or (2).</p>
<p>SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.</p> <p>(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.</p> <p>(b) Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</p> <p>(c) A spendthrift provision is unenforceable against a claim of this State or the United States to the extent a statute of this State or federal law so provides</p>	<p>701.06. Spendthrift provisions and rights of creditors of beneficiaries</p> <p>(4) Claims for child support. Notwithstanding any provision in the creating instrument or subs. (1) and (2), upon application of a person having a valid order directing a beneficiary to make payment for support of the beneficiary's child, the court may:</p> <p>(a) If the beneficiary is entitled to receive income or principal under the trust, order the trustee to satisfy part or all of the claim out of part or all of payments of income or principal as they are due, presently or in the future;</p> <p>(b) In the case of a beneficiary under a discretionary trust, order the trustee to satisfy part or all of the claim out of part or all of future payments of income or principal which are to be made pursuant to the exercise of the trustee's discretion in favor of such beneficiary.</p> <p>(5) Claims for public support. Notwithstanding any provision in the creating instrument or subs. (1) and (2), if the settlor is legally obligated to pay for the public support of a beneficiary under s. 46.10 or 301.12 or the beneficiary is legally obligated to pay for the beneficiary's public support or that furnished the beneficiary's spouse or minor child under s. 46.10 or 301.12, upon application by the appropriate state department or county official, the court may:</p> <p>(a) If such beneficiary is entitled to receive income or principal under the trust, order the trustee to satisfy part or all of the liability out of part or all of payments of income or principal as they are due, presently or in the future;</p> <p>(b) Except as otherwise provided in par. (c), in the case of a beneficiary under a discretionary trust, order the trustee to satisfy part or all of the liability out of part or all of future payments of income or principal which are to be made pursuant to the exercise of the trustee's discretion in favor of such beneficiary;</p>

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	<p>(c) In the case of a beneficiary under a discretionary trust who is a settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all of the liability without regard to whether the trustee has then exercised or may thereafter exercise the trustee's discretion in favor of the beneficiary.</p> <p>(5m) Trust for disabled individual. Subsection (5) does not apply to any trust that is established for the benefit of an individual who has a disability which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual if the trust does not result in ineligibility for public assistance under ch. 49. A trustee of a trust which is exempt from claims for public support under this subsection shall notify the county department under s. 46.215 or 46.22 in the county where the disabled beneficiary resides of the existence of the trust.</p>
	<p>(7) Subsequent modification of court's order. Any order entered by a court under sub. (4), (5) or (6) is subject to modification upon application of an interested person.</p> <p>(8) Exempt assets. Assets of a trust, to the extent they are exempt from claims of creditors under other statutes, shall not be subject to sub. (4), (5) or (6).</p>
<p>SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.</p> <p>(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.</p> <p>(b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:</p> <p>(1) the discretion is expressed in the form of a standard of distribution; or</p> <p>(2) the trustee has abused the discretion.</p> <p>(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:</p> <p>(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and</p> <p>(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.</p> <p>(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.</p>	
<p>SECTION 5. CREDITOR'S CLAIM AGAINST SETTLOR.</p>	<p>36. (6) Settlor as beneficiary. Notwithstanding any provision</p>

<p>Uniform Trust Code</p> <p>(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:</p> <p>(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.</p> <p>(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.</p> <p>(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and [statutory allowances] to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and [allowances].</p> <p>(b) For purposes of this section:</p> <p>(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and</p> <p>(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on [the effective date of this [Code]], or as later amended].</p> <p>SECTION 506. OVERDUE DISTRIBUTION. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date</p> <p>SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt</p> <p>ARTICLE 6</p> <p>SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will</p> <p>SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.</p>	<p>Wisconsin</p> <p>creating instrument and in addition to the remedies available under subs. (4) and (5) where the settlor is a beneficiary, upon application of a judgment creditor of the settlor, the court may, if the terms of the instrument require or authorize the trustee to make payments of income or principal to or for the benefit of the settlor, order the trustee to satisfy part or all of the judgment out of part or all of the payments of income or principal as they are due, presently or in the future, or which are payable in the trustee's discretion, to the extent in either case of the settlor's proportionate contribution to the trust.</p> <p>701.07. Living trusts. (3) Creditors' rights. If a settlor retains a power to revoke, modify or terminate which is exercisable in the settlor's favor, except when such power is exercisable only in conjunction with a person having a substantial adverse interest, the trust property to the extent it is subject to such power is also subject to the claim of a creditor of the settlor. This subsection shall not apply to trust property to the extent it is exempt from claims of creditors under other statutes.</p>
<p>SECTION 506. OVERDUE DISTRIBUTION. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date</p> <p>SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt</p>	
<p>ARTICLE 6</p> <p>SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will</p> <p>SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.</p>	
<p>701.12. Revocation, modification and termination of trusts with consent of settlor</p>	

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<p>(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before [the effective date of this [Code]].</p> <p>(b) If a revocable trust is created or funded by more than one settlor:</p> <p>(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and</p> <p>(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and</p> <p>(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.</p> <p>(c) The settlor may revoke or amend a revocable trust:</p> <p>(1) by substantial compliance with a method provided in the terms of the trust; or</p> <p>(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:</p> <p>(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or</p> <p>(B) any other method manifesting clear and convincing evidence of the settlor's intent.</p> <p>(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.</p> <p>(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.</p> <p>(f) A [conservator] of the settlor or, if no [conservator] has been appointed, a [guardian] of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the [conservatorship] or [guardianship].</p> <p>(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked</p>	<p>(1) By written consent of the settlor and all beneficiaries of a trust or any part thereof, such trust or part thereof may be revoked, modified or terminated, except as provided under s. 445.125(1)(a)2. to 4.</p> <p>(2) For purposes of this section such consent may be given on behalf of a legally incapacitated, unascertained or unborn beneficiary by the court after a hearing in which the interests of such beneficiary are represented by a guardian ad litem. A guardian ad litem for such beneficiary may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a revocation, modification or termination of a trust or any part thereof.</p> <p>(3) Nothing in this section shall prevent revocation, modification or termination of a trust pursuant to its terms or otherwise in accordance with law.</p>
<p>SECTION 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL.</p> <p>(a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are []ed exclusively to, the settlor.</p>	

<p>Uniform Trust Code</p> <p>(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power</p> <p>SECTION 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.</p> <p>(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:</p> <p>(1) [three] years after the settlor's death; or</p> <p>(2) [120] days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.</p> <p>(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:</p> <p>(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or</p> <p>(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.</p> <p>(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.</p>	<p>Wisconsin</p>
<p>701.115. Future interests in revocable trusts</p> <p>(1) Unless a contrary intention is found, if a person has a future interest in property under a revocable trust and, under the terms of the trust, the person has the right to possession and enjoyment of the property at the grantor's death, the right to possession and enjoyment is contingent on the person's surviving the grantor. Extrinsic evidence may be used to show contrary intent.</p> <p>(2) Survivorship under sub. (1) is governed by s. 854.03.</p> <p>(3) The rights of the issue of a predeceasing beneficiary under sub. (1) are governed by s. 854.06.</p>	
<p>ARTICLE 7</p> <p>SECTION 701. ACCEPTING OR DECLINING TRUSTEESHIP.</p> <p>(a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:</p> <p>(1) by substantially complying with a method of acceptance provided in the terms of the trust; or</p> <p>(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.</p>	

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- (b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- (c) A person designated as trustee, without accepting the trusteeship, may:
 - (1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and
 - (2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose

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701.16. Testamentary trustees

- (1) **Appointment of original trustee.** (a) *Trustee named in will.* A trustee who is named or whose appointment is provided for in a will derives the authority to carry out the trust from the will and assumes the office of trustee upon the issuance of letters of trust by the court as provided in s. 856.29. A trustee named in a will may renounce the position by an instrument filed with the court having jurisdiction to admit the will to probate.
- (b) *Other original trustee.* If a testamentary trust is created which fails to name a trustee, or the named trustee refuses to accept the position or predeceases the settlor and no alternate trustee is named in the will nor effective provision made for appointment of an alternate trustee, the court shall appoint a suitable person as trustee. Letters of trust shall be issued to such trustee as provided in s. 856.29.
- (c) *Special trustee.* If it appears necessary, the court can appoint a special trustee until a regular trustee can be appointed. A special trustee may be appointed without notice and may be removed whenever the court so orders. Such special trustee shall give such bond as the court requires and shall have such powers as are conferred by the order of appointment and set forth in any letters of trust issued the special trustee.
- (d) *Foreign trustee.* If a trustee is authorized to carry out a trust created by will admitted to probate outside this state, but not also admitted to probate in this state, the foreign trustee may have recorded in the office of the register of deeds of a county in which part of the subject matter of the trust is located a certified copy of the letters of trust and filed with the register of probate of the same county a statement appointing the register of probate in his or her official capacity the trustee's resident agent for service of process. Thereafter the trustee may exercise all powers and have all the rights, remedies and defenses that the trustee would have if he or she received letters of trust from a circuit court of this state. Service of process shall be complete upon delivery of duplicate copies to the register of probate, one of which copies the register of probate shall promptly forward by registered mail to the foreign trustee.

(3) Inventory. A testamentary trustee shall make and file a verified inventory of all property received from the settlor's personal representative or from any other source.

(4) Annual accounting. (a) A testamentary trustee is required to make and file a verified account annually with the court, except as provided in pars. (am) and (b). If the trustee is accounting on a calendar-year basis, the court may not require the trustee to file the annual account prior to April 15. Production of securities and other assets for examination is not necessary upon the filing of an annual account unless the court determines such production is necessary to ascertain the correctness of an account filed for a particular trust. In the case of a testamentary charitable trust a copy of the annual account filed with the court shall be filed with the attorney general.

(am) The annual accounting requirements under par. (a) do not apply to corporate trustees or to corporate cotrustees if those trustees or cotrustees agree, in their initial consent to act as trustees or cotrustees or in a subsequent filing with the register in probate for the county that has jurisdiction over the trust, to provide annual accounts to all persons interested, as defined in s. 851.21, who request those accounts by writing to the trustee or cotrustee. Each request is effective until the requester withdraws it or is no longer a person interested. A corporate trustee or cotrustee may withdraw its agreement by notifying the appropriate register in probate of its intent to do so.

(b) Except in the case of a testamentary charitable trust, the court may dispense with the requirement of an annual accounting where, due to the size or nature of the trust property, the duration of the trust, the relationship of the trustee to the beneficiaries or other relevant factors, compliance with such requirement is unnecessary or unduly burdensome on the trustee. Whether or not an annual accounting is required a beneficiary may petition the court to require an accounting and the trustee may petition for approval of the trustee's accounts on a periodic basis.

(c) Notwithstanding pars. (a), (am) and (b) the court may require an accounting at any time.

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

(5) Final accounting. A verified final account is required upon the termination of a testamentary trust. Upon the petition of a surviving or successor trustee, a beneficiary, a personal representative of a deceased trustee or on its own motion, the court may order a verified account filed upon the death, resignation or removal of a testamentary trustee. The court may require

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	<p>such proof of the correctness of a final account as it considers necessary.</p> <p>(6) Discharge. No testamentary trustee or personal representative of a deceased trustee shall be discharged from further responsibility with respect to a testamentary trust until the court is satisfied upon notice and hearing that the requirements of this section have been met and it has received satisfactory proof that the trust property has been turned over to a successor or special trustee or, where the trust is terminated, distributed to the beneficiaries entitled to such property or turned over to a special trustee for distribution.</p>
<p>SECTION 702. TRUSTEE'S BOND.</p> <p>(a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.</p> <p>(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.</p> <p>[(c) A regulated financial-service institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.]</p>	<p>701.16. Testamentary trustees</p> <p>(2) Bond. Prior to the issuance of letters of trust to an original testamentary trustee under sub. (1) or to a successor or added testamentary trustee under s. 701.17(1), the court may require such trustee to give a bond in accordance with ch. 878 and conditioned on the faithful performance of such trustee's duties. If a settlor directs that a trustee serve without bond, the court shall give effect to this direction unless it determines that a bond is required by a change in the trustee's personal circumstances since the execution of the settlor's will. If the court requires a bond, and the trustee named in the will fails to furnish the required bond within a reasonable period of time after receiving notice of the bond requirement, the court may remove the trustee named in the will and appoint a successor trustee under s. 701.17. No bond shall be required of a trust company bank, state bank or national banking association which is authorized to exercise trust powers and which has complied with s. 220.09 or 223.02, nor shall a bond be required of a religious, charitable or educational corporation or society.</p>
<p>SECTION 703. COTRUSTEES.</p> <p>(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.</p> <p>(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.</p> <p>(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.</p> <p>(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.</p> <p>(e) A trustee may not delegate to a cotrustee the performance of a function the settlor probably expected the trustee to perform jointly. Unless a delegation</p>	<p>701.17. Successor and added trustees</p> <p>(4) Powers of cotrustees. If one of several trustees dies, resigns or is removed, the remaining trustees shall have all rights, title and powers of all the original trustees. If the creating instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is appointed.</p> <p>701.19. Powers of trustees</p> <p>(9) Joint trustees. (a) In the absence of contrary or limiting provisions in the creating instrument, any power vested in 3 or more trustees may be exercised by a majority. This paragraph shall not apply to living trusts created prior to July 1, 1971, or to testamentary trusts contained in wills executed or last republished prior to that date.</p> <p>(b) A trustee who has not joined in exercising a power is not liable to an affected person for the consequences of the exercise unless the trustee has failed to discharge the trustee's duty to participate in the administration of the trust. A dissenting trustee is not liable for the consequences of an act which</p>

<p>Uniform Trust Code</p> <p>was irrevocable, a trustee may revoke a delegation previously made.</p> <p>(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.</p> <p>(g) Each trustee shall exercise reasonable care to:</p> <p>(1) prevent a cotrustee from committing a serious breach of trust; and</p> <p>(2) compel a cotrustee to redress a serious breach of trust.</p> <p>(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust</p>	<p>Wisconsin</p> <p>the dissenting trustee joins at the direction of the majority of the trustees if the dissenting trustee's dissent is expressed in writing to the other trustees at or before the time of the joinder.</p>
<p>SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR.</p> <p>(a) A vacancy in a trusteeship occurs if:</p> <p>(1) a person designated as trustee rejects the trusteeship;</p> <p>(2) a person designated as trustee cannot be identified or does not exist;</p> <p>(3) a trustee resigns;</p> <p>(4) a trustee is disqualified or removed;</p> <p>(5) a trustee dies; or</p> <p>(6) a [guardian] or [conservator] is appointed for an individual serving as trustee.</p> <p>(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.</p> <p>(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:</p> <p>(1) by a person designated in the terms of the trust to act as successor trustee;</p> <p>(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or</p> <p>(3) by a person appointed by the court.</p> <p>(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:</p> <p>(1) by a person designated in the terms of the trust to act as successor trustee;</p> <p>(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the [attorney general] concurs in the selection; or</p> <p>(3) by a person appointed by the court.</p> <p>(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust</p>	<p>701.17. Successor and added trustees</p> <p>(1) Appointment of successor or added trustee. If there is a vacancy in the office of trustee because of the death, resignation or removal of a trustee, the court may appoint a successor trustee unless the creating instrument names or provides an effective method for appointing a successor. Upon the death of a sole trustee, title to the trust property does not pass to the trustee's personal representative but to the successor named in or appointed pursuant to the terms of the creating instrument or, in the case of a successor or special trustee appointed by the court, as provided in sub. (5). The court may in the exercise of a sound discretion appoint an additional trustee if necessary for the better administration of the trust, unless the creating instrument expressly prohibits such addition or provides an effective method for appointing an additional trustee. Subject to s. 701.16(2), a successor or added testamentary trustee shall be issued letters of trust, at that trustee's request.</p> <p>(2) Appointment of special trustee. If it appears necessary, the court may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. Such special trustee shall give such bond as the court requires and shall have the powers conferred by the order of appointment and set forth in any letters of trust issued the special trustee.</p>
<p>SECTION 705. RESIGNATION OF TRUSTEE.</p> <p>(a) A trustee may resign:</p>	<p>701.18. Resignation and removal of trustees</p> <p>(1) Resignation. A trustee may resign in accordance with the terms of the</p>

<p>Uniform Trust Code</p> <p>(1) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or</p> <p>(2) with the approval of the court.</p> <p>(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.</p> <p>(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.</p>	<p>Wisconsin</p> <p>creating instrument or petition the court to accept the trustee's resignation and the court may, upon notice and hearing, discharge the trustee from further responsibility for the trust upon such terms and conditions as are necessary to protect the rights of the beneficiaries and any cotrustee. In no event shall a testamentary trustee be discharged from further responsibility except as provided in s. <u>701.16(6)</u>.</p>
<p>SECTION 706. REMOVAL OF TRUSTEE.</p> <p>(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.</p> <p>(b) The court may remove a trustee if:</p> <p>(1) the trustee has committed a serious breach of trust;</p> <p>(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;</p> <p>(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or</p> <p>(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.</p> <p>(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries</p>	<p>701.18. Resignation and removal of trustees</p> <p>(2) Removal. A trustee may be removed in accordance with the terms of the creating instrument or the court may, upon its own motion or upon a petition by a beneficiary or cotrustee, and upon notice and hearing, remove a trustee who fails to comply with the requirements of this chapter or a court order, or who is otherwise unsuitable to continue in office. In no event shall a testamentary trustee be discharged from further responsibility except as provided in s. <u>701.16(6)</u>.</p>
<p>SECTION 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE.</p> <p>(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.</p> <p>(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it</p>	
<p>SECTION 708. COMPENSATION OF TRUSTEE.</p> <p>(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.</p> <p>(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:</p>	

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<p>(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or</p> <p>(2) the compensation specified by the terms of the trust would be unreasonably low or high</p>	
<p>SECTION 709. REIMBURSEMENT OF EXPENSES.</p> <p>(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:</p> <p>(1) expenses that were properly incurred in the administration of the trust; and</p> <p>(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.</p> <p>(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.</p>	
<p>ARTICLE 8</p>	
<p>SECTION 801. DUTY TO ADMINISTER TRUST. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this [Code].</p>	
<p>SECTION 802. DUTY OF LOYALTY.</p> <p>(a) A trustee shall administer the trust solely in the interests of the beneficiaries.</p> <p>(b) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:</p> <p>(1) the transaction was authorized by the terms of the trust;</p> <p>(2) the transaction was approved by the court;</p> <p>(3) the beneficiary did not commence a judicial proceeding within the time allowed by Section 1005;</p> <p>(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 1009; or</p> <p>(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.</p> <p>(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:</p> <p>(1) the trustee's spouse;</p> <p>(2) the trustee's descendants, siblings, parents, or their spouses;</p>	

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- (3) an agent or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
- (d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.
- (e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.
- (f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of [Article] 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.
- (g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.
- (h) This section does not preclude the following transactions, if fair to the beneficiaries:
 - (1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
 - (2) payment of reasonable compensation to the trustee;
 - (3) a transaction between a trust and another trust, decedent's estate, or [conservatorship] of which the trustee is a fiduciary or in which a beneficiary has an interest;
 - (4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

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<p>(5) an advance by the trustee of money for the protection of the trust.</p> <p>(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.</p>	
<p>SECTION 803. IMPARTIALITY. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests</p>	
<p>SECTION 804. PRUDENT ADMINISTRATION. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution</p>	
<p>SECTION 805. COSTS OF ADMINISTRATION. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.</p>	
<p>SECTION 806. TRUSTEE'S SKILLS. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise</p>	
<p>SECTION 807. DELEGATION BY TRUSTEE.</p> <p>(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:</p> <ol style="list-style-type: none"> (1) selecting an agent; (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation. <p>(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.</p> <p>(c) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.</p> <p>(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.</p>	
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall</p>	

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<p>act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty</p>	
<p>SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY. A trustee shall take reasonable steps to take control of and protect the trust property</p>	
<p>SECTION 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY.</p> <p>(a) A trustee shall keep adequate records of the administration of the trust.</p> <p>(b) A trustee shall keep trust property separate from the trustee's own property.</p> <p>(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.</p> <p>(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.</p>	
<p>SECTION 811. ENFORCEMENT AND DEFENSE OF CLAIMS. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust</p>	
<p>SECTION 812. COLLECTING TRUST PROPERTY. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee</p>	
<p>SECTION 813. DUTY TO INFORM AND REPORT.</p> <p>(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.</p> <p>(b) A trustee:</p> <p>(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of _____ trust instrument;</p>	

<p>Uniform Trust Code</p> <p>(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;</p> <p>(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c); and</p> <p>(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.</p> <p>(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, [conservator], or [guardian] may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.</p> <p>(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given</p>	<p>Wisconsin</p>
<p>SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS.</p> <p>(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.</p> <p>(b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:</p> <p>(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on [the effective</p>	<p>701.19. Powers of trustees</p> <p>(10) Restriction on exercise of powers. Unless the creating instrument negates application of this subsection, a power conferred upon a person in the person's capacity as trustee to make discretionary distributions of principal or income to himself or herself or to make discretionary allocations in the trustee's favor of receipts or expenses as between principal and income, cannot be exercised by the trustee. If the power is conferred on 2 or more trustees, it may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise the power, it may be exercised by a special trustee appointed by the court. This subsection shall not apply to living trusts created prior to July 1, 1971, or to testamentary trusts contained in wills executed or last republished prior to that date.</p>

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<p>date of this [Code]] [, or as later amended]; and</p> <p>(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.</p> <p>(c) A power whose exercise is limited or prohibited by subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.</p> <p>(d) Subsection (b) does not apply to:</p> <p>(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended], was previously allowed;</p> <p>(2) any trust during any period that the trust may be revoked or amended by its settlor; or</p> <p>(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended].</p> <p>SECTION 815. GENERAL POWERS OF TRUSTEE.</p> <p>(a) A trustee, without authorization by the court, may exercise:</p> <p>(1) powers conferred by the terms of the trust; and</p> <p>(2) except as limited by the terms of the trust:</p> <p>(A) all powers over the trust property which an unmarried competent owner has over individually owned property;</p> <p>(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and</p> <p>(C) any other powers conferred by this [Code].</p> <p>(b) The exercise of a power is subject to the fiduciary duties prescribed by this [article].</p> <p>SECTION 816. SPECIFIC POWERS OF TRUSTEE. Without limiting the authority conferred by Section 815, a trustee may:</p> <p>(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;</p> <p>(2) acquire or sell property, for cash or on credit, at public or private sale;</p> <p>(3) exchange, partition, or otherwise change the character of trust property;</p> <p>(4) deposit trust money in an account in a regulated financial-service institution;</p> <p>(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;</p> <p>(6) with _____ ct to an interest in a proprietorship, partnership, limited liability</p>	<p>701.19. Powers of trustees</p> <p>(1) Power to sell, mortgage or lease. In the absence of contrary or limiting provisions in the creating instrument, in the court order appointing a trustee or in a subsequent order, a trustee has complete power to sell, mortgage or lease trust property without notice, hearing or order. A trustee has no power to give warranties in a sale, mortgage or lease which are binding on the trustee personally. In this section "sale" includes an option or agreement to transfer for cash or on credit, exchange, partition or settlement of a title dispute; this definition is intended to broaden rather than limit the meaning of "sale". "Mortgage" means any agreement or arrangement in which trust property is _____ 1 as security.</p>

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<p>company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;</p> <p>(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:</p> <p>(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;</p> <p>(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;</p> <p>(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and</p> <p>(D) deposit the securities with a depository or other regulated financial-service institution;</p> <p>(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;</p> <p>(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;</p> <p>(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;</p> <p>(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;</p> <p>(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;</p> <p>(13) with respect to possible liability for violation of environmental law:</p> <p>(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;</p> <p>(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim</p>	<p>(2) Court authorization of administrative action. (a) In the absence of contrary or limiting provisions in the creating instrument, in any case where it is for the best interests of the trust, on application of the trustee or other interested person, the court may upon notice and hearing authorize or require a trustee to sell, mortgage, lease or otherwise dispose of trust property upon such terms and conditions as the court deems just and proper.</p> <p>(b) Despite contrary or limiting provisions in the creating instrument, upon application of a trustee or other interested person, a court may upon notice and hearing order the retention, investment, reinvestment, sale, mortgage, lease or other disposition of trust property if the court is satisfied that the original purpose of the settlor cannot be carried out, substantially performed or practically achieved for any reason existing at the inception of the trust or arising from any subsequent change in circumstances and the retention, investment, reinvestment, sale, mortgage, lease or other disposition of the property more nearly approximates the settlor's intention.</p> <p>(c) Unless authorized in the creating instrument, a trustee may not be interested as a purchaser, mortgagee or lessee of trust property unless such purchase, mortgage or lease is made with the written consent of all beneficiaries or with the approval of the court upon notice and hearing. A representative of a beneficiary, under <u>s. 701.15</u>, may give written consent for such beneficiary.</p> <p>(d) A trustee may not sell individually owned assets to the trust unless the sale is authorized in the creating instrument, made with the written consent of all beneficiaries or made with the approval of the court upon notice and hearing.</p> <p>(3) When mandatory power deemed discretionary. If a creating instrument expressly or by implication directs a trustee to sell trust property and such property has not been sold for a period of 25 years after the creation of the trust, such direction to the trustee shall be deemed a discretionary power of sale.</p> <p>(4) Continuation of business by court order. (am) In the absence of contrary or limiting provisions in the creating instrument, the circuit court may, where it is in the best interests of the trust, order the trustee to continue any business of a deceased settlor. The order may be issued without notice and hearing, in the court's discretion and, in any case, may provide:</p> <ol style="list-style-type: none"> 1. For conduct of the business solely by the trustee, jointly with one or more of the settlor's surviving partners or as a corporation or limited liability company to be formed by the trustee; 2. As between the trust and the trustee, the extent of liability of the trust and the extent of the personal liability of the trustee for obligations incurred in the continuation of the business; 3. As between beneficiaries, the extent to which liabilities incurred in the continuation of the business are to be chargeable solely to a part of the trust

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<p>or the initiation of governmental enforcement;</p> <p>(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;</p> <p>(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and</p> <p>(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;</p> <p>(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;</p> <p>(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;</p> <p>(16) exercise elections with respect to federal, state, and local taxes;</p> <p>(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;</p> <p>(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;</p> <p>(19) pledge trust property to guarantee loans made by others to the beneficiary;</p> <p>(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;</p> <p>(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:</p> <p>(A) paying it to the beneficiary's [conservator] or, if the beneficiary does not have a [conservator], the beneficiary's [guardian];</p> <p>(B) paying it to the beneficiary's custodian under [the Uniform Transfers to Minors Act] or custodial trustee under [the Uniform Custodial Trust Act], and, for that purpose, creating a custodianship or custodial trust;</p> <p>(C) if the trustee does not know of a [conservator], [guardian], custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or</p> <p>(D) man it as a separate fund on the beneficiary's behalf, subject to the</p>	<p>property set aside for use in the business or to the trust as a whole; and</p> <p>4. For the period of time for which the business may be conducted and any other conditions, restrictions, regulations, requirements and authorizations as the court orders.</p> <p>(e) Nothing in this subsection shall be construed as requiring a trustee to liquidate a business, including a business operated as a closely held corporation, when liquidating the business is not required by the creating instrument or other applicable law.</p> <p>(4m) Continuation of business by direction of settlor. If the settlor directs retention of a business that is among the trust's assets in the trust document or by other written means, a trustee may retain that business during the settlor's lifetime without liability.</p> <p>(5) Formation of business entity. In the absence of contrary or limiting provisions in the creating instrument:</p> <p>(a) The court may by order authorize a trustee to become a partner under ch. 178 or 179 and transfer trust property to the partnership in return for a partnership interest.</p> <p>(aL) The court may by order authorize a trustee to become a member of a limited liability company under ch. 183 and transfer trust property to the limited liability company in return for an ownership interest.</p> <p>(b) The court may by order authorize a trustee to organize a corporation for any purpose permitted by ch. 180, subscribe for shares of such corporation and transfer trust property to such corporation in payment for the shares subscribed.</p> <p>(c) The court may by order authorize a trustee to form a corporation for any purpose permitted by ch. 181.</p> <p>(d) An order under this subsection may in the court's discretion be issued without notice and hearing.</p> <p>(6) Registration of securities in nominee. Unless prohibited in the creating instrument, a trustee may register securities in the name of a nominee.</p> <p>(7) Proxy voting of stock. Unless the creating instrument contains an express prohibition or specifies the manner in which the trustee is to vote stock in a corporation or certificates of beneficial interest in an investment trust, the trustee may vote such stock or certificates by general or limited proxy, with or without power of substitution.</p> <p>(8) Platting land. In the absence of contrary or limiting provisions in the creating instrument, the court may by order authorize a trustee to plat land which is part of the trust, either alone or together with other owners of such real estate. In such platting the trustee must comply with the same statutes, ordinances, rules and regulations which apply to a person who is platting the on's own land. The order under this subsection may in court's</p>

<p>Uniform Trust Code</p> <p>beneficiary's continuing right to withdraw the distribution;</p> <p>(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;</p> <p>(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;</p> <p>(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;</p> <p>(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and</p> <p>(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.</p> <p>SECTION 817. DISTRIBUTION UPON TERMINATION.</p> <p>(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.</p> <p>(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.</p> <p>(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:</p> <p>(1) it was induced by improper conduct of the trustee; or</p> <p>(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.</p>	<p>Wisconsin</p> <p>discretion be issued without notice and hearing.</p>
	<p>701.05. Title of trustee; interest of beneficiaries</p> <p>(1) Unless the creating instrument expressly limits the trustee to a lesser title or to a power, the trustee takes all title of the settlor or other transferor and holds such title subject to the trustee's fiduciary duties as trustee.</p> <p>(2) If a trustee of a private trust has title to the trust property, a beneficiary has both a right to have the trustee perform the trustee's fiduciary duties and an equitable interest, present or future, in the trust property. If a trustee of a private trust holds only a power over property, a beneficiary has a right to have such trustee perform the trustee's fiduciary duties.</p>

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(3) In a private or charitable trust where the trustee takes all title of the settlor or other transferor and holds such title subject to the trustee's fiduciary duties as trustee, any interest expressly retained by the settlor or not effectively disposed of to others remains in the settlor, or the settlor's successors in interest, as an equitable reversionary interest and to this extent the settlor, or the settlor's successors, are beneficiaries of the trust. In a private trust where the trustee takes all title of the settlor or other transferor and holds such title subject to the trustee's fiduciary duties as trustee, any interest, present or future, created by the settlor in any other person is an equitable interest and such person is a beneficiary of the trust.

701.065. Debts of decedents

(1) Limitations on claims. (a) 1. A trustee who has a duty or power to pay the debts of a decedent may publish in the county in which the decedent resided, as a class 3 notice, under ch. 985, a deadline for filing claims with the trustee. The deadline shall be the date that is 4 months after the date of the first insertion of the notice.

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

(b) Notwithstanding par. (a) 2., a claim that is not filed on or before the date specified in the notice under par. (a) 1. is not barred if any of the following apply:

1. The claim is a claim based on tort, on a marital property agreement that is subject to the time limitations under s. 766.58(13)(b) or (c), on Wisconsin income, franchise, sales, withholding, gift or death taxes, or on unemployment compensation contributions due or benefits overpaid; a claim for funeral or administrative expenses; a claim of this state under s. 46.27(7g), 49.496 or 49.682 or rules promulgated under s. 46.286(7); or a claim of the United States.

2. All of the following circumstances exist:

a. On or before the date specified in the notice under par. (a) 1., the trustee knew, or in the exercise of reasonable diligence should have known, of the existence of the potential claim and of the identity and mailing address of the potential claimant.

b. At least 30 days before the date specified in the notice under par. (a) 1., the trustee had not given notice to the potential claimant of the final day for filing his or her claim.

At least 30 days before the date specified in the notice under par. 1., the

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claimant did not have actual knowledge of the date on which the claim would be barred.

(c) If an action is pending against a decedent at the time of his or her death and the action survives, the plaintiff in that action may serve a notice of substitution of party defendant on the trustee and file proof of service of notice in the court. Filing of proof of service on or before the deadline for filing a claim under par. (a) 1. gives the plaintiff the same rights against the trust as the filing of a claim. A judgment in any such action constitutes an adjudication for or against the trust.

(2) Effect of statute of limitations. A trustee shall not pay a claim that was barred by a statute of limitations at the time of the decedent's death. A claim not barred by a statute of limitations at the time of the decedent's death shall not be barred thereafter by a statute of limitations if the claim is filed with the trustee on or before the deadline for filing a claim under sub. (1)(a)1.

(3) Claims of creditors without notice. (a) A claim not barred by sub. (1)(a)2. because of the operation of sub. (1)(b)2. may be enforced against trust property only as provided in this subsection.

(b) The claimant shall file the claim with the trustee within one year after the decedent's death and within 30 days after the earlier of the following:

1. The date that the trustee gives notice to the potential claimant of the deadline for filing a claim under sub. (1)(a)1.
2. The date that the claimant first acquires actual knowledge of the deadline for filing a claim under sub. (1)(a)1.

(c) The claimant shall have the burden of establishing by the greater weight of the credible evidence that all of the circumstances under sub. (1)(b)2. existed.

(d) This subsection does not extend the time for commencement of a claim beyond the time provided by any statute of limitations applicable to that claim.

(4) Satisfaction of claim from other property. Failure of a claimant timely to file a claim as provided in this section does not bar the claimant from satisfying the claim, if not otherwise barred, from property other than trust property.

701.20. Principal and income

(1) **Scope of section.** Unless otherwise stated, this section governs the ascertainment of income and principal and the apportionment of receipts and expenses in trusts and decedents' estates, to the extent not inconsistent with the provisions of a creating instrument. A person making an outright gift or establishing a trust may make provision in the creating instrument for the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the personal representative or trustee to do so and the provision where not otherwise contrary to law controls notwithstanding this section.

(2) Duty of trustee as to receipts and expenditure. (a) A trust shall be administered with due regard to the respective interests of beneficiaries of income and principal. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

1. In accordance with the terms of the creating instrument, notwithstanding contrary provisions of this section;
 2. In the absence of any contrary terms of the creating instrument, in accordance with the provisions of this section; or
 3. If neither of the rules of administration under subd. 1 or 2 is applicable, in accordance with what is reasonable and equitable in view of the respective interests of the beneficiaries.
- (b) If the creating instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has or has not improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to this section.

(c) After determining income and principal, the trustee shall charge to income or principal expenses and other charges as provided in sub. (12).

(3) Income; principal; charges. As used in this section:

(a) "Income" is the return in money or other property derived from the use of principal, including, but not limited to, return received as:

1. Rent of real or personal property, including sums received for cancellation or renewal of a lease.
 2. Interest, including sums received as consideration for the privilege or prepayment of principal, except as provided in sub. (7).
 3. Income earned during administration of a decedent's estate as provided in sub. (5).
 4. Corporation distributions as provided in sub. (6).
 5. Accrued increment on bonds or other obligations issued at discount as provided in sub. (7).
 6. Receipts from business and farming operations as provided in sub. (8).
 7. Receipts from disposition of natural resources as provided in subs. (9) and (10).
 8. Receipts from other principal subject to depletion as provided in sub. (11).
 9. Proceeds of insurance relating to loss of income.
- (b) "Principal" is property other than income, including, but not limited to:
1. Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal.

Proceeds of property taken on eminent domain proceedings.

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3. Proceeds of insurance upon property forming part of the principal.
4. Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in sub. (6).
5. Receipts from the disposition of bonds or other obligations as provided in sub. (7).
6. Receipts from disposition of natural resources as provided in subs. (9) and (10).
7. Receipts from other principal subject to depletion as provided in sub. (11).
8. Allowances for depreciation established under subs. (8) and (12)(a) 2.
9. Income added to and held as principal as provided in s. 701.21(4).
- (4) When right to income arises; apportionment of income.** (a) Except as provided in par. (b), income earned or accrued in whole or in part before the date when an asset becomes subject to the trust shall be income when received.
(b) In the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will or by reason of the death of a decedent, income which is earned or accrued to the date of death of the decedent but not yet payable, including, but not limited to, income in respect of a decedent, or which is due but not yet paid, shall be added to principal when received.
(c) On termination of an income interest, the following amounts shall be classified as income and treated as if received prior to the termination:
 1. Income collected but undistributed on the date of termination and not subject to s. 701.21(4).
 2. Income due but not paid to the trustee on the date of termination.
 3. Income accrued.
- (d) In determining accrued income, the following rules apply:
 1. Corporate distributions to stockholders including distributions from a regulated investment company or by a trust qualified and electing to be taxed under federal law as a real estate investment trust shall be treated as accrued on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.
 2. Except for corporate distributions to stockholders, income in the form of periodic payments, including interest, rent and annuities, shall be treated as accruing from day to day.
 3. Obligations for the payment of money which are sold by the issuer at a discount from their maturity value in lieu of interest payments shall be treated as accruing from day to day.
- (5) Income earned during administration of a decedent's estate.** (a) Unless the will otherwise provides and subject to par. (b), debts, funeral expenses, estate taxes, property taxes prorated to the date of death, family allowances unless charged against income by the court, and administration expenses shall

be charged against the principal of the estate.

(b) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the decedent and before distribution, including income from property used to discharge liabilities, legacies and devises, shall be determined in accordance with the rules applicable to a trustee under this section and distributed as follows:

1. To legatees and devisees of specific property other than money, the income from the property bequeathed or devised to them less any of the following recurrent and other ordinary expenses attributable to the specific property:

a. Property taxes, excluding taxes prorated to the date of death.

b. Interest, excluding interest accrued to the date of death.

c. Income taxes, excluding taxes on income in respect of a decedent, capital-gains and any other income taxes chargeable against principal, that accrue during the period of administration.

d. Ordinary repairs and other expenses of management and operation of the property.

2. To all other legatees and devisees, except as provided in par. (d), the balance of the income, less the balance of the recurrent and other ordinary expenses attributable to all other property from which the estate is entitled to income, the distribution to be in proportion to their respective interests in the property at the time of distribution and based upon the value of the property at the date of death.

(c) Income received by a trustee under par. (b) shall be treated as income of the trust.

(d) A legatee, including a trustee, of a specific amount of money not determined by a pecuniary formula shall not be paid any part of the income of the estate but shall receive interest on any unpaid portion of the legacy for the period commencing one year after decedent's death at the legal rate set forth in s. 138.04.

(e) Unless the creating instrument otherwise provides, if a trust may be included in a decedent's gross estate for federal estate tax purposes, and if the trust is divided or distributed in whole or in part as a result of the decedent's death, this subsection shall apply during the period after the death of the decedent and before the division or distribution is complete. For this purpose, the assets of the trust shall be valued as of the decedent's death.

(6) **Corporate distributions.** (a) Except as provided in pars. (b), (c) and (d), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in pars. (c) and (d), if the distributing corporation gives a stockholder an option to receive a distribution

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either in cash or in its own shares, the distribution chosen is income.

(b) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(c) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

1. A call of shares;
2. A merger, consolidation, reorganization, or other plan by which assets of a corporation are acquired by another corporation;
3. A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation;
4. Any distribution of assets pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets; or
5. Any distribution of securities other than shares of the distributing corporation on which no gain or loss is recognized for federal income tax purposes.

(d) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(e) Corporate distributions other than cash which are deemed income under this subsection may be distributed in kind, or the trustee may instead distribute its cash equivalent on the date of distribution by the corporation.

(7) **Premium and discount.** (a) Except as provided in par. (b), no provision may be made for amortization of premiums or for accumulation for discounts on bonds or other obligations for the payment of money. The proceeds of sale, redemption or other disposition of the bonds or obligations are principal.

(b) In the case of a bond or other stated obligation for the payment of money bearing no stated interest but payable or redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued, the increment in value while held by the personal representative or trustee is income when realized.

(8) **Business and farming operations.** If a trustee uses any part of the principal in the operation of a business, including an agricultural or farming operation, as a sole proprietor, partner or member of a limited liability

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company, the net profits and losses of the business shall be computed in accordance with generally accepted accounting principles for a comparable business.

(a) Net profits from a business are income.

(b) Net losses from a business do not reduce other trust income for the fiscal or calendar year during which they occur but shall be carried into subsequent fiscal or calendar years and reduce the net profits of the business for those years.

(9) Disposition of natural resources. (a) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals, oil, gas, stone, gravel, sand or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

1. If received as rent on a lease or extension payments on a lease, the receipts are income.

2. If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

3. If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subds. 1 and 2 shall be apportioned on a yearly basis in accordance with this subdivision whether or not any natural resource was being taken from the land at the time the trust was established. There shall be added to principal as an allowance for depletion such portion of the gross receipts as shall be allowed as a deduction in computing taxable income for federal income tax purposes. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(b) If a trustee, on January 1, 1979, held an item of depletable property of a type specified in this subsection the trustee may continue to allocate receipts from the property in the manner used before January 1, 1979.

(c) This subsection does not apply to timber, water, soil, sod, dirt, peat, turf, mosses or interests in a partnership or limited liability company owning natural resources.

(10) Timber, water, soil, sod, dirt, peat, turf, mosses or an interest in a partnership or limited liability company owning natural resources. If any part of the principal consists of an interest in timber, water, soil, sod, dirt, peat, mosses or a partnership or limited liability company owning natural

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resources, the receipts shall be allocated in accordance with sub. (2)(a)3.

(11) **Other property subject to depletion.** Except as provided in subs. (9) and (10), if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights and any rights to receive periodic payments under a contract or plan for deferred compensation or for the benefit of one or more of the employees of an employer, receipts shall be allocated in accordance with sub. (2)(a) 3.

(12) **Charges against income and principal.** (a) The following charges shall be made against income:

2. Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including fees and expenses of attorneys, accountants, appraisers, investment counselors, custodians and agents, regularly recurring taxes assessed against any portion of the principal, all premiums on insurance other than life insurance, interest, maintenance, and ordinary repairs.

3. Any tax levied upon receipts defined as income under this section or the trust instrument and payable by the trustee.

(b) No allowance may be made for depreciation of any property held by the trustee unless the court directs otherwise.

(c) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(d) The following charges shall be made against principal:

2. Charges not provided for in par. (a), including fees and expenses of attorneys, accountants, appraisers, investment counselors, custodians and agents, the cost of investing and reinvesting principal, the payments on principal of an indebtedness including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and attorney fees and other expenses in judicial proceedings unless the court directs otherwise.

3. Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments.

4. Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income or franchise tax by the taxing authority.

5. If a death tax or generation skipping transfer tax is levied in respect to a trust, any amount apportioned to the trust, or any beneficial interest in the trust.

(dm) The following charges shall be made in equal portions against income and principal:

1. The trustee's regular compensation, whether based on a percentage of principal or income.

2. Special compensation of trustees, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee.
(e) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under sub. (4).

701.21. Income payments and accumulations

(1) **Distribution of income.** Where a beneficiary is entitled to receive income from a trust, but the creating instrument fails to specify how frequently it is to be paid, the trustee shall distribute at least annually the income to which such beneficiary is entitled.

(2) **Permitted accumulations.** No provision directing or authorizing accumulation of trust income shall be invalid.

(3) **Charitable trust accumulations.** A trust containing a direction or authorization to accumulate income from property devoted to a charitable purpose shall be subject to the general equitable supervision of the court with respect to any such accumulation of income, including its reasonableness, amount and duration.

(4) **Disposition of accumulated income.** Income not required to be distributed by the creating instrument, in the absence of a governing provision in the instrument, may in the trustee's discretion be held in reserve for future distribution as income or be added to principal subject to retransfer to income of the dollar amount originally transferred to principal; but at the termination of the income interest, any undistributed income shall be distributed as principal.

701.22. Distributions in kind by trustees; marital bequests

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