

# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix B ... segment I

### LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-1110 (For: LRB)

has been copied/added to the drafting file for

**2013 LRB-0010** (For: Senator Risser)

Are These "Companion Bills" ?? ... No



## **RESEARCH APPENDIX - PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 02/27/2013 (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.

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/11/2013 Received By: **fknepp**  
Wanted: **As time permits** Same as LRB:  
For: **Legislative Reference Bureau** By/Representing:  
May Contact: Drafter: **fknepp**  
Subject: **Probate - trusts and trustees** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **fern.knepp@legis.wisconsin.gov**  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Uniform principal and income act

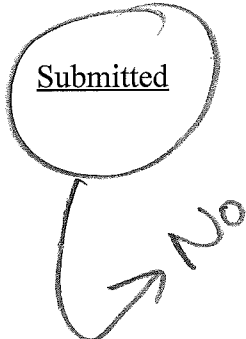
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**Instructions:**

Redraft of LRB 11-1340 with revisions. Will become an insert to LRB-0010.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp	PI 24 jld		==			

FE Sent For:

<END>

## UNIFORM TRUST CODE COMMITTEE

### REVISED COMMENTS ON SUBCHAPTER XI: LRB DRAFT #4340/P1

#### 1. 701.1101 PAGE 3 LINES 10 - 12:

We need to amend the scope of this subchapter since it applies to both trusts and estates. We also request that you consider if the effective date information provided in UTC draft #2, section 145 on page 118, section 701.1206(2), should be incorporated into subchapter 11. The scope provision could be incorporated in s. 701.1101:

*701.1101 Article XI, Section 1101 – Short Title and Scope This subchapter may be cited as the Wisconsin Uniform Principal and Income Act. This subchapter also applies to an estate that is administered in this state.*

#### 2. 701.1123 PAGES 3 – 5 SECTIONS 6 - 7

Delete this language. We are resubmitting revised language for section 701.1123.

#### 3. 701.1134 (4) PAGE 5 LINE 16

Change the word “complying” to “*applying*”.

#### 4. 701.1102( ) PAGE 6 LINE 1 SECTION 14

Add a definition for the term “assets”. For example:

*“Assets” means the property of a trust or estate.*

#### 5. 701.1102(2) PAGE 6 LINE 1 SECTION 14

The definition of “beneficiary” was deleted. Please add this definition back.

#### 6. 701.1102(4) PAGE 6 LINES 11 - 12

Change the definition of “Income beneficiary” to the original definition:

*“Income beneficiary” means a person to whom net income of a trust is or may be payable.*

#### 7. 701.1102(9) PAGE 7 LINES 3 - 4:

Use the original definition from section 701.20(k):

*“Remainder beneficiary” means a person entitled to receive principal when an income interest ends.*

✓ **8. 701.1106(1)(a)3 PAGE 12 LINES 11 - 12**

Delete subparagraph 3. It no longer applies with the removal of the definition of sui juris beneficiary.

✓ **9. 701.1106(2) PAGE 12 LINES 22 – 24**

Change this section so that it also applies in determining the fixed percentage:

*(2) In deciding whether to convert the trust to a unitrust under sub. (1)(a) and in determining the fixed percentage under sub. (3)(b)1., the trustee shall consider all relevant factors under s. 701.1104(2)(a) to (i).*

✓ **10. 701.1106(3)(a) PAGE 13 LINES 1 – 9**

Change the references in this section from “creating instrument” to *“trust instrument”*.

✓ **11. 701.1106(3)(c)1. PAGE 13 Following LINE 19**

Change the reference in this subparagraph from “creating instrument” to *“trust instrument”*.

✓ **12. 701.1106(3)(f) PAGE 13 Following LINE 23**

Change the reference in this subparagraph from “creating instrument” to *“trust instrument”*.

✓ **13. 701.1106(3)(h) PAGE 14 LINE 8**

Change the reference in this subparagraph from “creating instrument” to *“trust instrument”*.

✓ **14. 701.1106(4)(a)1 and 3 PAGE 14 Following LINE 12**

Change the reference in these subparagraphs from “creating instrument” to *“trust instrument”*.

✓ **15. 701.1107(1) PAGE 15 LINES 4 – 5**

Change the reference in this subsection from “governing instrument” to *“trust instrument”*.

**16. 701.1107(2)(e) PAGE 15 Following LINE 9**

Change the reference in this subparagraph from “governing instrument” to “*trust instrument*”.

**17. 701.1107(2)(g) PAGE 15 Following LINE 11**

Change the reference in this subparagraph from “trust document” to “*trust instrument*”.

**18. 701.1107(2)(h) PAGE 15 LINE 12**

Change the reference in this subparagraph from “governing document” to “*trust instrument*”.

**19. 701.1108 PAGE 15 LINES 18 – 23**

Change the language in this section to refer to both trusts and estates:

*Unless prohibited by the will or trust, a fiduciary may cause gains from the sale or exchange of estate or trust property, as determined for federal income tax purposes, to be taxed for federal income tax purposes as part of a distribution of income that has been increased by an adjustment from principal to income under s. 701.1104, of a unitrust distribution, of a fixed annuity distribution, or of a principal distribution to a beneficiary.*

**20. 701.1110 PAGE 17 LINE 5**

You confirmed that the introduction to this section has not been deleted.

*701.1110 Article XI, Section 1110 – Determination and distribution of net income.  
(Intro.) In the case of an estate of a decedent or after an income interest in a trust ends, the following rules apply.*

**21. 701.1110(3) PAGE 17 LINE 23**

Delete the reference to “of money”:

*For purposes of this subsection, the deferred marital property elective share amount elected by a surviving spouse under s. 861.02(1) is a bequest of a pecuniary amount not determined by a pecuniary formula related to a transfer tax.*

**22. 701.1110(4) PAGE 17 LINE 25**

Reference all of the preceding subsections:

*(4) A fiduciary shall distribute the net income remaining after distributions required under subs. (1) – (3) in the manner described in s. 701.1111 to all other beneficiaries, including a beneficiary who receives a pecuniary amount determined by a pecuniary formula related to a transfer tax.*

**23. 701.1119 PAGE 22 Following LINE 13**

Refer to “section” instead of “subsection”:

*To the extent that a trustee accounts for receipts from rental property in accordance with this section, the trustee shall allocate ... ..*

**24. 701.1123 PAGES 23 – 26 SECTIONS 61 – 66**

You suggested that we add a new definition for “separate account” and that we revise subsection (4) because it does not make sense as originally drafted. Our revised language follows. We also request some drafting instructions from LRB. Subsections (4) and (5) are intended to be savings provisions to comply with IRS rulings. We want these subsections to override the other language in this section. Do you suggest any further revisions to accomplish this?

**701.1123 Article XI, Section 1123 – Deferred Compensation, annuities and similar payments.**

Rewrite subsection (1):

*(1) In this section:*

*(a) "Payment" is an amount of money or property received by a trustee that is:*

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

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

*(b) "Plan" is a contractual, custodial, trust or other arrangement that provides for distributions to the trust and includes a private or commercial annuity, an individual retirement account, a Roth individual retirement account, a qualified*

*annuity payment* ↗

*any of the following*

retirement plan such as a pension, profit-sharing, stock-bonus, or stock-ownership plan, or any nonqualified deferred compensation plan.

(c) "Separate account" means an account established or maintained by a plan under which income, gains and losses, whether or not realized, from assets allocated to the account, are credited to or charged against the account without regard to other income, gains or losses of the plan. A separate account is typically established in defined contribution retirement plans and individual retirement accounts and is not typically established in defined benefit pension plans and private or commercial annuities.

Keep subsection (2) as drafted:

(2) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to <sup>trust</sup> principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment. <sup>a payment made in lieu</sup>

Revise subsection (3) as follows:

(3) (a) In this subsection, <sup>and sub. (4)</sup> "plan income" means any of the following:

1. With respect to payments received from a plan that maintains separate accounts for its participants or account holders, either the amount of the separate account held for the benefit of the trust that, if the separate account were a trust, would be allocated to income for that accounting period, or 4 percent of the value of the separate account determined on the first day of the accounting period. The trustee shall choose the method of determining plan income under this subdivision, and may change the method of determining plan income under this subdivision for any subsequent accounting period.

2. With respect to payments received from a plan that does not maintain separate accounts for its participants or account holders, 4 percent of the total present

value of the trust's interest in the plan as of the first day of the accounting period, based on reasonable actuarial assumptions as determined by the trustee.

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

Revise new subsection (4) as follows:

- (a) NWst (sub (3), (4))
- (4) With respect to a trust where an election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code has been made, or a trust that qualified for the marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal Revenue Code, a trustee shall determine the plan income for the accounting period as if the plan were a trust subject to this subchapter. If the trustee cannot determine the plan income, the plan income shall be <sup>13</sup> 4% of the total present value of the trust's income in the plan determined as of the first day of the accounting period, based on reasonable actuarial assumptions as determined by the trustee. Upon the request of the surviving spouse of the settlor, the trustee shall demand that the person administering the plan distribute the plan income to the trust. The trustee shall allocate a payment from the plan to income to the extent of the plan income and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon the request of the surviving spouse, the trustee shall allocate principal to income to the extent the plan income exceeds payments made from the plan to the trust during the accounting period.
- (b)
- (c) NWst (2) and (3)

Renumber existing Wisconsin statute section 701.20(18)(d) as subsection (5):



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

Renumber and revise existing Wisconsin statute section 701.20(18)(e) as subsection (6):

*(6) This section does not apply to a payment to which s. 201.1124 applies.*

**25. 701.1131(1)(g) PAGE 30 Following LINE 14**

Modify the last three lines of this subsection to reference the defined term “environmental law”:

*“ ..... penalties imposed under environmental law and other payments made to comply with environmental law, statutory or common law claims by 3<sup>rd</sup> parties, and defending claims based on environmental matters.”*

**26. 701.1136(1) PAGE 32 LINE 20**

Change “creating instrument” to “trust instrument”.

**27. 701.1136(2) PAGE 32 Following LINE 21**

Change the reference to “trust income” to “income”.

**28. 701.1136(4) PAGE 32 Following LINE 21**

Revise this subsection to read:

*“(4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed by the trust 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. At the termination of the income interest, any undistributed income shall be distributed as principal.”*

**29. 861.015(2) PAGE 33 LINES 5 – 6**

We think the reference could be more specific here and you could refer to s. 701.1115 instead of to subchapter 11 under chapter 701.



State of Wisconsin  
2011 - 2012 LEGISLATURE



-1110

LRB-340/P1 /P1

TKKjld:jf  
Keep  
FFK

In 1-11-2013

(To be used as an insert to LRB-0010)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

RMNR

PWF

DUE  
MONDAY, 1/28

✓

Regen

1 AN ACT *to repeal* 701.12 (3), 701.20 (title), 701.20 (2) (intro.), 701.20 (2) (b),  
2 701.20 (2) (i), 701.20 (2) (L), (m) and (n), 701.20 (4c) (b) 3. a., b. and c., 701.20  
3 (18) (d), 701.20 (21) (title), 701.20 (29) (c) 2. b., 701.20 (29) (d), 701.20 (31) and  
4 701.24 (1) and (2); *to renumber* 701.20 (2) (a), 701.20 (2) (c), 701.20 (2) (f),  
5 701.20 (2) (g), 701.20 (2) (j), 701.20 (4c) (b) 1., 701.20 (4c) (b) 2., 701.20 (4m) (b),  
6 701.20 (4m) (d), 701.20 (29) (a) and 701.20 (29) (b); *to renumber and amend*  
7 701.20 (2) (d), 701.20 (2) (e), 701.20 (2) (h), 701.20 (2) (k), 701.20 (3), 701.20 (4),  
8 701.20 (4c) (title), 701.20 (4c) (b) (intro.), 701.20 (4c) (b) 3. (intro.), 701.20 (4c)  
9 (b) 4., 701.20 (4c) (c), 701.20 (4c) (d), 701.20 (4c) (e), 701.20 (4c) (f), 701.20 (4c)  
10 (g), 701.20 (4g), 701.20 (4j), 701.20 (4k), 701.20 (4m) (title), 701.20 (4m) (a),  
11 701.20 (4m) (am), 701.20 (4m) (c), 701.20 (5), 701.20 (6), 701.20 (7), 701.20 (8),  
12 701.20 (9) (a), 701.20 (10), 701.20 (11), 701.20 (12), 701.20 (13), 701.20 (14),  
13 701.20 (15), 701.20 (16), 701.20 (17), 701.20 (18) (title), 701.20 (18) (a), 701.20  
14 (18) (b), 701.20 (18) (c), 701.20 (18) (e), 701.20 (19), 701.20 (20), 701.20 (21),  
15 701.20 (22), 701.20 (23), 701.20 (24), 701.20 (25), 701.20 (26), 701.20 (27),

1 701.20 (28), 701.20 (29) (title), 701.20 (29) (c) (intro.), 701.20 (29) (c) 1., 701.20  
2 (30) and 701.21; **to consolidate, renumber and amend** 701.20 (29) (c) 2.  
3 (intro.) and a.; **to amend** 23.0918 (2), 25.70 and 861.015 (2); and **to create**  
4 subchapter XI (title) of chapter 701 [precedes 701.1101], 701.1101, 701.1102  
5 (intro.), 701.1123 (1) (a) 3., 701.1123 (4), (5), (6) and (7), 701.1126 (title) and  
6 701.1134 (3) (c) and (d) and (4) of the statutes; **relating to:** Uniform Principal  
7 and Income Act. ✓

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

8 **SECTION 1.** 23.0918 (2) of the statutes is amended to read:

9 23.0918 (2) Unless the natural resources board determines otherwise in a  
10 specific case, only the income from the gifts, grants, or bequests in the fund is  
11 available for expenditure. The natural resources board may authorize expenditures  
12 only for preserving, developing, managing, or maintaining land under the  
13 jurisdiction of the department that is used for any of the purposes specified in s. 23.09  
14 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,  
15 principal and income are determined as provided under s. ~~701.20~~ subch. XI of ch. 701.

16 **SECTION 2.** 25.70 of the statutes is amended to read:

17 **25.70 Historical society trust fund.** There is established a separate  
18 nonlapsible trust fund designated as the historical society trust fund, consisting of  
19 all endowment principal and income and all cash balances of the historical society.  
20 Unless the board of curators of the historical society determines otherwise in each

1 case, only the income from the assets in the historical society trust fund is available  
2 for expenditure. In this section, unless otherwise provided in the gift, grant, or  
3 bequest, principal and income are determined as provided under s. 701.20 subch. XI  
4 of ch. 701.

5 SECTION 3. Subchapter XI (title) of chapter 701 [precedes 701.1101] of the  
6 statutes is created to read:

7 CHAPTER 701

8 SUBCHAPTER XI

9 UNIFORM PRINCIPAL AND INCOME ACT

10 SECTION 4. 701.1101 of the statutes is created to read:

11 701.1101 Article XI, Section 1101 - Short title. This subchapter may be  
12 cited as the Wisconsin Uniform Principal and Income Act.

13 SECTION 5. 701.1102 (intro.) of the statutes is created to read:

14 701.1102 Article XI, Section 1102 - Definitions. (intro.) In this subchapter:

15 SECTION 6. 701.1123 (1) (a) 3. of the statutes is created to read:

16 701.1123 (1) (a) 3. For purposes of subs. (4), (5), (6), and (7), any payment from  
17 any separate fund, regardless of the reason for the payment.

18 SECTION 7. 701.1123 (4), (5), (6) and (7) of the statutes are created to read:

19 701.1123 (4) Except as provided in sub. (5), subs. (6) and (7) apply but subs. (2)  
20 and (3) do not apply in determining the allocation of a payment made from a separate  
21 fund to any of the following:

22 (a) A trust to which an election to qualify for a marital deduction under section  
23 2056 (b) (7) of the Internal Revenue Code has been made.

24 (b) A trust that qualifies for the marital deduction under section 2056 (b) (5)  
25 of the Internal Revenue Code.

FNS  
3-14

and scope

=m

=m

In addition to a trust described in s. 701.0102, this subchapter applies to an estate that is administered in this state as provided under s. 701.1206(2)

1 (5) Subsections (4), (6), and (7) do not apply if and to the extent that the series  
2 of payments would, without the application of sub. (4), qualify for the marital  
3 deduction under section 2056 (b) (7) (C) of the Internal Revenue Code.

\*\*\*\*NOTE: This subsection refers to "the series of payments," but there has been no prior reference to any series of payments. What is the series of payments that is being referred to?

Also, is it necessary to say both that "[s]ubsections (4), (6), and (7) do not apply if and to the extent that..."? What does "to the extent that" mean? Would the meaning be clearer if the language read the paragraphs "do not apply if but only to the extent that..."?

4 (6) A trustee shall determine the internal income of each separate fund for the  
5 accounting period as if the separate fund were a trust subject to this chapter. Upon  
6 request of a surviving spouse, the trustee shall demand that the person  
7 administering the separate fund distribute the internal income to the trust. The  
8 trustee shall allocate a payment from the separate fund to income to the extent of the  
9 internal income of the separate fund and distribute that amount to the surviving  
10 spouse. The trustee shall allocate the balance of the payment to principal. Upon  
11 request of the surviving spouse, the trustee shall allocate principal to income to the  
12 extent the internal income of the separate fund exceeds payments made from the  
13 separate fund to the trust during the accounting period.

\*\*\*\*NOTE: Internal income is not defined; should it be?

\*\*\*\*NOTE: The third sentence is confusing, perhaps because "allocate a payment from the separate fund ... to the extent of the internal income of the separate fund" is separated by the words "to income." Is "to income" necessary?

\*\*\*\*NOTE: What is the "balance of the payment" referenced in the fourth sentence? As I read the preceding sentence, any internal income from a separate fund is distributed to the surviving spouse as income. Put another way, how does the trustee determine "the balance of the payment" that is to be allocated to principal?

\*\*\*\*NOTE: In the fifth sentence, the trustee is directed to "allocate principal to income..." What is the source of the principal in that sentence? The principal of one specific separate fund? Or, if there is more than one separate fund, the principal in all separate funds? Or something else entirely?

14 (7) If a trustee cannot determine the internal income of a separate fund but can  
15 determine the value of the separate fund, the internal income of the separate fund

1 is deemed to equal [insert number at least three percent and not more than five  
 2 percent] of the fund's value, according to the most recent statement of value  
 3 preceding the beginning of the accounting period. If the trustee can determine  
 4 neither the internal income of the separate fund nor the fund's value, the internal  
 5 income of the fund is deemed to equal the product of the interest rate and the present  
 6 value of the expected future payments, as determined under section 7520 of the  
 7 Internal Revenue Code for the month preceding the accounting period for which the  
 8 computation is made.

\*\*\*\*NOTE: The determination of the value of the separate fund is clumsy: "... percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period". Can this phrase be replaced with "percent of the fund's value on the last day of the immediately preceding accounting period...?"

\*\*\*\*NOTE: Note the placeholder for the value of the internal income.

9 SECTION 8. 701.1126 (title) of the statutes is created to read:

10 701.1126 (title) Article XI, Section 1126-<sup>com</sup> Timber.

11 SECTION 9. 701.1134 (3) (c) and (d) and (4) of the statutes are created to read:

12 701.1134 (3) (c) Proportionately from principal and income to the extent that  
 13 receipts from the entity are allocated to both income and principal.

14 (d) From principal to the extent that the tax exceeds the total receipts from the  
 15 entity.

16 (4) After <sup>applying</sup> complying with subs. (1) to (3), the trustee shall adjust income or  
 17 principal receipts to the extent that the trust's taxes are reduced because the trust  
 18 receives a deduction for payments made to a beneficiary.

19 SECTION 10. 701.12 (3) of the statutes is repealed.

20 SECTION 11. 701.20 (title) of the statutes is repealed.

21 SECTION 12. 701.20 (2) (intro.) of the statutes is repealed.

22 SECTION 13. 701.20 (2) (a) of the statutes is renumbered 701.1102 (1).

Insert 6-1 ✓

1

SECTION 14. 701.20<sup>x</sup> (2) (b) of the statutes is repealed.

2

SECTION 15. 701.20 (2) (c) of the statutes is renumbered 701.1102 (2).

3

SECTION 16. 701.20 (2) (d) of the statutes is renumbered 701.1102 (3) and

4

amended to read:

5

701.1102 (3) "Income" means money or property that a fiduciary receives as

6

current return from a principal asset. "Income" includes a portion of receipts from

7

a sale, exchange, or liquidation of a principal asset, to the extent provided in subs.

8

(10) ss. 701.1115 to (24) 701.1129.

9

Fix component

SECTION 17. 701.20 (2) (e) of the statutes is renumbered 701.1102 (4) and

plain period

10

amended to read:

11

701.1102 (4) "Income beneficiary" means a person to whom net income of a

12

trust is or may be payable described in [s. 701.0103 (19) (a)].

\*\*\*\*NOTE: This is a cross-reference to a definition for "qualified beneficiary" created on p. 7, lines 10-12 in LRB-2788/P1.

13

SECTION 18. 701.20 (2) (f) of the statutes is renumbered 701.1102 (5).

14

SECTION 19. 701.20 (2) (g) of the statutes is renumbered 701.1102 (6).

15

SECTION 20. 701.20 (2) (h) of the statutes is renumbered 701.1102 (7) and

16

amended to read:

17

701.1102 (7) "Net income" means the total receipts allocated to income during

18

an accounting period, minus the disbursements made from income during the period,

19

plus or minus transfers under ~~this section~~ subch. XI to or from income during the

20

period.

21

SECTION 21. 701.20 (2) (i) of the statutes is repealed.

22

SECTION 22. 701.20 (2) (j) of the statutes is renumbered 701.1102 (8).

① Fix component

②

amended to read:

701.1102 (9) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends described in s. 701.0103 (19) (b).

\*\*\*NOTE: This is a cross-reference to a definition for "qualified beneficiary" created on p. 7, lines 10-11 and 13-16 in LRB-2788/P1.

5

SECTION 24. 701.20 (2) (L), (m) and (n) of the statutes are repealed.

6

SECTION 25. 701.20 (3) of the statutes is renumbered 701.1103 and amended

7

to read:

⑧

701.1103 ~~Fiduciary~~ Article XI, Section 1103 - Fiduciary duties; general

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

12

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

14

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

18

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

21

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

23



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

9           SECTION 26. 701.20 (4) of the statutes is renumbered 701.1104, and 701.1104  
10 (title), (1), (2) (intro.), (3) (h) and (i), (4), (5) and (6) as renumbered, are amended to  
11 read:

12           **701.1104 (title) Trustee's Article XI, Section 1104 <sup>← = m</sup> ~~Trustee's power to~~**  
13 **adjust.** (1) A trustee may adjust between principal and income to the extent the  
14 trustee considers necessary if the trustee invests and manages trust assets as a  
15 prudent investor, the terms of the trust describe the amount that may or must be  
16 distributed to a beneficiary by referring to the trust's income, and the trustee  
17 determines, after applying the rules in ~~sub. (3) (a)~~ s. 701.1103 (1), that the trustee  
18 is unable to comply with ~~sub. (3) (b)~~ s. 701.1103 (2).

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

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

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

24           (4) If ~~par. (e) 5., 6.~~ sub. (3) (e), (f), or 7. (g) applies to a trustee and there is more  
25 than one trustee, a cotrustee to whom the provision does not apply may make the

1 adjustment unless the terms of the trust do not permit the exercise of the power by  
2 that cotrustee.

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

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

15 SECTION 27. 701.20 (4c) (title) of the statutes is renumbered 701.1105 (title) and  
16 amended to read:

17 **701.1105 (title) ~~Notice Article XI, Section 1105~~ <sup>← = m</sup> Notice to beneficiaries**  
18 **of proposed action.**

19 SECTION 28. 701.20 (4c) (b) (intro.) of the statutes is renumbered 701.1105 (1)  
20 (intro.) and amended to read:

21 701.1105 (1) (intro.) A trustee may, but is not required to, obtain approval of  
22 a proposed action under ~~sub. (4) (a) s. 701.1104 (1)~~ by providing a written notice that  
23 complies with all of the following:

24 SECTION 29. 701.20 (4c) (b) 1. of the statutes is renumbered 701.1105 (1) (a).

25 SECTION 30. 701.20 (4c) (b) 2. of the statutes is renumbered 701.1105 (1) (b).

1           **SECTION 31.** 701.20 (4c) (b) 3. (intro.) of the statutes is renumbered 701.1105

2 (1) (c) and amended to read:

3           701.1105 (1) (c) Is given to all sui-juris qualified beneficiaries ~~who are any of~~  
4 ~~the following:~~

5           **SECTION 32.** 701.20 (4c) (b) 3. a., b. and c. of the statutes are repealed.

6           **SECTION 33.** 701.20 (4c) (b) 4. of the statutes is renumbered 701.1105 (1) (d),  
7 and 701.1105 (1) (d) (intro.) and 4., as renumbered, are amended to read:

8           701.1105 (1) (d) (intro.) States that it is given in accordance with this ~~subsection~~  
9 section and discloses the following information:

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

12           **SECTION 34.** 701.20 (4c) (c) of the statutes is renumbered 701.1105 (2) and  
13 amended to read:

14           701.1105 (2) If a trustee gives notice of a proposed action under this ~~subsection~~  
15 section, the trustee is not required to give notice to a sui-juris qualified beneficiary  
16 who consents to the proposed action in writing at any time before or after the  
17 proposed action is taken.

18           **SECTION 35.** 701.20 (4c) (d) of the statutes is renumbered 701.1105 (3) and  
19 amended to read:

20           701.1105 (3) A sui-juris qualified beneficiary may object to the proposed action  
21 by giving a written objection to the trustee within the time specified in the notice  
22 under ~~par. (b) 4. c. sub. (1) (d) 3.~~

23           **SECTION 36.** 701.20 (4c) (e) of the statutes is renumbered 701.1105 (4) and  
24 amended to read:

1           701.1105 (4) A trustee may decide not to take a proposed action after the  
2 trustee receives a written objection to the proposed action or at any other time for any  
3 other reason. In that case, the trustee shall give written notice to the ~~sui-juris~~  
4 qualified beneficiaries of the decision not to take the proposed action.

5           **SECTION 37.** 701.20 (4c) (f) of the statutes is renumbered 701.1105 (5) and  
6 amended to read:

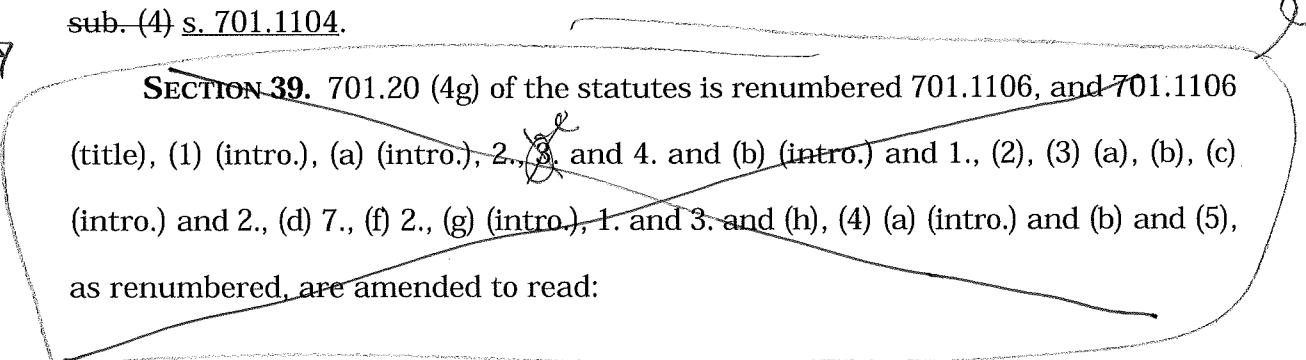
7           701.1105 (5) If a trustee receives a written objection to a proposed action within  
8 the time specified in the notice under ~~par. (b) 4. c. sub. (1) (d) 3.~~, either the trustee  
9 or the qualified beneficiary making the written objection may petition the court to  
10 have the proposed action approved, modified, or prohibited. In the court proceeding,  
11 the qualified beneficiary objecting to the proposed action has the burden of proving  
12 that the proposed action should be modified or prohibited. A qualified beneficiary  
13 who did not make the written objection may oppose the proposed action in the court  
14 proceeding.

15           **SECTION 38.** 701.20 (4c) (g) of the statutes is renumbered 701.1105 (6) and  
16 amended to read:

17           701.1105 (6) For purposes of this ~~subsection~~ section, a proposed action under  
18 ~~sub. (4) s. 701.1104~~ includes a course of action or a decision not to take action under  
19 ~~sub. (4) s. 701.1104.~~

20           ~~**SECTION 39.** 701.20 (4g) of the statutes is renumbered 701.1106, and 701.1106~~  
21 ~~(title), (1) (intro.), (a) (intro.), 2., 3. and 4. and (b) (intro.) and 1., (2), (3) (a), (b), (c)~~  
22 ~~(intro.) and 2., (d) 7., (f) 2., (g) (intro.), 1. and 3. and (h), (4) (a) (intro.) and (b) and (5),~~  
23 ~~as renumbered, are amended to read:~~

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11-19



1           **701.1106** (title) **Conversion Article XI, Section 1106 – Conversion to**  
 2 **unitrust.** (1) (intro.) Subject to ~~par. (d)~~ sub. (4), a trust may be converted to a  
 3 unitrust in any of the following ways:

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

6           2. The trustee provides notice in the same manner as provided in ~~sub. (4c) (b)~~  
 7 s. 701.1105 (1) of the trustee's intention to convert the trust to a unitrust, and the  
 8 notice advises how the unitrust will operate, including the fixed percentage under  
 9 ~~par. (c) 1. sub. (3) (a)~~ and any other initial determinations under ~~par. (c) 4. sub. (3)~~  
 10 (d) that the trustee intends to follow.

11           3. There is at least one sui juris income beneficiary under ~~sub. (4c) (b) 3. a.~~ and  
 12 at least one other sui juris remainder beneficiary under ~~sub. (4c) (b) 3. b. or c.~~

13           4. Every sui juris qualified beneficiary consents to the conversion to a unitrust  
 14 in a writing delivered to the trustee.

15           (b) (intro.) By a court on the petition of the trustee or a qualified beneficiary,  
 16 if all of the following apply:

17           1. The trustee or qualified beneficiary has provided notice under ~~sub. (4c) s.~~  
 18 701.1105 of the intention to request the court to convert the trust to a unitrust, and  
 19 the notice advises how the unitrust will operate, including the fixed percentage  
 20 under ~~par. (c) 1. sub. (3) (a)~~ and any other initial determinations under ~~par. (c) 4. sub.~~  
 21 (3) (d) that will be requested.

22 <sup>701.1106</sup> (2) In deciding whether to convert the trust to a unitrust under ~~par. (a) 1. sub.~~  
 23 (1) (a), the trustee shall consider all relevant factors under ~~sub. (4) (b) 1. to 9. s.~~  
 24 701.1104 (2) (a) to (i).

*and in determining the fixed percentage under sub. (3)(b) 1.*

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

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

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

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

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

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

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

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13-19

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13-23

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

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

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

7 (h) Conversion to a unitrust under this ~~subsection~~ section does not affect a  
8 provision in the <sup>creating</sup> ~~instrument~~ <sup>trust</sup> instrument that directs or authorizes the trustee to  
9 distribute principal or that authorizes a beneficiary to withdraw a portion or all of  
10 the principal.

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

INS  
14-12 →  
13 (b) Notwithstanding ~~subd. 1.~~ par. (a), if a trust may not be converted to a  
14 unitrust solely because ~~subd. 1. g.~~ par. (a) 7. applies to a trustee, a cotrustee, if any,  
15 to whom ~~subd. 1. g.~~ par. (a) 7. does not apply may convert the trust to a unitrust under  
16 ~~par. (a) 1.~~ sub. (1) (a), unless prohibited by the creating instrument, or a court may  
17 convert the trust to a unitrust under ~~par. (a) 2.~~ sub. (1) (b) on the petition of a trustee  
18 or qualified beneficiary.

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

1 SECTION 40. 701.20 (4j) of the statutes is renumbered 701.1107, and 701.1107  
2 (title), (1) and <sup>(e), (g)</sup> (2) (f) 2. and (h), as renumbered, are amended to read:

3 **701.1107 (title) ~~Express Article XI. Section 1107~~ <sup>=m</sup> ~~Express~~ <sup>✓</sup> unitrusts. (1)**

4 In this subsection section, "express unitrust" means any trust that by its governing  
5 instrument requires the distribution at least annually of a unitrust amount equal to  
6 a fixed percentage of the net fair market value of the trust's assets, valued at least  
7 annually, other than a trust solely for charitable purposes or a charitable  
8 split-interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal Revenue  
9 Code.

INS. 15-9 ✓  
INS 15-11 ✓

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

12 (h) In the absence of contrary provisions in the ~~governing document~~ <sup>trust instrument</sup> of an  
13 express unitrust, the provisions of ~~sub. (4g) (e) 1., 4. s. 701.1106 (3) (a), (d), and 5. (e)~~  
14 apply.

strike → trust instrument ✓

15 SECTION 41. 701.20 (4k) of the statutes is renumbered 701.1108 and amended  
16 to read:

17 **701.1108 ~~Power Article XI. Section 1108~~ <sup>=m</sup> ~~Power~~ <sup>✓</sup> to treat capital gains**

18 **as part of a distribution.** Unless prohibited by the ~~governing instrument~~ <sup>will or trust</sup>, a  
19 ~~trustee~~ <sup>fiduciary</sup> may cause gains from the sale or exchange of trust ~~assets~~ <sup>property</sup>, as determined for  
20 federal income tax purposes, to be taxed for federal income tax purposes as part of  
21 a distribution of income that has been increased by an adjustment from principal to  
22 income under ~~sub. (4) s. 701.1104~~, of a unitrust distribution, of a fixed annuity  
23 distribution, or of a principal distribution to a beneficiary.

will or trust ✓  
property ✓  
estate or ✓

24 SECTION 42. 701.20 (4m) (title) of the statutes is renumbered 701.1109 (title)  
25 and amended to read:



1 **701.1109** (title) **Judicial Article XI, Section 1109** ~~–~~ **Judicial review of**  
2 **discretionary power.**

3 **SECTION 43.** 701.20 (4m) (a) of the statutes is renumbered 701.1109 (1) and  
4 amended to read:

5 701.1109 (1) Nothing in this ~~section~~ subchapter creates a duty to make an  
6 adjustment under ~~sub. (4) s. 701.1104~~ or to convert a trust to a unitrust under ~~sub.~~  
7 ~~(4g) s. 701.1106~~. Unless it determines that the decision to make an adjustment or  
8 to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not  
9 grant relief from any decision a fiduciary makes regarding the exercise of a  
10 discretionary power conferred by ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~. ✓

11 **SECTION 44.** 701.20 (4m) (am) of the statutes is renumbered 701.1109 (2) and  
12 amended to read:

13 701.1109 (2) An action taken under ~~sub. (4) s. 701.1104~~ or ~~(4g) 701.1106~~ is not ✓  
14 an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed  
15 action under ~~sub. (4e) s. 701.1105~~ and did not receive a timely written objection to  
16 the notice. It is not an abuse of discretion not to exercise the power to adjust under  
17 ~~sub. (4) s. 701.1104~~ or to convert under ~~sub. (4g) s. 701.1106~~.

18 **SECTION 45.** 701.20 (4m) (b) of the statutes is renumbered 701.1109 (3).

19 **SECTION 46.** 701.20 (4m) (c) of the statutes is renumbered 701.1109 (4), and  
20 701.1109 (4) (c), as renumbered, is amended to read:

21 701.1109 (4) (c) To the extent that the court is unable, after applying ~~subds. 1.~~  
22 ~~pars. (a) and 2. (b)~~, to place the beneficiaries, the trust, or both in the positions that  
23 they would have occupied had the discretion not been abused, the court may order  
24 the fiduciary to pay an appropriate amount from its own funds to one or more of the  
25 beneficiaries, the trust, or both.

1 SECTION 47. 701.20 (4m) (d) of the statutes is renumbered 701.1109 (5).

2 SECTION 48. 701.20 (5) of the statutes is renumbered 701.1110, and 701.1110  
3 (title), (1), (2) (intro.), (3), (4) and (5), as renumbered, are amended to read:

4 **701.1110** (title) **Determination Article XI, Section 1110** <sup>↙ = m</sup> ~~Determination~~  
5 **and distribution of net income.** (1) A fiduciary of an estate or of a terminating  
6 income interest shall determine the amount of net income and net principal receipts  
7 received from property specifically given to a beneficiary under the rules in subs. (7)  
8 ss. 701.1112 to (30) 701.1135 that apply to trustees and the rules in ~~par. (e)~~ sub. (5).  
9 The fiduciary shall distribute the net income and net principal receipts to the  
10 beneficiary who is to receive the specific property.

11 (2) (intro.) A fiduciary shall determine the remaining net income of a decedent's  
12 estate or a terminating income interest under the rules in ~~subs. (7)~~ ss. 701.1112 to  
13 ~~(30) 701.1135~~ that apply to trustees and by:

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

24 (4) A fiduciary shall distribute the net income remaining after distributions  
25 required by ~~par. (e)~~ ~~sub. (3)~~ in the manner described in ~~sub. (6)~~ s. 701.1111 to all other

↑  
Strike

↑  
under subs. (1) to ✓

1 beneficiaries, including a beneficiary who receives a pecuniary amount determined  
2 by a pecuniary formula related to a transfer tax.

3 (5) A fiduciary may not reduce principal or income receipts from property  
4 described in ~~par. (a)~~ sub. (1) because of a payment described in ~~sub. (25)~~ s. 701.1130  
5 or ~~(26)~~ 701.1131 to the extent that the will, the terms of the trust, or applicable law  
6 requires the fiduciary to make the payment from assets other than the property or  
7 to the extent that the fiduciary recovers or expects to recover the payment from a 3rd  
8 party. The net income and principal receipts from the property are determined by  
9 including all of the amounts the fiduciary receives or pays with respect to the  
10 property, whether those amounts accrued or became due before, on, or after the date  
11 of a decedent's death or an income interest's terminating event, and by making a  
12 reasonable provision for amounts that the fiduciary believes the estate or  
13 terminating income interest may become obligated to pay after the property is  
14 distributed.

15 SECTION 49. 701.20 (6) of the statutes is renumbered 701.1111, and 701.1111  
16 (title), (1), (2) (d) and (4), as renumbered, are amended to read:

17 **701.1111 (title) Distribution Article XI, Section 1111 <sup>← = m</sup> Distribution to**  
18 **residuary and remainder beneficiaries.** (1) Each beneficiary described in ~~sub.~~  
19 ~~(5)-(d)~~ s. 701.1110 (4) is entitled to receive a portion of the net income equal to the  
20 beneficiary's fractional interest in undistributed principal assets, using values as of  
21 the distribution date. If a fiduciary makes more than one distribution of assets to  
22 beneficiaries to whom this ~~subsection~~ section applies, each beneficiary, including one  
23 who does not receive part of the distribution, is entitled, as of each distribution date,  
24 to the net income the fiduciary has received after the date of death or terminating

1 event or earlier distribution date but has not distributed as of the current  
2 distribution date.

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

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

10 SECTION 50. 701.20 (7) of the statutes is renumbered 701.1112, and 701.1112  
11 (title) and (3), as renumbered, are amended to read:

12 (12) 701.1112 (title) ~~When Article XI, Section 1112~~ When right to income  
13 begins and ends.


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

18 SECTION 51. 701.20 (8) of the statutes is renumbered 701.1113, and 701.1113  
19 (title), (1) and (3), as renumbered, are amended to read:

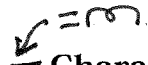
20 (20) 701.1113 (title) Apportionment Article XI, Section 1113  
21 Apportionment of receipts and disbursements when decedent dies or  
22 income interest begins. (1) A trustee shall allocate to principal an income receipt  
23 or disbursement other than one to which ~~sub. (5) (a)~~ s. 701.1110 (1) applies if its due  
24 date occurs before a decedent dies in the case of an estate or before an income interest  
25 begins in the case of a trust or successive income interest.

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

9           SECTION 52. 701.20 (9) (a) of the statutes is renumbered 701.1114, and 701.1114  
10 (title) and (1), as renumbered, are amended to read:

11           **701.1114** (title)    ~~Apportionment~~ Article XI, Section 1114   
12           Apportionment when income interest ends. (1) In this subsection section,  
13 “undistributed income” means net income received before the date on which an  
14 income interest ends. “Undistributed income” does not include an item of income or  
15 expense that is due or accrued or net income that has been added or is required to  
16 be added to principal under the terms of the trust.

17           SECTION 53. 701.20 (10) of the statutes is renumbered 701.1115, and 701.1115  
18 (1), (2) and (5), as renumbered, is amended to read:

19           **701.1115** (title)    ~~Character~~ Article XI, Section 1115  ~~Character~~ of  
20 **receipts.** (1) In this subsection section, “entity” means a corporation, partnership,  
21 limited liability company, regulated investment company, real estate investment  
22 trust, common trust fund, or any other organization in which a trustee has an  
23 interest other than a trust or estate to which ~~sub. (11)~~ s. 701.1116 applies, a business  
24 or activity to which ~~sub. (12)~~ s. 701.1117 applies, or an asset-backed security to which  
25 ~~sub. (24)~~ s. 701.1129 applies.

1 (2) Except as otherwise provided in this ~~subsection~~ section, a trustee shall  
2 allocate to income money received from an entity.

3 (5) Money is not received in partial liquidation, nor may it be taken into account  
4 under ~~par. (d) 2, sub. (4) (b)~~, to the extent that it does not exceed the amount of income  
5 tax that a trustee or beneficiary must pay on taxable income of the entity that  
6 distributes the money.

7 SECTION 54. 701.20 (11) of the statutes is renumbered 701.1116 and amended  
8 to read:

9 **701.1116 ~~Distribution~~ Article XI, Section 1116 ~~-Distribution~~ from trust**  
10 **or estate.** A trustee shall allocate to income an amount received as a distribution  
11 of income from a trust or an estate in which the trust has an interest other than a  
12 purchased interest, and shall allocate to principal an amount received as a  
13 distribution of principal from such a trust or estate. If a trustee purchases an interest  
14 in a trust that is an investment entity, or a decedent or donor transfers an interest  
15 in such a trust to a trustee, ~~sub. (10) s. 701.1115 or (24) 701.1129~~ applies to a receipt  
16 from the trust.

17 SECTION 55. 701.20 (12) of the statutes is renumbered 701.1117 and 701.1117  
18 (title) and (3) (g), as renumbered, are amended to read:

19 **701.1117 (title) ~~Business~~ Article XI, Section 1117 ~~- Business~~ and other**  
20 **activities conducted by trustee.**

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

22 SECTION 56. 701.20 (13) of the statutes is renumbered 701.1118, and 701.1118  
23 (title), (1), (2), (3) and (6), as renumbered, are amended to read:

24 **701.1118 (title) ~~Principal~~ Article XI, Section 1118 ~~-Principal~~ receipts.**

25 (1) To the extent not allocated to income under this ~~section~~ subchapter, assets

1 received from a transferor during the transferor's lifetime, a decedent's estate, a  
2 trust with a terminating income interest, or a payer under a contract naming the  
3 trust or its trustee as beneficiary.

4 (2) Money or other property received from the sale, exchange, liquidation, or  
5 change in form of a principal asset, including realized profit, subject to subs. (10) ss.  
6 701.1115 to (24) 701.1129.

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

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

Ins.  
22-10 →

11 SECTION 57. 701.20 (14) of the statutes is renumbered 701.1119, and 701.1119  
12 (title), as renumbered, is amended to read:

13 701.1119 (title) **Rental Article XI, Section 1119 – Rental property.**

14 SECTION 58. 701.20 (15) of the statutes is renumbered 701.1120, and 701.1120  
15 (title) and (3), as renumbered, are amended to read:

16 701.1120 (title) **Obligation Article XI, Section 1120 – Obligation to pay**  
17 **money.**

↙ = m

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

21 SECTION 59. 701.20 (16) of the statutes is renumbered 701.1121 and amended  
22 to read:

23 701.1121 **Insurance Article XI, Section 1121 – Insurance policies and**  
24 **similar contracts.** (1) Except as provided in par. (b) sub. (2), a trustee shall allocate  
25 to principal the proceeds of a life insurance policy or other contract in which the trust

↙ = m

1 or its trustee is named as beneficiary, including a contract that insures the trust or  
2 its trustee against loss for damage to, destruction of, or loss of title to, a trust asset.  
3 The trustee shall allocate dividends on an insurance policy to income if the premiums  
4 on the policy are paid from income, and to principal if the premiums are paid from  
5 principal.

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

9 (3) This ~~subsection~~ section does not apply to a contract to which ~~sub. (18)~~ s.  
10 701.1123 applies.

11 SECTION 60. 701.20 (17) of the statutes is renumbered 701.1122, and 701.1122  
12 (intro.), as renumbered, are amended to read:

13 **701.1122 Insubstantial Article XI, Section 1122 — Insubstantial**  
14 **allocations not required.** (intro.) If a trustee determines that an allocation  
15 between principal and income required by ~~sub. (15) (b), (18), (19), (20), (21)~~ s.  
16 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or (24) 701.1129 is  
17 insubstantial, the trustee may allocate the entire amount to principal unless one of  
18 the circumstances described in ~~sub. (4) (e)~~ s. 701.1104 (3) applies to the allocation.  
19 This power may be exercised by a cotrustee in the circumstances described in ~~sub.~~  
20 ~~(4) (d)~~ s. 701.1104 (4) and may be released for the reasons and in the manner  
21 described in ~~sub. (4) (e)~~ s. 701.1104 (5). An allocation is presumed to be insubstantial  
22 if:

23 SECTION 61. 701.20 (18) (title) of the statutes is renumbered 701.1123 (title)  
24 and amended to read:



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2 ✓  
3  
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24-2

701.1123 (title) **Deferred Article XI, Section 1123** <sup>↓ = m</sup> **Deferred compensation, annuities, and similar payments.**

SECTION 62. 701.20 (18) (a) of the statutes is renumbered 701.1123 (1) (intro.) and amended to read:

701.1123 (1) (intro.) In this subsection, "payment" section:

(a) "Payment" means ~~a~~ all of the following:

1. A payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. ~~The term includes a~~

2. A payment made in money or property from the payer's general assets or from a separate fund created by the payer, ~~including.~~

\*\*\*\*NOTE: I split the definition for payment into three subdivisions. Please let me know if I have inadvertently changed the meaning of the definition found at subd. 1. by separating out that portion of the definition governing "a payment made in money or property from the payer's general assets..." created in subd. 2.

\*\*\*\*NOTE: The remainder of this definition is created at s. 701.1123 (1) (a) 3.

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

SECTION 63. 701.20 (18) (b) of the statutes is renumbered 701.1123 (2) and amended to read:

701.1123 (2) To the extent that a payment is characterized as interest or, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent <sup>✓ a</sup> payment. in lieu of interest or a dividend

21

1

SECTION 64. 701.20 (18) (c) of the statutes is renumbered 701.1123 (3), and

2

701.1123 (3) (a) (intro.) and 1. and (b), as renumbered, are amended to read:

3

701.1123 (3) (a) (intro.) In this paragraph subsection "plan income" means any

4

of the following:

5

1. With respect to payments received from a plan that maintains separate

6

accounts or funds for its participants or account holders, such as defined contribution

7

~~retirement plans, individual retirement accounts, Roth individual retirement~~

8

~~accounts, and some types of deferred compensation plans, either the amount of the~~

9

~~plan account or fund held for the benefit of the trust that, if the plan account or fund~~

10

were a trust, would be allocated to income under pars. (b) subs. (2) and (d) (4) for that

11

accounting period, or 4 percent of the value of the plan account or fund on the first

12

day of the accounting period. The trustee shall, in his or her discretion, choose the

13

method of determining "plan income" under this subd. 1. a. subdivision, and may

14

change the method of determining "plan income" under this subd. 1. a. subdivision

15

for any subsequent accounting period.

16

(b) For each accounting period of a trust in which the trust receives a payment

17

but no part of any payment is allocated to income under par. (b) sub. (2), the trustee

18

shall allocate to income that portion of the aggregate value of all payments received

19

by the trustee in that accounting period that is equal to the amount of plan income

20

that is attributable to the trust's interest in the plan from which payment is received

21

for that accounting period. The trustee shall allocate the balance of any payments

22

to principal.

23

SECTION 65. 701.20 (18) (d) of the statutes is repealed.

\*\*\*\*NOTE: Section 701.1123 (4) through (7) are created later in the draft, in numerical order.

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✓ (6)

1

SECTION 66. 701.20 (18) (e) of the statutes is renumbered 701.1123 (8) and

2

amended to read:

3

701.1123 (8) This subsection section does not apply to payments a payment to

4

which sub. (19) s. 701.1124 applies.

5

SECTION 67. 701.20 (19) of the statutes is renumbered 701.1124, and 701.1124

6

(title) and (1), as renumbered, are amended to read:

7

701.1124 (title) ~~Liquidating Article XI, Section 1124~~ Liquidating asset.

8

(1) In this subsection section, "liquidating asset" means an asset whose value will

9

diminish or terminate because the asset is expected to produce receipts for a period

10

of limited duration. The term includes a leasehold, patent, copyright, royalty right,

11

and right to receive payments during a period of more than one year under an

12

arrangement that does not provide for the payment of interest on the unpaid balance.

13

The term does not include a payment subject to sub. (18) s. 701.1123, resources

14

subject to sub. (20) s. 701.1125, timber subject to sub. (21) s. 701.1126, an activity

15

subject to sub. (23) s. 701.1128, an asset subject to sub. (24) s. 701.1129, or any asset

16

for which the trustee establishes a reserve for depreciation under sub. (27) s.

17

701.1132.

18

SECTION 68. 701.20 (20) of the statutes is renumbered 701.1125, and 701.1125

19

(title), (1) (intro.) and (d), (3) and (4), as renumbered, are amended to read:

20

701.1125 (title) ~~Minerals Article XI, Section 1125~~ Minerals, water, and

21

other natural resources. (1) (intro.) To the extent that a trustee accounts for

22

receipts from an interest in minerals or other natural resources in accordance with

23

this subsection section, the trustee shall allocate them as follows:

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

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

7 (4) If a trust owns an interest in minerals, water, or other natural resources  
8 on May 17, 2005, the trustee may allocate receipts from the interest as provided in  
9 this ~~subsection~~ section or in the manner used by the trustee before May 17, 2005.  
10 If the trust acquires an interest in minerals, water, or other natural resources after  
11 May 17, 2005, the trustee shall allocate receipts from the interest as provided in this  
12 ~~subsection~~ section.

13 **SECTION 69.** 701.20 (21) (title) of the statutes is repealed.

14 **SECTION 70.** 701.20 (21) of the statutes is renumbered 701.1126, and 701.1126  
15 (1) (intro.), (c) and (d), (2), (3) and (4), as renumbered, are amended to read:

16 701.1126 (1) (intro.) To the extent that a trustee accounts for receipts from the  
17 sale of timber and related products in accordance with this ~~subsection~~ section, the  
18 trustee shall allocate the net receipts:

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

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

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

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

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

11           **SECTION 71.** 701.20 (22) of the statutes is renumbered 701.1127 and amended  
12 to read:

13           **701.1127 Property Article XI, Section 1127 – Property not productive**  
14 **of income.** (1) If a marital deduction is allowed for all or part of a trust whose assets  
15 consist substantially of property that does not provide the surviving spouse with  
16 sufficient income from or use of the trust assets, and if the amounts that the trustee  
17 transfers from principal to income under ~~sub. (4) s. 701.1104~~ and distributes to the  
18 spouse from principal in accordance with the terms of the trust are insufficient to  
19 provide the spouse with the beneficial enjoyment required to obtain the marital  
20 deduction, the spouse may require the trustee to make property productive of  
21 income, convert property within a reasonable time, or exercise the power conferred  
22 by ~~sub. (4) (a) s. 701.1104 (1)~~. The trustee may decide which action or combination  
23 of actions to take.

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

4 SECTION 72. 701.20 (23) of the statutes is renumbered 701.1128, and 701.1128  
5 (title), (1) and (2), as renumbered, are amended to read:

6 **701.1128 (title) ~~Derivatives~~ Article XI, Section 1128 ~~Derivatives~~ and**  
7 **options. (1)** In this subsection section, “derivative” means a contract or financial  
8 instrument or a combination of contracts and financial instruments that gives a trust  
9 the right or obligation to participate in some or all changes in the price of a tangible  
10 or intangible asset or group of assets, or changes in a rate, an index of prices or rates,  
11 or another market indicator for an asset or a group of assets.

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

15 SECTION 73. 701.20 (24) of the statutes is renumbered 701.1129, and 701.1129  
16 (title) and (1), as renumbered, is amended to read:

17 **701.1129 (title) ~~Asset-backed~~ Article XI, Section 1129 ~~Asset-backed~~**  
18 **securities. (1)** In this subsection section, “asset-backed security” means an asset  
19 whose value is based upon the right it gives the owner to receive distributions from  
20 the proceeds of financial assets that provide collateral for the security. The term  
21 includes an asset that gives the owner the right to receive from the collateral  
22 financial assets only the interest or other current return or only the proceeds other  
23 than interest or current return. The term does not include an asset to which ~~sub. (10)~~  
24 s. 701.1115 or ~~(18)~~ 701.1123 applies.

1 SECTION 74. 701.20 (25) of the statutes is renumbered 701.1130, and 701.1130  
2 (intro.), as renumbered, are amended to read:

3 **701.1130 Disbursements Article XI, Section 1130** ~~Disbursements from~~  
4 **income.** (intro.) A trustee shall make the following disbursements from income to  
5 the extent that they are not disbursements specified in ~~sub. (5) (b) 2.~~ s. 701.1110 (2)  
6 (b) or 3. (c):

7 SECTION 75. 701.20 (26) of the statutes is renumbered 701.1131, and 701.1131  
8 (title) and (1) (a) ~~and (e)~~ <sup>and (g)</sup>, as renumbered, are amended to read:

9 **701.1131 (title) Disbursements Article XI, Section 1131** ~~Disbursements~~  
10 **from principal.**

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

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

In s  
30-14

15 SECTION 76. 701.20 (27) of the statutes is renumbered 701.1132, and 701.1132  
16 (title), (1) and (2) (c), as renumbered, are amended to read:

17 **701.1132 (title) Transfers Article XI, Section 1132** ~~Transfers from~~  
18 **income to principal for depreciation.**

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

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

24 SECTION 77. 701.20 (28) of the statutes is renumbered 701.1133, and 701.1133  
25 (title), (1), (2) (intro.) and (e) and (3), as renumbered, are amended to read:

1

**701.1133 (title) ~~Transfers~~ Article XI, Section 1133 ~~Transfers from~~**

2

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

6

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

9

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

10

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

13

**SECTION 78.** 701.20 (29) (title) of the statutes is renumbered 701.1134 (title) and amended to read:

15

**701.1134 (title) ~~Income~~ Article XI, Section 1134 ~~Income taxes.~~**

16

**SECTION 79.** 701.20 (29) (a) of the statutes is renumbered 701.1134 (1).

17

**SECTION 80.** 701.20 (29) (b) of the statutes is renumbered 701.1134 (2).

18

**SECTION 81.** 701.20 (29) (c) (intro.) of the statutes is renumbered 701.1134 (3) (intro.) and amended to read:

20

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

22

**SECTION 82.** 701.20 (29) (c) 1. of the statutes is renumbered 701.1134 (3) (a) and amended to read:

24

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

25



1 SECTION 83. 701.20 (29) (c) 2. (intro.) and a. of the statutes are consolidated,  
2 renumbered 701.1134 (3) (b) and amended to read:

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

5 SECTION 84. 701.20 (29) (c) 2. b. of the statutes is repealed.

6 SECTION 85. 701.20 (29) (d) of the statutes is repealed.

7 SECTION 86. 701.20 (30) of the statutes is renumbered 701.1135, and 701.1135  
8 (title) and (1) (a), as renumbered, are amended to read:

9 **701.1135 (title) ~~Adjustments~~ Article XI, Section 1135 ~~Adjustments~~**  
10 **between principal and income because of taxes.**

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

13 SECTION 87. 701.20 (31) of the statutes is repealed.

14 SECTION 88. 701.21 of the statutes is renumbered 701.1136, and 701.1136 (title)  
15 ~~and~~ (1), <sup>(2) and (4)</sup> as renumbered, are amended to read:

16 **701.1136 (title) ~~Income~~ Article XI, Section 1136 ~~Income payments and~~**  
17 **accumulations. (1) DISTRIBUTION OF INCOME.** Except as otherwise determined by  
18 the trustee or a court under s. 701.20 ~~(4g)~~ 701.1106 with respect to unitrust  
19 distributions, if a beneficiary is entitled to receive income from a trust, but the  
20 <sup>creating</sup> instrument fails to specify how frequently it is to be paid, the trustee shall  
21 distribute at least annually the income to which such beneficiary is entitled.

22 SECTION 89. 701.24 (1) and (2) of the statutes are repealed.

23 SECTION 90. 861.015 (2) of the statutes is amended to read:

24 861.015 (2) For purposes of this section, property subject to a directive is valued  
25 by its clear market value on the date of the decedent's death. Satisfaction of the

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trust

1 nonholding spouse's marital property interest in the property subject to the directive  
2 shall be based on that value, plus any income from the property subject to the  
3 directive after the death of the decedent and before satisfaction. For purposes of  
4 determining the income from the property subject to a directive, such property shall  
5 be treated as a legacy or devise of property other than money under ~~s. 701.20~~ subch.

5

6

7

XI of ch. 701 701.1115

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INS 3-14

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

701.1102 (1g) ✓ "Asset" means property, as defined in s. 701.0103 ✓ (18).

\*\*\*NOTE: I assumed that the intention of providing a definition for asset was to make the usage of asset in this subchapter, which is based on a uniform law, consistent with usage of property in the remainder of the chapter. I did not include the suggested language because in many places in the subchapter the term assets is modified to indicate whether that reference is to a trust or unitrust. For example, with the suggested definition the phrase "trust assets" translates to "trust property of a trust or estate". Please let me know if this definition is not consistent with your intent. \*

✕  
SECTION 2. 701.1123 (1) of the statutes is created to read:

701.1123 (1) In this section:

(a) ✓ "Payment" means an amount of money or property received by a trustee that is any of the following: ✓

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

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

(b) ✓ "Plan" means a contractual, custodial, trust, or other arrangement that provides for distributions to a trust and includes a private or commercial annuity, an individual retirement account, a Roth ✓ individual retirement account, a qualified retirement plan such as a pension, profit-sharing, ✓ stock-bonus, or ✓ stock-ownership plan, or any nonqualified deferred compensation plan. ✓

(c) ✓ "Separate account" means an account established or maintained by a plan under which income, gains, and losses, whether or not realized, from assets allocated to the account, are credited to or charged against the account without regard to other income, gains, or losses of the plan. ✓

↓

**SECTION 3.** 701.1123 (4) of the statutes is created to read:

701.1123 (4) (a) For purposes of this subsection, "trustee" means a trustee of a trust <sup>and which for</sup> where an election to qualify for a marital deduction under Section 2056 (b) (7) or Section 2523 (f) of the Internal Revenue Code has been made, or a trust that qualified for the marital deduction under Section 2056 (b) (5) or Section 2523 (e) of the Internal Revenue Code.

(b) Notwithstanding sub. (3), a trustee shall determine plan income for an accounting period as if the plan were a trust subject to this subchapter. If the trustee cannot determine the plan income, the plan income is 4 percent of the total present value of the trust's income in the plan on the first day of the accounting period, based on reasonable actuarial assumptions as determined by the trustee.

(c) Notwithstanding subs. (2) and (3), a trustee shall allocate a payment from a plan to income to the extent of the plan income and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon the request of the surviving spouse, the trustee shall allocate principal to income to the extent the plan income exceeds payments made from the plan to the trust during the accounting period.

(d) Upon the request of the surviving spouse of the settlor, a trustee shall demand that a person administering a plan distribute the plan income to the trust.

**END INS 3-14**

**INS 6-1**

**SECTION 4.** 701.20 (2) (b) of the statutes is renumbered 701.1102 (1m) and amended to read:



701.1102 (1m) "~~Beneficiary~~" Notwithstanding s. 701.0103<sup>✓</sup>(3), "beneficiary"  
means a person who has a beneficial interest in a trust or an estate and includes, in  
the case of a decedent's estate, an heir, a legatee, and a devisee and, in the case of a  
trust, an income beneficiary and a remainder beneficiary.<sup>✓</sup>

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.  
**END INS 6-1**

**INS. 11-19**

**SECTION 5.** 701.20 (4g)<sup>X</sup> (title) of the statutes is renumbered 701.1106<sup>✓</sup> (title) and  
amended to read:

701.1106 (title) **Conversion Article XI, Section 1106 — Conversion<sup>✓</sup> to  
unitrust.** <sup>(B) NOCS.</sup>

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.  
**SECTION 6.** 701.20 (4g) (a) (intro.) of the statutes is renumbered 701.1106 (1)

(intro.) and amended to read:

701.1106 (1) (intro.) Subject to ~~par. (d)~~ sub. (4)<sup>✓</sup>, a trust may be converted to a  
unitrust in any of the following ways:

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.  
**SECTION 7.** 701.20 (4g) (a) 1. (intro.) of the statutes is renumbered 701.1106 (1)

(a) (intro.) and amended to read:

701.1106 (1) (a) (intro.) By the trustee, at his or her own discretion or at the  
request of a qualified<sup>✓</sup> beneficiary, if all of the following apply:

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.  
**SECTION 8.** 701.20 (4g) (a) 1. a. of the statutes is renumbered 701.1106 (1) (a)

1.<sup>✓</sup>

**SECTION 9.** 701.20 (4g) (a) 1. b. of the statutes is renumbered<sup>✓</sup> 701.1106 (1) (a)

2. and amended to read:



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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**SECTION 10.** 701.20 (4g) (a) 1. c. of the statutes is repealed.

**SECTION 11.** 701.20 (4g) (a) 1. d. of the statutes is renumbered 701.1106 (1) (a) 3. and amended to read:

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**SECTION 12.** 701.20 (4g) (a) 1. e. of the statutes is renumbered 701.1106 (1) (a) 4.

**SECTION 13.** 701.20 (4g) (a) 2. (intro.) of the statutes is renumbered 701.1106 (1) (b) (intro.) and amended to read:

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**SECTION 14.** 701.20 (4g) (a) 2. a. of the statutes is renumbered 701.1106 (1) (b)

1. and amended to read:

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.



2. ✓  
**SECTION 15.** 701.20 (4g) (a) 2. b. ✓ of the statutes is renumbered 701.1106 (1) (b)

\*  
\*  
**SECTION 16.** 701.20 (4g) (b), (c), (d) ✓ and (e) of the statutes are renumbered 701.1106 (2) ✓, (3) ✓, (4) ✓ and (5) ✓, and 701.1106 (2) ✓, (3) (a) ✓, (b) ✓, (c) ✓, (d) 7. ✓, (e) (intro.) ✓, (f) 2. ✓, (g) (intro.) ✓, 1. ✓ and 3. ✓ and (h) ✓, (4) (a) (intro.) ✓, 1. ✓ and (b) ✓ and (5) ✓, as renumbered, are amended to read:

**END INS. 11-19**

**INS. 13-19**

1. ✓ Convert the unitrust back to the original trust under the ✓ creating trust instrument.

**History:** 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS. 13-19**

**INS. 13-23**

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

**History:** 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS. 13-23**

**INS 14-12**

\*  
1. The creating trust ✓ instrument specifically prohibits the conversion.

**History:** 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 14-12**

**INS 15-9**

(2) (e) ✓ The governing trust ✓ instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust



distribution, to the extent that the unitrust distribution exceeds the income determined as if the trust were not a unitrust, or it may specify the ordering of such classes of income.

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 15-9**

**INS 15-11**

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 15-11**

**INS 22-10**

~~SECTION 17.~~ 701.20 (14) of the statutes is renumbered 701.1119 and amended to read:

**701.1119 Rental Article XI, Section 1119 — Rental property.** To the extent that a trustee accounts for receipts from rental property in accordance with this ~~subsection~~ section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a

*(B) - NO CS.*





beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 22-10**

**INS. 24-2**

**SECTION 18.** 701.20 (18) (a) <sup>✓</sup> of the statutes is repealed.

**END INS 24-2**

**INS 25-15**

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 25-15**

**INS. 25-22**

**SECTION 19.** 701.20 (18) (d) of the statutes is ~~renumbered~~ <sup>✓</sup> 701.1123 (5) and amended to read:

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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS. 25-22**

**INS 30-14**



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

History: 1971 c. 40; 1977 c. 408; 1983 a. 189; 1985 a. 37; 1987 a. 27; 1987 a. 393 s. 53; 1991 a. 39; 1993 a. 112, 160; 1997 a. 188; 1999 a. 85; 2005 a. 10, 216; 2009 a. 180.

**END INS 30-14**

**INS 32-21**

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

History: 2005 a. 10.

(4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed by the ~~creating~~ trust 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.~~ At the termination of the income interest, any undistributed income shall be distributed as principal. ✓

History: 2005 a. 10.

**END INS 32-21**