

1971 Senate Bill 121

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CHAPTER 66, Laws of 1971

AN ACT to repeal 700.19 (4) and 700.20 (1); to renumber 700.19 (6), 700.20 (2), 701.07 (1) (a) to (e) and 701.14 (3); to renumber and amend 700.19 (5); to amend 178.01 (2), 179.01, 700.05 (3), 700.17 (2), 700.20 (title), 700.22, 700.23 (3) (a), 701.01 (1) and (3), 701.05 (2) and (3), 701.06 (1), (2), (4) (a) and (b), (5) and (6), 701.07 (1) (intro.); (a) 2, 3 and 5, as renumbered; (2) and (3), 701.08, 701.09, 701.10 (2) (e), (3) (a) 1 and (b) and (4), 701.12 (2), 701.13 (1), (2), (3) and (5) (intro.), (b), (c) and (d), 701.14 (1) and (2), 701.15 (intro.) and (2), 701.16 (1) (a), (b), (c) (title) and (d), (2) and (5), 701.17 (title), (1), (3) (title) and (5), 701.18, 701.19 (2) (d), (5) (a), (9) and (10), 701.24, 702.01 (3) and 702.05 (2); to repeal and recreate 700.21 and 701.06 (7); and to create 181.77, 700.215, 701.06 (5) (c) and (8), 701.07 (1) (b) and (c), 701.105 and 701.14 (3) of the statutes, relating to a revision of the laws of trusts, powers of appointment, and interests in property.

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

SECTION 1. 178.01 (2) of the statutes is amended to read:

178.01 (2) In this chapter, ~~"court"~~:

(a) "Court" includes every court and judge having jurisdiction in the case.

(b) "Business" includes every trade, occupation or profession.

(c) "Person" includes individuals, partnerships, corporations, and other associations and, to the extent authorized by governing instrument or court order, personal representatives and trustees.

(d) "Bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act.

(e) "Conveyance" includes every assignment, lease, mortgage or incumbrance.

(f) "Real property" includes land and any interest or estate in land.

SECTION 2. 179.01 of the statutes is amended to read:

179.01 A limited partnership is a partnership formed by 2 or more persons, including a personal representative or trustee to the extent authorized by governing instrument or court order, under s. 179.02, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

SECTION 3. 181.77 of the statutes is created to read:

181.77 PRIVATE FOUNDATIONS. (1) No corporation which is a "private foundation", as defined in s. 509 (a) of the internal revenue code of 1954, shall:

(a) Engage in any act of "self-dealing" as defined in s. 4941 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4941 (a) of the internal revenue code of 1954;

(b) Retain any "excess business holdings" as defined in s. 4943 (c) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4943 (a) of the internal revenue code of 1954;

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of s. 4944 of the internal revenue code of 1954, so as to give rise to any liability for the tax imposed by s. 4944 (a) of the internal revenue code of 1954; and

(d) Make any "taxable expenditures" as defined in s. 4945 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4945 (a) of the internal revenue code of 1954.

(2) Each corporation which is a "private foundation" as defined in s. 509 of the internal revenue code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by s. 4942 (a) of the internal revenue code of 1954.

(3) The provisions of subs. (1) and (2) shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such subsections.

(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 corporation.

SECTION 4. 700.05 (3) of the statutes is amended to read:

700.05 (3) Vested subject to complete defeasance, if the interest is created in favor of one or more ascertained persons in being and would become a present interest on the expiration of the preceding interests but may end or may be completely defeated as provided by the transferor at, before or after the expiration of the preceding interests;

SECTION 5. 700.17 (2) of the statutes is amended to read:

700.17 (2) Each of 2 or more joint tenants has an equal interest in the whole property for the duration of the tenancy, irrespective of unequal contributions at its creation. On the death of one of 2 joint tenants, the survivor becomes the sole owner; on the death of one of 3 or more joint tenants, the survivors are joint tenants of the entire interest.

SECTION 6. 700.19 (4) of the statutes is repealed.

SECTION 7. 700.19 (5) of the statutes is renumbered 700.19 (4) and amended to read:

700.19 (4) Notwithstanding s. 700.18 and the preceding subsections of this section, ~~2 or more personal representatives or trustees~~ co-personal representatives and cotrustees hold title to interests in property as joint tenants.

SECTION 8. 700.19 (6) of the statutes is renumbered 700.19 (5).

SECTION 9. 700.20 (1) of the statutes is repealed.

SECTION 10. 700.20 (2) of the statutes is renumbered 700.20.

SECTION 11. 700.20 (title) of the statutes is amended to read:

700.20 (title) EXTENT OF UNDIVIDED INTERESTS IN TENANCY IN COMMON.

SECTION 12. 700.21 of the statutes is repealed and recreated to read:

700.21 COVENDORS IN CONTRACTS TO TRANSFER. (1) If 2 or more persons are named as covendors in a contract to transfer an interest in property which they own as joint tenants, the purchase price is payable to them as joint tenants, unless the contract expresses a contrary intent. If 2 or more persons are named as covendors in a contract to transfer an interest in property which they own as tenants in common, the purchase price is payable to them according to their interests, unless the contract expresses a contrary intent.

(2) If 2 or more persons are named as covendors in a contract to transfer an interest in property which is owned by less than all of the covendors, the purchase price is payable to the owner or owners of the interest in property to which the contract relates, unless the contract expresses an intent that the purchase price is payable to the covendors as joint tenants or as tenants in common.

SECTION 13. 700.215 of the statutes is created to read:

700.215 EXCEPTION FOR EQUITABLE RIGHTS OF COTENANTS AND THIRD PERSONS. Nothing in ss. 700.17 to 700.21 prevents an equitable lien arising in favor of one cotenant against another tenant or tenants because of events occurring after the establishment of the cotenancy relationship nor prevents imposition of a constructive trust in favor of a 3rd person in an appropriate case.

SECTION 14. 700.22 of the statutes is amended to read:

700.22 (1) Nothing in ss. 700.17 to ~~700.20~~ 700.21 governs the determination of rights to deposits (including checking accounts or instruments deposited therein or drawn thereon, savings accounts, certificates of deposit, investment shares or any other form of deposit) in banks, building and loan associations, savings and loan associations, credit unions or other financial institutions.

(2) Nothing in ss. 700.17 to ~~700.20~~ 700.21 applies to United States obligations to the extent they are governed by regulations law of the United States government.

SECTION 15. 700.23 (3) (a) of the statutes is amended to read:

700.23 (3) (a) A proportionate share of the reasonable rental value of the land accruing after written demand for rent if the occupying tenant manifests his intent to occupy the premises to the exclusion of the ~~plaintiff~~ other cotenant or cotenants;

SECTION 16. 701.01 (1) and (3) of the statutes are amended to read:

701.01 (1) "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. ~~"Trust" does not include a business or investment trust subject to s. 226.14, an assignment for the benefit of creditors under ch. 128, or a trust securing performance of a debtor's obligation.~~

(3) 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"; ~~to the extent that trust income or principal presently or in the future must or may be used any other trust is a "private trust", provided it is for the benefit of a person sufficiently identifiable to enforce the trust, the trust is a "private trust".~~

SECTION 17. 701.05 (2) and (3) of the statutes are amended to read:

701.05 (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 his 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 his fiduciary duties.

(3) In a private or charitable trust where the trustee has absolute legal title to the trust property takes all title of the settlor or other transferor and holds such title subject to his fiduciary duties as trustee, any interest expressly retained by the settlor or not effectively disposed of to others remains in the settlor, or his successors in interest, as an equitable reversionary interest and to this extent he, or they, are beneficiaries of the trust. In a private trust where the trustee has absolute legal title of the settlor or other transferor and holds such title subject to his 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.

SECTION 18. 701.06 (1), (2) and (4) (a) and (b) of the statutes are amended to read:

701.06 (1) A settlor may expressly provide in the creating instrument that the ~~right to~~ interest in income of a beneficiary other than the settlor is not subject to voluntary or involuntary alienation. The income interest of such a beneficiary cannot be assigned and is exempt from the claims of ~~creditors against the beneficiary~~ until paid over to the ~~beneficiary~~ him pursuant to the terms of the trust.

(2) A settlor may expressly provide in the creating instrument that the ~~right to~~ 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 the claims of ~~creditors 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 of ~~principal which have become due or payable to the beneficiary pursuant to the terms of the trust~~ and the court in its discretion may issue an order for payment of part or all of the judgment.

(4) (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, ~~in whole or in part,~~ out of part or all of payments of income or principal ~~then or thereafter due or payable as they are due, presently or in the future;~~

(b) In the case of a beneficiary under a discretionary trust, order the trustee to satisfy part or all of the claim, ~~in whole or in part,~~ out of part or all of future payments of income or principal ~~if the trustee has then exercised or thereafter exercises his discretion which are to be made pursuant to the exercise of the trustee's discretion~~ in favor of such beneficiary.

SECTION 19. 701.06 (5) of the statutes is amended to read:

701.06 (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 the beneficiary is legally obligated to pay for his public support ~~of a or that furnished his spouse or minor child under s. 46.10,~~ upon application by the appropriate state department or county official, the court, ~~after determining the fact and amount of liability,~~ may:

(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, ~~in whole or in part,~~ out of part or all of payments of income or principal ~~then or thereafter due or payable as they are due, presently or in the future;~~

(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, ~~in whole or in part,~~ out of part or all of future payments of income or principal ~~if the trustee has then exercised or thereafter exercises his discretion which are to be made pursuant to the exercise of the trustee's discretion~~ in favor of such beneficiary.

SECTION 20. 701.06 (5) (c) of the statutes is created to read:

701.06 (5) (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 his discretion in favor of the beneficiary.

SECTION 21. 701.06 (6) of the statutes is amended to read:

(6) Notwithstanding any provision in the creating instrument, ~~to the extent that a settlor has a right to receive income or principal or to the extent that the trustee may distribute income or principal solely to the settlor, the court and in addition to the remedies available under subs. (4) and (5) where the settlor is a beneficiary,~~ upon application ~~or of a judgment creditor of the settlor, the court~~ may order the trustee to satisfy the judgment, ~~in~~

~~whole or in part, out of income, principal or both to the extent of the settlor's contribution, 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.~~

SECTION 22. 701.06 (7) of the statutes is repealed and re-created to read:

701.06 (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.

SECTION 23. 701.06 (8) of the statutes is created to read:

701.06 (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) of this section.

SECTION 24. 701.07 (1) (intro.) of the statutes is amended to read:

701.07 (1) (intro.) ~~An instrument creating a~~ A living trust, otherwise valid, shall not be held invalid as an attempted testamentary disposition ~~of~~ a passive trust under s. 701.03, or a trust lacking a sufficient corpus because it:

(a) It contains any or all of the following powers, whether exercisable by the settlor, another person or both:

SECTION 25. 701.07 (1) (a) to (c) of the statutes are renumbered 701.07 (1) (a) 1 to 5, and 701.07 (1) (a) 2, 3 and 5, as renumbered, are amended to read:

701.07 (1) (a) 2. To exercise a power or option over property in the trust or over ~~a interests made payable to the trust under an employe benefit plan, life insurance policy the proceeds of which are payable to the trust under sub. (2), or otherwise;~~

3. To direct, during the lifetime of the settlor or another, the person to whom or on whose behalf the income ~~or~~ or principal ~~of both~~ shall be paid or applied;

5. To add property or cause additional employe benefits, life insurance ~~or other interests~~ to be made payable to the trust at any time.

SECTION 26. 701.07 (1) (b) and (c) of the statutes are created to read:

701.07 (1) (b) The corpus consists of a designation of the trustee as a primary or direct, secondary or contingent beneficiary under a will, employe benefit plan, life insurance policy or otherwise; or

(c) The corpus consists of assets of nominal value.

SECTION 27. 701.07 (2) and (3) of the statutes are amended to read:

701.07 (2) ELIGIBILITY TO RECEIVE ASSETS. A living trust ~~which is valid under sub. (1) is~~ shall be eligible to receive ~~life insurance proceeds payable to the trustee and such proceeds shall be administered in accordance with the terms of the trust as~~

~~they exist at the death of the insured. The trustee's right to receive such proceeds is a sufficient corpus for a valid trust property from any source.~~

(3) If a settlor retains a power to revoke, modify or terminate which is exercisable in his own 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 an ~~employee benefit trust described in s. 272.18 (31) or to a reasonable amount placed in a burial trust agreement described in s. 156.125 trust property to the extent it is exempt from claims of creditors under other statutes.~~

SECTION 28. 701.08 of the statutes is amended to read:

701.08 (1) (title) VALIDITY AND EFFECT. ~~Unless the instrument creating a living trust expressly provides otherwise, a living trust, regardless of the size or character of its corpus, is eligible to receive additional property transferred or appointed by the will of the settlor or any other person. Such a living trust shall be treated as an independently existing entity. The order of execution of a living trust instrument and a will or other instrument purporting to transfer or appoint property to the trust evidenced by the trust instrument shall be disregarded in determining the validity of the transfer or appointment.~~ No reference in any will to such a living trust shall cause assets in the living such trust to be included in the property administered as part of the testator's estate; nor shall it cause the trust or any portion thereof to be treated as a testamentary trust.

(2) (title) GOVERNING TERMS. Property ~~passing under transferred~~ or appointed by a will or by a beneficiary designation under an employee benefit plan, life insurance policy or other instrument permitting designation of a beneficiary to a living trust, the terms of which the testator or designator was the sole holder of a power to modify the terms of the trust, shall be administered in accordance with the terms of the trust as they may have been modified prior to his death, even though the will or beneficiary designation was not reexecuted or republished after exercise of the power to modify, unless the will or beneficiary designation expressly provides that modifications of the trust occurring after execution of the will are to be disregarded. Property passing under otherwise. Such property transferred or appointed by a will to a living trust, which is subject to a power of modification exercisable by requiring action or consent of a person other than the testator or designator, shall be administered in accordance with the terms of the trust in effect instrument as they exist at the execution of the will or beneficiary designation, unless expressly otherwise provided. If the will or beneficiary designation expressly provides that the property shall be administered in accordance with the terms of the trust instrument as they may have been modified thereafter, in which case the will or beneficiary designation need not be reexecuted or republished after exercise of the power to modify.

(3) (title) DISPOSITION WHEN NO EXISTING LIVING TRUST. If at the death of a testator a living trust has been completely revoked, or otherwise terminated, a provision in his will purporting to transfer additional or appoint property to such trust shall have the following effect, unless the will provides otherwise:

(a) If the testator was also a settlor necessary party to the revocation or other termination of such trust, the provision in his will shall be invalid;

(b) If the testator was not a ~~settlor~~ necessary party to the revocation or other termination of such trust, the provision in his will shall be deemed to create a testamentary trust upon the same terms as those of the living trust instrument at the time the will was executed or as otherwise provided where sub. (2) is applicable.

SECTION 29. 701.09 of the statutes is amended to read:

701.09 (title) TRANSFERS TO TESTAMENTARY TRUSTS. (1) (title) TESTAMENTARY TRANSFER TO TRUST OF ANOTHER. A ~~testamentary~~ 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 ~~testamentary~~ 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 ~~testamentary~~ transfer or appointment. Property included in such a ~~testamentary~~ transfer or appointment shall not be considered property subject to administration as part of the other person's estate but shall pass directly to his testamentary trustee, be added to the designated trust and administered as a part thereof.

(2) (title) INVALID TESTAMENTARY TRANSFER. If such a ~~testamentary~~ 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 ~~testamentary~~ 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 ~~testamentary~~ transfer or appointment by will.

(3) (title) 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 and any other requirements of the insurance company issuing the policy. After admission of the insured's will to probate and qualification of 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 such proceeds may be commingled with other assets passing to the trust under the insured's will. Insurance proceeds paid to a testamentary trustee because of his designation ~~of as~~ as life insurance beneficiary shall not be subject to inheritance tax to any greater extent than if such proceeds were payable to ~~any other~~ a beneficiary other than the insured's estate. Such proceeds shall be inventoried for tax purposes only and shall not be subject to taxes, debts or charges enforceable against the estate nor otherwise considered assets of the insured's estate to any greater extent than if such proceeds were payable to a beneficiary other than the insured's estate.

(4) (title) EMPLOYEE BENEFITS TRANSFERRED TO TRUST OF EMPLOYEE. A trustee named or to be named in the will of an employe covered by any employe benefit plan described in s. 272.18 (31) or any annuity or insurance contract purchased by an employer which 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 employe if the designation is made in accordance with the terms of the plan or contract and any other requirements of the payer. ~~Such benefits shall be treated in the same manner as insurance proceeds are treated under sub. (3).~~ After admis-

sion of the employe's will to probate and issuance of letters to such 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 employe, and such benefits may be commingled with other assets passing to the trust. Death benefits paid to a testamentary trustee because of his designation as payee shall not be subject to inheritance tax to any greater extent than if such benefits were payable to a beneficiary other than the employe's estate. Such benefits shall be inventoried for tax purposes only and shall not be subject to taxes, debts or charges enforceable against the estate nor otherwise considered assets of the employe's estate to any greater extent than if such benefits were payable to a beneficiary other than the employe's estate.

(5) (title) TRANSFER OF OTHER PROPERTY. ~~Interests Property~~ other than ~~those that~~ described in subs. (3) and (4) may be made payable to or transferred to a trustee named or to be named in ~~a the will in the same manner and with the same consequences as insurance proceeds under sub. (3) of the transferor.~~

SECTION 30. 701.10 (2) (e), (3) (a) 1 and (b) and (4) of the statutes are amended to read:

701.10 (2) (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 ~~made a party to persons interested in~~ any proceeding under this subsection.

(3) (a) 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;

(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) 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).

SECTION 31. 701.105 of the statutes is created to read:

701.105 PRIVATE FOUNDATIONS. (1) (a) In the administration of any trust which is a "private foundation", as defined in s. 509 of the internal revenue code of 1954, a "charitable trust", as defined in s. 4947 (a) (1) of the internal revenue code of 1954, or a "split-interest trust" as defined in s. 4947 (a) (2) of the internal revenue code of 1954, the following acts shall be prohibited:

1. Engaging in any act of "self-dealing" as defined in s. 4941 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4941 (a) of the internal revenue code of 1954;

2. Retaining any "excess business holdings" as defined in s. 4943 (c) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4943 (a) of the internal revenue code of 1954;

3. Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of s. 4944 of the internal revenue code of 1954, so as to give rise to any liability for the tax imposed by s. 4944 (a) of the internal revenue code of 1954; and

4. Making any "taxable expenditures" as defined in s. 4945 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4945 (a) of the internal revenue code of 1954;

(b) Provided, however, that 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 s. 4947 of the internal revenue code of 1954.

(2) In the administration of any trust which is a "private foundation" as defined in s. 509 of the internal revenue code of 1954, or which is a "charitable trust" as defined in s. 4947 (a) (1) of the internal revenue code of 1954, 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 s. 4942 (a) of the internal revenue code of 1954.

(3) The provisions of subs. (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.

(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.

SECTION 32. 701.12 (2) of the statutes is amended to read:

701.12 (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 ~~under s. 701.15~~ by a guardian ad litem. A ~~representative of guardian ad litem~~ 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.

SECTION 33. 701.13 (1), (2), (3) and (5) (intro.), (b), (c) and (d) of the statutes are amended to read:

701.13 MODIFICATION AND TERMINATION OF TRUSTS BY COURT ACTION. (1) When an accumulation of income is directed for the benefit of a beneficiary without other sufficient means to support or educate himself, the court on the application of such person or his ~~representative under s. 701.15~~ (2) 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.

(2) Unless the creating instrument provides to the contrary, if a beneficiary is entitled to income or to have it applied for his benefit, the court may make an allowance from principal to or for the benefit of such beneficiary if his support or education is not sufficiently provided for, taking into account all other resources available to the beneficiary.

(3) In the case of a living trust where the settlor is deceased and in the case of any testamentary trust, regardless in either case of spendthrift or similar protective provisions, a court with consent of the trustee may order termination of the trust, in whole or in part, and such distribution of the assets as 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 ~~impracticable impractical.~~ In any event, if the trust property is valued at less than \$5,000, the court may order termination of the trust and such distribution of the assets as it considers appropriate.

(5) (intro.) ~~This section does Subs. (2) and (3) do not apply to a trust where a future interest is indefeasibly vested in , or an indefeasibly vested future interest may be validly appointed to:~~

(b) A corporation 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 which does not participate or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office;

(c) 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 (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office; or

(d) Any veteran's organization incorporated by act of congress, or any of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

SECTION 34. 701.14 (1) and (2) of the statutes are amended to read:

701.14 (1) GENERALLY. A proceeding in the county court involving a living or testamentary trust may be commenced by a trustee or other person interested in the trust and except as otherwise provided in this chapter, all probate procedure governing county courts, so far as it may be applicable, shall apply to such proceeding.

(2) NOTICE. If notice of any such a trust proceeding to a person interested in the trust, to his representative or guardian ad litem as provided in s. 701.15 or to other persons, is required by law or deemed necessary by the court, the court shall order such notice to be given as prescribed in s. 879.05 except that service by publication shall not be required unless ordered by the court. The court may order both personal service and service by publication on designated persons. Proof of service shall be made as provided in s. 879.07. Persons interested in the trust, on behalf of themselves, or their representatives or guardians ad litem as provided in s. 701.15, on behalf of themselves and those whom they represent, may in writing waive service of notice and consent to the hearing of any matter without notice. Waiver of notice or an appearance by any person interested in the trust or his representative or guardian ad litem as provided in s. 701.15 is equivalent to timely service of notice.

SECTION 35. 701.14 (3) of the statutes is renumbered 701.14 (4).

SECTION 36. 701.14 (3) of the statutes is created to read:

701.14 (3) ATTORNEY FOR PERSON IN MILITARY SERVICE. At the time of filing a petition for a trust proceeding, an affidavit shall be filed setting forth the name of any person interested in the proceeding who is actively engaged in the military service of the United States. Whenever it appears by the affidavit or otherwise that any person in the active military service of the United States is interested in any trust proceeding and is not represented by an attorney, the court shall appoint an attorney to represent the person and protect his interest.

SECTION 37. 701.15 (intro.) and (2) of the statutes are amended to read:

701.15 (intro.) ~~In~~ Except as otherwise provided in ss. 701.12 and 701.13 (1), in a trust proceeding in the county or circuit court:

(2) (title) GUARDIAN AD LITEM; VIRTUAL REPRESENTATION. Subject to sub. (1), the court may appoint a guardian ad litem for any ~~interested~~ interested person 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.

SECTION 38. 701.16 (1) (a), (b), (c) (title) and (d), (2) and (5) of the statutes are amended to read:

701.16 (1) (title) APPOINTMENT OF ORIGINAL TRUSTEE. (a) A trustee ~~who is named or whose appointment is provided for~~ in a will derives his authority to carry out the trust from the will and ~~need not be appointed by the court. After the court has admitted a will to probate, it shall issue~~ assumes his office upon the issuance of letters of trust to the trustee named in the will, at his request, as evidence of his authority 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) (title) 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 his appointment, after the court has admitted the will to probate~~ it shall appoint a suitable person as trustee. A nonresident trustee must appoint a resident agent to accept service of process and such appointment must be filed with the court before letters of trust are issued to such trustee. Letters of trust shall be issued to such trustee as provided in s. 856.29.

(c) (title) Special trustee.

(d) Where 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, such 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 ~~duly authenticated~~

certified copy of his letters of trust and filed with the register of probate of the same county a statement appointing the register of probate in his 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 he would have if he received letters of trust from a county 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.

(2) The 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 a testamentary such trustee to give a bond in accordance with ch. 878 and conditioned on the faithful performance of his 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.

(5) A verified final account is required upon the death of a trustee, resignation of a trustee, removal of a trustee and 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 such proof of the correctness of a final account as it considers necessary.

SECTION 39. 701.17 (title), (1), (3) (title) and (5) of the statutes are amended to read:

701.17 (title) SUCCESSOR AND ADDED TRUSTEES. (1) (title) **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 his 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 his request.

(3) (title) **POWERS OF SUCCESSOR OR ADDED TRUSTEE.**

(5) **VESTING OF TITLE.** A special or successor trustee is vested with the title of the original trustee ~~to~~ and an added trustee becomes a joint tenant with the existing trustee in all trust property within the jurisdiction of the court. The court may order a trustee who resigns ~~or~~, is removed or is joined by an added trustee to execute such documents transferring title to trust prop-

erty as may be appropriate to facilitate administration of the trust or may itself transfer title.

SECTION 40. 701.18 of the statutes is amended to read:

701.18 (1) A trustee may resign in accordance with the terms of the creating instrument or petition the court to accept his resignation and the court, ~~subject to s. 701.17 (5) in the case of a testamentary trust,~~ may, upon notice and hearing, discharge him from further responsibility for the trust upon such terms and conditions as are necessary to protect the rights of the beneficiaries and any cotrustee. ~~If, however, the instrument creating a living trust provides a method for resignation, such method shall be followed rather than the method prescribed by this subsection. In no event shall a testamentary trustee be discharged from further responsibility except as provided in s. 701.16 (6).~~

(2) ~~A beneficiary or cotrustee may petition the court for removal of a trustee and the court may, upon notice and hearing, remove a trustee found to be unsuitable to continue in office. - The 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. 701.16 (6).~~

SECTION 41. 701.19 (2) (d), (5) (a), (9) and (10) of the statutes are amended to read:

701.19 (2) (d) ~~With the approval of the court Except as otherwise provided in s. 223.03 (10), a trustee may not sell individually owned assets to the trust at the price the trustee originally paid for such assets or their current fair market value, whichever is lower, provided such assets satisfy the investment standards set forth in s. 320.01 (1) and (2). The 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 may approve the sale without upon notice and hearing.~~

(5) (a) The court may by order authorize a trustee to become a ~~limited partner under ch. 178 or 179 and transfer trust property to the partnership in return for a partnership interest.~~

(9) (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, ~~but a . . . 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.~~

(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 he has failed to discharge his duty to participate in the administration of the trust. A dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees if he expressed his dissent in writing to his cotrustees at or before the time of the joinder.

(10) Unless the creating instrument expressly negates application of this subsection, a power conferred upon a person in his capacity as trustee to make discretionary distributions of principal or income to himself or to make discretionary allocations in his own favor of receipts or expenses as between principal and income, cannot be exercised by him. If the power is conferred on 2 or more trustees, it may be exercised by the trustees who are not so dis-

qualified. 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.

SECTION 42. 701.24 of the statutes is amended to read:

701.24 ~~The~~ Except as otherwise provided in s. 701.19 (9) (a) and (10), the provisions of this chapter are applicable to a trust existing on July 1, 1971, as well as a trust created after such date and shall govern trustees acting under such trusts. If application of any provision of this chapter to a trust in existence on the effective date of this chapter is unconstitutional, it shall not affect application of the provision to a trust created after the effective date of this chapter.

SECTION 43. 702.01 (3) of the statutes is amended to read:

702.01 (3) "Creating instrument" means the ~~deed~~, will, trust agreement or other document which creates or reserves the power.

SECTION 44. 702.05 (2) of the statutes is amended to read:

702.05 (2) A donee can exercise a power only by an instrument which meets the intent of the donor as to kind of instrument and formalities of execution. If the power is exercisable by will, this means a will executed with the formalities necessary for a valid will. ~~If the power is exercisable by deed, this means a written instrument signed by the donee under seal.~~ A written instrument signed by the donee is sufficient if the donor ~~so directs~~ fails to require any additional formalities or ~~if he~~ fails to indicate a ~~deed~~ or will, but if the power is to appoint legal interests in land, it can be exercised only by an instrument executed with sufficient formalities ~~to pass legal title for that purpose.~~

SECTION 45. This act shall take effect July 1, 1971, or the 1st day of the month following publication, whichever is later.