CHAPTER 701

TRUSTS

SUBCHAPTER I
GENERAL PROVISIONS AND DEFINITIONS
701.0101 Short title.
701.0102 Scope.
701.0103 Definitions.
701.0104 Knowledge.
701.0105 Default and mandatory rules.
701.0106 Common law of trusts; principles of equity.
701.0107 Governing law.
701.0108 Principal place of administration.
701.0109 Methods and waiver of notice.
701.0110 Others treated as qualified beneficiaries.
701.0111 Nonjudicial settlement agreements.
SUBCHAPTER II
JUDICIAL PROCEEDINGS
701.0201 Role of court in administration of trust.
701.0202 Personal jurisdiction.
701.0203 Subject matter jurisdiction.
701.0204 Venue.
701.0205 Notice.
701.0206 Attorney for person in military service.
SUBCHAPTER III
REPRESENTATION
701.0301 Representation: basic effect.
701.0302 Representation by holder of general power of appointment.
701.0303 Representation by fiduciaries, parents, or a person appointed by a trustee.
701.0304 Representation by person having substantially identical interest.
701.0305 Appointment of representative by a court.
SUBCHAPTER IV
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST
701.0401 Methods of creating a trust.
701.0402 Requirements for creation.
701.0403 Trusts created in other jurisdictions.
701.0404 Trust purposes.
701.0405 Charitable purposes; enforcement.
701.0406 Creation of trust induced by fraud, duress, or undue influence.
701.0407 Evidence of oral trust.
701.0408 Trust for care of animal.
701.0409 Noncharitable trust without ascertainable beneficiary.
701.0410 Modification or termination of trust; proceedings for approval or disapproval.
701.0411 Modification or termination of noncharitable irrevocable trust by consent.
701.0412 Modification or termination because of unanticipated circumstances or inability to administer trust effectively.
701.0413 Cy pres.
701.0414 Modification or termination of uneconomic trust.
701.0415 Reformation to correct mistakes.
701.0416 Modification to achieve settlor's tax objectives.
701.0417 Combination and division of trusts.
701.0418 Trustee's power to appoint assets to new trust.
701.0419 Transfers to trusts.
SUBCHAPTER V
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS
701.0501 Rights of beneficiary's creditor or assignee.
701.0502 Spendthrift provision.
701.0503 Exceptions to spendthrift provision.
701.0504 Discretionary trusts; effect of standard.
701.0505 Creditor's claim against settlor.
701.0506 Overdue distribution.
701.0507 Personal obligations of trustee.
701.0508 Debts of decedents.
SUBCHAPTER VI
REVOCABLE TRUSTS
701.0601 Capacity of settlor of revocable trust.
701.0602 Revocation or amendment of revocable trust.
701.0603 Settlor's powers; powers of withdrawal.
701.0604 Limitation on action contesting validity of revocable trust; distribution of trust property.
SUBCHAPTER VII
OFFICE OF TRUSTEE
701.0701 Accepting or declining trusteeship.
701.0702 Trustee's bond.
701.0703 Cotrustees.
701.0704 Vacancy in trusteeship; appointment of successor.
701.0705 Resignation of trustee.
701.0706 Removal of trustee.
701.0707 Delivery of property by former trustee.
701.0708 Compensation of trustee.
701.0709 Reimbursement of expenses.
701.0710 Title of trust property.
SUBCHAPTER VIII
DUTIES AND POWERS OF TRUSTEES, DIRECTING PARTIES, AND TRUST PROTECTORS
701.0801 Duty to administer trust.
701.0802 Duty of loyalty.
701.0803 Impartiality.
701.0804 Prudent administration.
701.0805 Costs of administration.
701.0806 Trustee's skills.
701.0807 Delegation by trustee.
701.0808 Powers to direct; directing parties.
701.0809 Control and protection of trust property.
701.0810 Record keeping and identification of trust property.
701.0811 Enforcement and defense of claims.
701.0812 Collecting trust property; duties of successor trustees.
701.0813 Duty to inform and report.
701.0814 Discretionary powers; tax savings.
701.0815 General powers of trustee.
701.0816 Specific powers of trustee.
701.0817 Distribution upon termination.
701.0818 Trust protectors.
701.0819 Marital deduction transfers.
SUBCHAPTER IX
INVESTMENT MANAGEMENT OF TRUSTS
701.0901 Application of the Wisconsin Prudent Investor Act.
701.0902 Directed trust property.
701.0903 Nonapplication of prudent investor rule to life insurance contracts owned by trusts.
SUBCHAPTER X
LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE
701.1001 Remedies for breach of trust.
701.1002 Damages for breach of trust; liability of successor trustee.
701.1003 Damages in absence of breach.
701.1004 Attorney fees and costs.
701.1005 Limitation of action against trustee.
701.1006 Reliance on trust instrument.
701.1007 Event affecting administration or distribution.
701.1008 Exculpation of trustee.
701.1009 Beneficiary's consent, release, or ratification.
701.1010 Limitation on personal liability of trustee.
701.1011 Interest as general partner.
701.1012 Protection of person dealing with trustee.
701.1013 Certification of trust.
SUBCHAPTER XI
UNIFORM PRINCIPAL AND INCOME ACT
701.1101 Short title and scope.
701.1102 Definitions.
701.1103 Fiduciary duties; general principles.
701.1104 Trustee's power to adjust.
701.1105 Notice to beneficiaries of proposed action.
701.1106 Conversion to unitrust.
701.1107 Express unitrusts.
701.1108 Power to treat capital gains as part of a distribution.
701.1109 Judicial review of discretionary power.
701.1110 Determination and distribution of net income.
701.1111 Distribution to residuary and remainder beneficiaries.
701.1112 When right to income begins and ends.
701.1113 Apportionment of receipts and disbursements when decedent dies or income interest begins.
701.1114 Apportionment when income interest ends.
701.1115 Character of receipts.
701.1116 Distribution from trust or estate.
701.1117 Business and other activities conducted by trustee.
701.1118 Principal receipts.
701.1119 Rental property.
701.1120 Obligation to pay money.
701.1121 Insurance policies and similar contracts.
701.1122 Insubstantial allocations not required.
701.1123 Deferred compensation, annuities, and similar payments.
701.1124 Liquidating asset.
701.1125 Minerals, water, and other natural resources.
701.1126 Timber.
701.1127 Property not productive of income.
701.1128 Derivatives and options.
701.1129 Asset−backed securities.

701.1130 Disbursements from income.
701.1131 Disbursements from principal.
701.1132 Transfers from income to principal for depreciation.
701.1133 Transfers from income to reimburse principal.
701.1134 Income taxes.
701.1135 Adjustments between principal and income because of taxes.
701.1136 Income payments and accumulations.

SUBCHAPTER XII
MISCELLANEOUS PROVISIONS
701.1201 Private foundations.
701.1202 Electronic records and signatures.
701.1203 Uniformity of application and construction.
701.1204 Applicability of general transfers at death provisions.
701.1205 Applicability.

SUBCHAPTER I

GENERAL PROVISIONS AND DEFINITIONS

701.0101 Short title. This chapter may be cited as the Wisconsin Trust Code.

History: 2013 a. 92.

Estate Planning Metamorphosis: Wisconsin's New Trust Code. Schultz & Weinsch. Wis. Law. June 2014.

701.0102 Scope. This chapter applies to express, charitable or noncharitable, and testamentary or living trusts, and any trust created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This chapter does not apply to any of the following:

(1) A constructive or resulting trust.

(2) A guardianship.

(3) A conservatorship.

(4) A custodial arrangement made pursuant to the Uniform Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss. 54.950 to 54.988.

(5) A common trust or a collective investment fund.

(6) A trust created by a depository agreement with a financial institution.

(7) A trust made in connection with a business transaction, including a trust created under a bond indenture or collateral trust agreement or in connection with a structured finance transaction, a common law trust under s. 226.14, or a business trust.

(8) A voting trust.

(9) A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding, business liquidation, or class action lawsuit.

(10) A trust that is part of an employee benefit arrangement or an individual retirement account.

(11) A trust established under a qualified tuition savings program or education savings account.

(12) A trust account maintained on behalf of a client or customer by a licensed service professional, including a trust account maintained by an attorney or by a real estate broker.

(13) Any other arrangement under which a person is a nominee or escrowee for another.

History: 2013 a. 92.

701.0103 Definitions. In this chapter:

(1) "Action," with respect to an act of a trustee, directing party, or trust protector, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code.

(3) "Beneficiary" means a person that satisfies any of the following:

(a) Has a present or future beneficial interest in a trust, vested or contingent.

(b) In a capacity other than that of trustee, trust protector, or a directing party, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in s. 701.0405 (1). This subsection does not apply in s. 701.1201.

(5) "Conservator" means a person appointed by a court pursuant to s. 54.76.

(6) "Directed trust property" means all or any portion of the property of a trust that is invested or managed by a directing party or is invested or managed at the direction of a directing party and for which the trustee has no investment or management responsibility.

(7) "Directing party" means a person who, in a trust instrument or court order, is granted a power to direct a trustee's investment or distribution decisions or a power to make investment or distribution decisions regarding trust property and the power is granted to the person in a capacity other than as a trustee or a trust protector. For purposes of this subsection, a power of appointment is not a power to direct a trustee's investment or distribution decisions or a power to make investment or distribution decisions regarding trust property.

(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection or remediation of the environment.

(9) "General power of appointment" has the meaning given in s. 702.02 (5).

(10) "Guardian of the estate" means a person appointed by a court under s. 54.10 as a guardian of the estate of a minor or adult individual.

(11) "Guardian of the person" means a person appointed by a court under s. 54.10 as a guardian of the person of a minor or adult individual.

(12) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her decisions.

(13) "Individual with a disability" means an individual who meets one of the following tests:

(a) The individual receives social security, supplemental security income, or medical assistance benefits on the basis of being an individual who is disabled, as defined by the applicable program.

(b) The individual has a mental or physical impairment of a type and severity that would cause the individual to be considered an individual who is disabled for purposes of participating in the social security, supplemental security income, or medical assistance program, if the individual applied to be eligible for one of those programs based on disability, and if the individual's education, work record, and engagement in substantial gainful activity were disregarded. The fact that the individual is age 65 or older does not bar the individual from being considered an individual with a disability.

(14) "Interests of the beneficiaries" means the beneficial interests provided in the terms of a trust.

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or such subsequent federal revenue law as may be in effect from time to time.

(16) "Jurisdiction," with respect to a geographic area, includes a state or country.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(18) "Power of appointment" has the meaning given in s. 702.02 (6).

(19) "Power of withdrawal" means a presently exercisable general power of appointment but does not include any of the following:

(a) A power exercisable by a trustee and limited by an ascertainable standard.

(b) A power exercisable by another person only upon consent of a trustee or of a person holding an adverse interest.

(20) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or digital property, as defined in s. 711.03 (10), or any interest therein.

(21) "Qualified beneficiary" means a beneficiary who, on the date on which the beneficiary's qualification is determined, satisfies any of the following:

(a) Is a distributee or permissible distributee of trust income or principal.

(b) Without considering the existence or exercise of a power of appointment, other than a power of appointment that has been irrevocably exercised and notice of the exercise has been given to the trustee, would be any of the following:

1. A distributee or permissible distributee of trust income or principal if the interests of the distributees described in par. (a) terminated on that date without causing the trust to terminate.

2. A distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(22) "Revocable," as applied to a trust, means that the trust can be revoked by the settlor without the consent of the trustee or a person holding an adverse interest, regardless of whether the settlor is incapacitated.

(23) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke the trust or withdraw that portion.

(24) "Special power of appointment" has the meaning given in s. 702.02 (7).

(25) "Spendthrift provision" means a term of a trust that restrains either or both of a voluntary or involuntary transfer of a beneficiary's interest.

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, and an Indian tribe, band, or nation recognized by federal law or formally acknowledged by a state.

(27) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(28) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

(29) "Trust for an individual with a disability" means a trust that is established for the benefit of an individual with a disability of any age, if the assets of the trust would not be counted as resources of the individual with a disability for purposes of eligibility for medical assistance under subch. IV of ch. 49, if he or she applied for medical assistance and was otherwise eligible.

(30) "Trust instrument" means an instrument, including any amendments or modifications to the instrument under s. 701.0111 or subch. IV, that is executed by the settlor that contains terms of a trust or is created under a statute, judgment, or decree that orders property to be transferred to a trustee to be administered for the benefit of a beneficiary.

(31) "Trust protector" means a person who, in a trust instrument or court order, is granted a power, other than a power of appointment, in a capacity other than as a trustee or a directing party.

History: 2013 a. 92; 2015 a. 300.

701.0104 Knowledge. (1) Subject to sub. (2), a person has knowledge of a fact if any of the following applies:

(a) The person has actual knowledge of the fact.

(b) The person has received a notice or notification of the fact.

(c) The person has reason to know the fact from all the facts and circumstances known to the person at the time in question.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been received by the employee if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

History: 2013 a. 92.

701.0105 Default and mandatory rules. (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of trustees, directing parties, and trust protectors; relations among trustees, directing parties, and trust protectors; and the rights and interests of beneficiaries.

(2) The terms of a trust prevail over any provision of this chapter except for the following:

(a) The requirements for creating a trust.

(b) The duty of a trustee or a directing party to act in good faith and in accordance with the terms and purposes of a trust instrument and the interests of the beneficiaries.

(c) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful.

(d) The power of a court to modify or terminate a trust under ss. 701.0410 to 701.0416.

(e) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in ss. 701.0501 to 701.0508.

(f) The power of the court under s. 701.0702.

(g) The power of the court under s. 701.0708 (2) to adjust a trustee's, directing party's, or trust protector's compensation specified in the terms of the trust.

(h) The effect of an exculpatory term under s. 701.1008.

(i) The rights under ss. 701.1010 to 701.1013 of a person other than a trustee or beneficiary.

(j) Periods of limitation for commencing a judicial proceeding.

(k) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(L) The jurisdiction of the court and venue for commencing a proceeding as provided in ss. 701.0202, 701.0203, and 701.0204.

(m) The jurisdiction of the court under ss. 701.0807 (4), 701.0808 (9), and 701.0818 (12).

(n) The legal capacity under s. 701.0818 (2) (c) in which a trust protector who is also serving as a trustee or a directing party must exercise any power granted to the trust protector.

History: 2013 a. 92; 2013 a. 151 s. 28.

701.0106 Common law of trusts; principles of equity. The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

History: 2013 a. 92.

701.0107 Governing law. The meaning and effect of the terms of a trust are determined by one of the following:

(1) The law of the jurisdiction designated in the trust instrument.

(2) In the absence of a controlling designation in the terms of a trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

History: 2013 a. 92.

701.0108 Principal place of administration. (1) The principal place of administration of a trust is determined by any of the following:

(a) The designation in the trust instrument if any of the following applies:

1. A trustee's usual place of business is located in the jurisdiction designated in the trust instrument.

2. A trustee is a resident of the jurisdiction designated in the trust instrument.

3. All or part of the administration of the trust occurs in the jurisdiction designated in the trust instrument.

4. The trust instrument designates the jurisdiction where the settlor is domiciled at the time the trust instrument is executed.

(b) If the principal place of administration is not validly designated in the trust instrument under par. (a), the jurisdiction where the trustee's usual place of business is located or, if the trustee has no place of business, the jurisdiction where the trustee's residence is located.

(c) The jurisdiction selected by the trustee under sub. (3).

(2) (a) If a corporate trustee is designated as the trustee of a trust and the corporate trustee has offices in multiple states and performs administrative functions for the trust in multiple states, the corporate trustee may designate the corporate trustee's usual place of business by providing notice to the qualified beneficiaries, trust protectors, and directing parties. The notice is valid and controlling if the corporate trustee has a connection to the jurisdiction designated in the notice, including an office where trustee services are performed and the actual performance of some administrative functions for that particular trust in that particular jurisdiction. The subsequent transfer of some of the administrative functions of the corporate trustee to another state or states does not transfer the usual place of business as long as the corporate trustee continues to maintain an office and perform some administrative functions in the jurisdiction designated in the notice and the corporate trustee does not transfer the principal place of administration pursuant to sub. (4).

(b) If there are cotrustees, the trustee's usual place of business is determined by any of the following:

1. If there is only one corporate trustee, the jurisdiction where the usual place of business of the corporate trustee is located.

2. The jurisdiction where the usual place of business or the residence of any of the cotrustees is located as agreed to by all of the cotrustees with notice to the qualified beneficiaries, trust protectors, and directing parties.

3. If the cotrustees cannot agree on a jurisdiction under subd. 2., and subd. 1. does not apply, by a court.

(3) Without precluding the right of the court to approve or disapprove a transfer and subject to sub. (5), a trustee may, but has no affirmative duty to, transfer a trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) A trustee shall notify the qualified beneficiaries, trust protectors, and directing parties of a proposed transfer of a trust's principal place of administration not less than 30 days before initiating the transfer. The trustee shall include in the notice of proposed transfer all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The mailing address, electronic mail address, if available, and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) The date, not less than 30 days after the giving of the notice, by which a qualified beneficiary, trust protector, or directing party must notify the trustee of an objection to the proposed transfer.

(5) If a qualified beneficiary, trust protector, or directing party commences a judicial proceeding objecting to the proposed transfer on or before the date specified in the notice, a trustee may not act under sub. (3) without court approval to transfer a trust's principal place of administration until the judicial proceeding is resolved or withdrawn.

(6) In connection with a transfer of a trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to s. 701.0704.

(7) The law of the trust's principal place of administration governs administrative matters related to the trust.

History: 2013 a. 92.

701.0109 Methods and waiver of notice. (1) Notice to a person under this chapter or the sending of a document to a person under this chapter shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include 1st class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(2) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter does not need to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by a trustee.

(3) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(4) Notice of a judicial proceeding shall be given as provided in s. 701.0205.

History: 2013 a. 92.

701.0110 Others treated as qualified beneficiaries. (1) A charitable organization that is expressly designated to receive distributions under the terms of a charitable trust and that is not subject to a right of substitution by the settlor or by any other party prior to the charitable organization becoming a distributee or permissible distributee of trust income or principal has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date on which the charitable organization's qualification is being determined, satisfies one of the following:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in s. 701.0408 or 701.0409 has the rights of a qualified beneficiary under this chapter.

(3) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state only when the charitable interest to be represented would qualify under sub. (1) but no char-

itable organization has been expressly designated to receive distribution under the terms of a charitable trust.

History: 2013 a. 92.

701.0111 Nonjudicial settlement agreements. (1) In this section, "interested person" means a person whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) An interested person may be represented under this section as provided in subch. III.

(3) Except as provided in sub. (4), an interested person may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. A binding nonjudicial settlement agreement is considered part of the trust instrument.

(4) A nonjudicial settlement agreement is valid only to the extent it includes terms and conditions that could be properly approved by a court under this chapter or other applicable law.

(5) Except as provided in sub. (4), matters that may be addressed by a nonjudicial settlement agreement include any of the following:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

(c) Direction to a trustee to perform or refrain from performing a particular act or the grant to a trustee of any necessary power.

(d) The resignation or appointment of a trustee.

(e) The determination of a trustee's compensation.

(f) The transfer of a trust's principal place of administration.

(g) The liability or release from liability of a trustee for an action relating to the trust.

(h) The criteria for distribution to a beneficiary where the trustee is given discretion.

(i) The resolution of disputes arising out of the administration or distribution of the trust.

(j) An investment action.

(k) The appointment of and powers granted to a directing party or a trust protector.

(L) Direction to a directing party or to a trust protector to perform or refrain from performing a particular act or the grant of a power to a directing party or trust protector.

(6) Any interested person may request a court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in subch. III was adequate, or to determine whether the agreement contains terms and conditions the court could have properly approved.

History: 2013 a. 92.

SUBCHAPTER II

JUDICIAL PROCEEDINGS

701.0201 Role of court in administration of trust. (1) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(2) Unless ordered by the court upon a petition of a settlor, trustee, or qualified beneficiary requesting continuing judicial supervision, a trust is not subject to continuing judicial supervision.

(3) A judicial proceeding involving a trust or the trust's administration may involve any of the following:

(a) Determining the validity of all or any part of a trust.

(b) Appointing or removing a trustee, directing party, or trust protector.

(c) Appointing a representative or guardian ad litem, as provided in s. 701.0305, whether or not any other judicial proceeding concerning the trust is pending.

(d) Reviewing and approving a fee of a trustee, directing party, or trust protector.

(e) Approving interim or final accounts.

(f) Ascertaining trust beneficiaries.

(g) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(h) Requesting trustee instructions.

(i) Obtaining a declaratory judgment.

(j) Seeking reformation or other equitable relief with respect to a trust.

(k) Resolving a question arising in the administration of a trust, including a question of construction of a trust instrument.

(L) Determining any other matter involving a trustee, directing party, trust protector, or beneficiary.

History: 2013 a. 92.

701.0202 Personal jurisdiction. (1) A trustee, trust protector, or directing party submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust by accepting an appointment as a trustee, trust protector, or directing party of a trust having its principal place of administration in this state or by continuing to serve as the trustee, trust protector, or directing party of a trust after the principal place of administration of the trust is moved to this state.

(2) With respect to a beneficiary's interest in a trust, the beneficiary of a trust having its principal place of administration in this state is subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from a trust having its principal place of administration in this state, a recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(3) Notwithstanding any contractual provision or other agreement between the trustee and the agent to the contrary, by accepting the delegation of a trust function pursuant to s. 701.0807 or 881.01 (10), or otherwise, from the trustee of a trust having a principal place of administration in this state, the agent submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) This section does not preclude other methods of obtaining jurisdiction over a trustee, directing party, trust protector, beneficiary, or other person receiving property from the trust.

History: 2013 a. 92.

701.0203 Subject matter jurisdiction. (1) The circuit court assigned to exercise probate jurisdiction has exclusive jurisdiction of proceedings in this state brought by a trustee, trust protector, directing party, or beneficiary concerning the administration of a trust. Except as otherwise provided in this chapter, and as applicable, the probate procedure described in ch. 879 applies to a proceeding brought by a trustee, trust protector, directing party, or beneficiary concerning the administration of a trust.

(2) This section does not preclude judicial or nonjudicial alternative dispute resolution, including nonjudicial settlement agreements described in s. 701.0111.

History: 2013 a. 92.

701.0204 Venue. (1) Except as provided in sub. (2), venue for a judicial proceeding involving a trust may be in the county of this state in which the trust's principal place of administration is or will be located or, if the trust is a testamentary trust and the decedent's estate is not yet closed, in the county of this state in which the decedent's estate is being administered.

(2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any of the following:

(a) A county of this state in which a beneficiary resides.

(b) A county of this state in which any trust property is located.

(c) A county of this state in which the holder of trust property maintains an office.

(d) If the trust is a testamentary trust and the decedent's estate is not yet closed, in the county of this state in which the decedent's estate is being administered.

(3) Venue for a judicial proceeding involving a trust is also governed by ss. 801.50 to 801.62, as applicable, and the proceeding is regarded as a civil action for that purpose.

History: 2013 a. 92.

701.0205 Notice. If notice of a judicial proceeding involving a trust to an interested person, to the person's representative or guardian ad litem, 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 may 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. Interested persons, on behalf of themselves, or their representatives or guardians ad litem, on behalf of the representative or guardian ad litem and the interested person the representative or guardian ad litem represents, 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 interested person or the interested person's representative or guardian ad litem is equivalent to timely service of notice.

History: 2013 a. 92 s. 194.

701.0206 Attorney for person in military service. At the time of filing a petition for a judicial proceeding involving a trust, the petitioner shall file an affidavit setting forth the name of any interested person 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 an interested person and is not represented by an attorney, or by an attorney−in−fact who is duly authorized to act on the interested person's behalf in the matter, the court shall appoint an attorney to represent the interested person and protect the person's interest.

History: 2013 a. 92 s. 195.

SUBCHAPTER III

REPRESENTATION

701.0301 Representation: basic effect. (1) Notice, information, an accounting, or a report given to a person who may represent and bind another person under this subchapter is a substitute for and has the same effect as notice, information, an accounting, or a report given directly to the other person.

(2) The consent of a person who may represent and bind another person under this subchapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative in writing before the consent would otherwise have become effective.

(3) Except as provided in ss. 701.0411 and 701.0602, a person who under this subchapter may represent a settlor who lacks capacity may receive notice and may give a binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under this subchapter with respect to the termination or modification of a trust under s. 701.0411 (1).

(5) A trustee is not liable for giving notice, information, an accounting, or a report to a beneficiary who is represented by another person under this subchapter and nothing in this subchapter prohibits the trustee from giving notice, information, an accounting, or a report to the person represented.

History: 2013 a. 92.

701.0302 Representation by holder of general power of appointment. To the extent there is no conflict of interest between a holder of a general power of appointment and a person represented with respect to the particular question or dispute, the holder may represent and bind the person whose interests, as a permissible appointee, a taker in default, or otherwise, are subject to the power.

History: 2013 a. 92.

701.0303 Representation by fiduciaries, parents, or a person appointed by a trustee. Except as provided in s. 701.0411, to the extent there is no conflict of interest between a representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(1) A conservator may represent and bind the estate that the conservator controls.

(2) Notwithstanding ss. 54.20 (2) and 54.25 (2), a guardian of the estate may represent and bind the ward and a guardian of the person may represent and bind the ward if a guardian of the estate of the ward has not been appointed.

(3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the trust, except as to matters relating to the administration or distribution of the trust.

(5) A personal representative of a decedent's estate may represent and bind a person interested in the estate, except as to matters relating to the administration or distribution of the estate.

(6) A parent may represent and bind the parent's minor or unborn child. If a disagreement arises between parents seeking to represent the same minor child or unborn child, representation is determined as follows:

(a) If only one parent is a beneficiary of the trust that is the subject of the representation, that parent may represent the minor child or unborn child.

(b) If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is related to the settlor, other than by reason of being married to the other parent, may represent the minor child or unborn child.

(c) Subject to s. 701.0301 (4), if neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is the settlor of the trust that is the subject of the representation may represent the minor child or unborn child.

(d) If neither parent is a beneficiary or settlor of the trust that is the subject of the representation, the parent who is related to the settlor, other than by reason of being married to the other parent, may represent the minor child or unborn child.

(7) The order in which the representatives are listed in subs. (1) to (6) sets forth the priority that each such representative has relative to the others.

(8) If there is no representation by a person having a substantially identical interest under s. 701.0304, the trustee may appoint a representative to act if any of the following applies:

(a) There is no one permitted to act under subs. (1) to (6).

(b) All of the people entitled to act under subs. (1) to (6) have declined to act.

(c) The trustee determines that the otherwise available representation under subs. (1) to (6) might be inadequate.

History: 2013 a. 92, 151.

701.0304 Representation by person having substantially identical interest. Unless otherwise represented with respect to a particular question or dispute, a minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

History: 2013 a. 92.

701.0305 Appointment of representative by a court. **(1)** If the court determines that an interest is not represented under this subchapter, or that the otherwise available representation might be inadequate, the court may appoint a representative or guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of the person who is not represented or whose representation might be inadequate. A representative or guardian ad litem may be appointed to represent several persons or interests.

(2) A representative or guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a representative or guardian ad litem may consider any general benefit accruing to the living members of the individual's family.

History: 2013 a. 92.

SUBCHAPTER IV

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

701.0401 Methods of creating a trust. A trust may be created by any of the following:

(1) A transfer of property to another person as trustee during the settlor's lifetime, by will, or by other disposition taking effect upon the settlor's death.

(2) A declaration by an owner of property that the owner holds identifiable property as trustee or declaration by any person who intends to create a trust with the expectation that property of the person or others will be transferred to the trust.

(3) An exercise of a power of appointment in favor of a trustee.

(4) A court pursuant to its statutory or equitable powers.

(5) A guardian of the estate or conservator acting with authority of the court, a representative payee, or an agent under a power of attorney that expressly grants authority to create the trust.

(6) Any other manner authorized by statute, regulation, common law, or other provision having the effect of law.

History: 2013 a. 92.

701.0402 Requirements for creation. **(1)** A trust is created only if all of the following are satisfied:

(a) The settlor of the trust has capacity, as defined in sub. (4), to create the trust, unless the trust is created by court order or by an agent, guardian of the estate, conservator, or representative payee with authority to act.

(b) The settlor indicates an intention to create the trust; or a statute, regulation, common law, other provision having the effect of law, judgment, or decree creates or authorizes the creation of a trust.

(c) The trust has a definite beneficiary or is one of the following:

1. A charitable trust.

2. A trust for the care of an animal, as provided in s. 701.0408.

3. A trust for a noncharitable purpose, as provided in s. 701.0409.

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained at the time the trust is created or in the future.

(3) A power in a trustee or trust protector to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(4) The capacity required to create a trust is the same as the capacity to make a will.

History: 2013 a. 92.

701.0403 Trusts created in other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation, any of the following was satisfied:

(1) The settlor was domiciled, had a place of abode, or was a national.

(2) A trustee was domiciled or had a place of business.

(3) Any trust property was located.

History: 2013 a. 92.

701.0404 Trust purposes. A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries or for a noncharitable, but otherwise valid, purpose as described in s. 701.0409.

History: 2013 a. 92.

701.0405 Charitable purposes; enforcement. **(1)** A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health or governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, or designate persons or procedures for selecting charitable purposes or beneficiaries, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor of a charitable trust or his or her designees, whether identified within or without the terms of the trust, or a charitable entity named in the trust instrument, or the attorney general, or a cotrustee, or such other person the court determines to have sufficient interest may maintain a proceeding to enforce the trust.

History: 2013 a. 92.

701.0406 Creation of trust induced by fraud, duress, or undue influence. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

History: 2013 a. 92.

701.0407 Evidence of oral trust. Except as required by a statute other than this chapter, a trust does not need to be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

History: 2013 a. 92.

701.0408 Trust for care of animal. **(1)** A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed under this subsection.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the

intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

History: 2013 a. 92.

701.0409 Noncharitable trust without ascertainable beneficiary. Except as otherwise provided in s. 701.0408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.

(2) A trust may be created for maintaining, keeping in repair, and preserving any grave, tomb, monument, gravestone, or any cemetery. Any cemetery authority under s. 157.061 (2) may receive property in trust for any of the purposes specified in this subsection and apply the income from the trust to the purpose stated in the trust instrument.

(3) A trust authorized by this section may be enforced by a trust protector with the power to enforce the trust. If there is not a trust protector with the power to enforce the trust, a court may appoint a trust protector with the power to enforce the trust under s. 701.0818.

(4) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

History: 2013 a. 92.

701.0410 Modification or termination of trust; proceedings for approval or disapproval. (1) In addition to the methods of termination prescribed by ss. 701.0411 to 701.0414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under ss. 701.0411 to 701.0416, or a proposed trust combination or division under s. 701.0417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under s. 701.0411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under s. 701.0413. A trustee does not have standing to oppose a proposed modification or termination commenced under s. 701.0411 (1).

(3) A trustee may not be compelled by a modification or termination under this section or under ss. 701.0411 to 701.0416 to make distributions to or for any beneficiary of a trust for an individual with a disability or to terminate the trust, during the lifetime of the individual with a disability. A court may modify the terms of a trust for an individual with a disability with retroactive effect or reform the terms of such trust to achieve the settlor's objective or, if because of circumstances not anticipated by the settlor, to otherwise further the purposes of the trust so that it does not result in trust property being countable as resources or income of the individual with a disability for purposes of public assistance.

History: 2013 a. 92.

701.0411 Modification or termination of noncharitable irrevocable trust by consent. (1) A noncharitable irrevocable trust may be modified or terminated, with or without court approval, upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by a representative under s. 701.0303 only if the representative is specifically authorized to consent to a trust's modification or termination under a power of attorney, the terms of the trust, or by a court under a guardianship or conservatorship.

(2) (a) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(4) A court may not compel a beneficiary to consent to a modification or termination to satisfy a creditor of the beneficiary.

(5) Upon termination of a trust under sub. (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries.

(6) If not all of the beneficiaries consent to a proposed modification or termination of the trust under sub. (1) or (2), the modification or termination may be approved by the court if the court is satisfied that all of the following apply:

(a) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section.

(b) The interests of a beneficiary who does not consent will be adequately protected.

(7) A party proposing to modify or terminate a trust under sub. (1) or (2) shall give notice of the proposed modification or termination to the settlor, if living, the trustee, each trust protector, each directing party, and each beneficiary at least 30 days before the proposed effective date of the modification or termination.

History: 2013 a. 92.

701.0412 Modification or termination because of unanticipated circumstances or inability to administer trust effectively. (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the court shall make the modification in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

History: 2013 a. 92.

701.0413 Cy pres. (1) The purpose of this section is to broaden the power of the courts to make charitable gifts more effective. The court shall liberally apply the cy pres doctrine.

(2) Except as provided in sub. (3), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply the cy pres doctrine to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In determining the alternative plan for disposition of the property under this paragraph, the court shall take into account current and future community needs in the general field of charity within which the original charitable purpose falls, other charitable interests of the settlor, the amount of principal and income available under the trust, and other relevant factors. A person with standing to enforce the terms of a charitable trust under s. 701.0405 (3) has standing to commence a proceed-

ing under this paragraph. The attorney general is a necessary party in all proceedings under this paragraph.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under sub. (2) to apply the cy pres doctrine to modify or terminate the trust only if, when the provision takes effect, the trust property is to revert to the settlor and the settlor is still living.

(4) A party petitioning the court for action under this section shall give notice to the settlor, if living, the trustee, each trust protector, each directing party, the qualified beneficiaries, and any person with standing to enforce the terms of a charitable trust under s. 701.0405 (3).

History: 2013 a. 92.

701.0414 Modification or termination of uneconomic trust. (1) In this section:

(a) "Adjustment reference number" means the consumer price index for all urban consumers, as published by the United States bureau of labor statistics, in effect on January 1 of the year in which an adjustment is to be made in accordance with sub. (3).

(b) "Base reference number" means the consumer price index for all urban consumers, as published by the United States bureau of labor statistics, in effect on January 1 of the base year.

(c) "Base year" means 2014.

(2) After notice to the settlor, if living, each trust protector, each directing party, and the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 or a revised applicable figure, as determined under sub. (3), may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(3) The dollar amount specified in sub. (2) shall be adjusted to a revised applicable figure on July 1, 2019, and every 5 years thereafter. The revised applicable figure shall be determined as follows:

(a) Calculate the percentage change between the base reference number and the adjustment reference number for the year in which the adjustment is being made.

(b) 1. If the percentage change determined in par. (a) is a positive number, determine the revised applicable figure as follows:

a. Multiply $100,000 by the percentage change determined in par. (a), expressed as a decimal.

b. Round the product under subd. 1. a. to the nearest $1,000.

c. Add the value determined under subd. 1. b. to $100,000.

2. If the percentage change determined in par. (a) is a negative number, determine the revised applicable figure as follows:

a. Multiply $100,000 by the absolute value of the percentage change determined in par. (a), expressed as a decimal.

b. Round the product under subd. 2. a. to the nearest $1,000.

c. Subtract the value determined under subd. 2. b. from $100,000.

(4) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration even if the trust property has a total value in excess of the amount described in sub. (2).

(5) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(6) This section does not apply to an easement for conservation or preservation.

(7) A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

History: 2013 a. 92.

701.0415 Reformation to correct mistakes. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

History: 2013 a. 92.

701.0416 Modification to achieve settlor's tax objectives. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect. A party petitioning the court for action under this section shall give notice of the proceeding to the settlor, if living, the trustee, each trust protector, each directing party, and the qualified beneficiaries.

History: 2013 a. 92.

701.0417 Combination and division of trusts. (1) After notice to each trust protector, each directing party, and the qualified beneficiaries, a trustee may do any of the following if the result does not impair rights of any beneficiary or adversely affect achievement of any trust purposes:

(a) Combine 2 or more trusts into a single trust.

(b) Divide a trust into 2 or more separate trusts.

(2) Subject to the terms of the trust, the trustee may take into consideration differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance under sub. (1) (b) is treated as a separate trust for all purposes from the date on which the severance is effective. The effective date of the severance may be retroactive to a date before the date on which the trustee exercises the power.

(3) If a trustee combines 2 or more trusts into a single trust, the trustee shall identify which trust is the surviving trust.

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

History: 2013 a. 92 ss. 91, 294.

701.0418 Trustee's power to appoint assets to new trust. (1) DEFINITIONS. In this section:

(a) "Absolute power" means a power to invade trust assets for the benefit of a beneficiary that is not limited by a specific or ascertainable standard, whether or not the term "absolute" is used in the trust instrument. "Absolute power" includes a power to invade trust assets for the best interests, welfare, comfort, or happiness of a beneficiary.

(b) "First trust" means the trust from which assets are or may be appointed under sub. (2).

(c) "Second trust" means the trust or trusts to which assets are or may be appointed under sub. (2).

(2) POWER TO APPOINT. (a) Except as otherwise provided in this subsection and in subs. (3) and (5), a trustee who has the power to invade the principal of a first trust for the benefit of a beneficiary who is eligible to receive or entitled to the income of the first trust

or entitled to an annuity or unitrust payment from the first trust may exercise the power by appointing part or all of the assets of the first trust in favor of a trustee of a 2nd trust if all of the following apply:

1. The appointment of assets does not reduce any fixed income, annuity, or unitrust interest of a beneficiary.

2. If the trustee's power to invade income or principal of the first trust is limited by a specific or ascertainable standard, the appointment of assets does not result in the trustee of the 2nd trust or any other person having a power to invade the income or principal of the 2nd trust that is broader than the trustee's power to invade income or principal of the first trust. This subdivision does not apply if the 2nd trust is a trust for an individual with a disability.

3. One of the following applies:

a. The beneficiaries of the first trust are the same as the beneficiaries of the 2nd trust.

b. If the first trust grants the trustee the absolute power to invade principal, the 2nd trust includes only all or some of the beneficiaries of the first trust.

(b) Paragraph (a) applies to a trustee whether or not the trustee has an absolute power to invade principal and whether or not there is a current need to invade principal under the terms of the first trust.

(3) LIMITATIONS ON EXERCISE OF POWER. A trustee may not appoint assets to a 2nd trust under sub. (2) if any of the following applies:

(a) The trust instrument creating the first trust expressly prohibits the trustee from appointing assets of the first trust to a 2nd trust by reference to this section or by using the term "decanting."

(b) A contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code and one of the following applies:

1. The 2nd trust contains a provision that, if included in the first trust, would have prevented the first trust from qualifying for the deduction or would have reduced the amount of the deduction.

2. The 2nd trust does not contain a provision that was contained in the first trust that, if omitted from the first trust, would have prevented the first trust from qualifying for the deduction or would have reduced the amount of the deduction.

(c) The trustee has a beneficial interest in the first trust unless the 2nd trust is a trust for an individual with a disability, the trustee's only beneficial interest in the first trust is as a remainder beneficiary, and the trustee's beneficial interest in the 2nd trust is not greater than the trustee's beneficial interest in the first trust.

(d) The appointment of assets to a 2nd trust would impair currently exercisable withdrawal rights of a beneficiary of the first trust and one of the following applies:

1. The withdrawal rights were granted to the beneficiary in a manner designed to allow contributions subject to the withdrawal rights to qualify for the federal gift tax annual exclusion.

2. The terms of the 2nd trust would impair gifts previously made to the first trust from qualifying for the federal gift tax annual exclusion under section 2503 of the Internal Revenue Code.

(e) The appointment of assets to the 2nd trust would violate a rule against perpetuities applicable to the first trust or suspend a trustee's power of alienation over assets of the first trust in a manner that would cause all or a portion of the 2nd trust to be void.

(f) The appointment of assets to the 2nd trust under sub. (2) would impair the essential purpose of a trust for an individual with a disability.

(4) PERMISSIBLE TERMS OF 2ND TRUST. (a) Subject to pars. (b) to (d) and subs. (2), (3), and (5), the trustee of the first trust may create a 2nd trust instrument that includes terms that are intended to achieve any purpose, including terms that are intended to do any of the following:

1. Correct a drafting error in the first trust.

2. Clarify potentially ambiguous terms contained in the first trust.

3. Change the age of distribution to a beneficiary of the first trust.

4. Extend the duration of the first trust.

5. Protect a beneficiary of the first trust, including protecting the beneficiary from self−destructive behavior.

6. Allow the trustee of the 2nd trust to transfer trust assets to a community trust. In this subdivision, "community trust" means a master trust that is established and managed by a nonprofit organization that maintains sub−accounts for individual beneficiaries that each satisfy the definition of a trust for an individual with a disability.

7. Add or remove a spendthrift trust provision to the first trust.

8. Modify investment provisions contained in the first trust, including those relating to permissible investments, use of investment advisors, or self−dealing transactions.

9. Change a present or future trustee of the first trust, including by defining the method by which a trustee or cotrustee may be appointed or removed and replaced.

10. Appoint a trust protector of the 2nd trust and define the powers of the trust protector.

11. Appoint a directing party of the 2nd trust and define the powers of the directing party.

12. Change the principal place of administration of the first trust.

13. Change the governing law of the first trust.

14. Allow for the division of the first trust into 2 or more trusts.

15. Allow for the merger of the first trust with one or more trusts.

16. Add or modify an exculpatory provision for a trustee, trust protector, or directing party.

17. Obtain desirable tax treatment, as determined by the trustee of the first trust, or to avoid adverse tax consequences, as determined by the trustee of the first trust, including provisions relating to grantor trust status under sections 671 to 679 of the Internal Revenue Code.

18. Modify a power in the first trust to invade income and principal.

19. Modify or eliminate a general or special power of appointment in the first trust.

(b) The trust instrument of the 2nd trust may include terms granting a beneficiary a general or special power of appointment only if the trustee of the first trust has the absolute power to invade income and principal.

(c) 1. The trust instrument of the 2nd trust may include terms that are intended to change terms of the first trust that are applicable to a beneficiary who is an individual with a disability only if the purpose of the change is to allow the beneficiary to qualify or continue to be qualified to receive public assistance.

2. Subdivision 1. applies regardless of whether the first trust includes specific or ascertainable standards for distribution.

(d) The trust instrument of the 2nd trust may include a term that adopts or expands an exculpatory provision relating to the trustee only if one of the following applies:

1. Any trustee of the first trust who would benefit from the adoption of the term in the 2nd trust abstains from the consideration and adoption of the term and the trustees of the first trust who would not benefit from the adoption of the term adopt the trust instrument of the 2nd trust.

2. A court approves the trust instrument of the 2nd trust.

(5) PROCEDURAL MATTERS. (a) A trustee shall appoint assets to a 2nd trust under sub. (2) by an instrument in writing that is signed and acknowledged by the trustee and shall include the written instrument with the records of the first and 2nd trusts. A

trustee may appoint assets to a 2nd trust under sub. (2) upon notice, without court approval, under the procedure described in par. (b), or with court approval, under the procedure described in par. (c).

(b) 1. If a trustee chooses to proceed without a court order, the trustee shall give notice of the manner in which the trustee intends to appoint assets to a 2nd trust under sub. (2) to all of the following:

a. The qualified beneficiaries of the first trust.

b. Each trust protector appointed under the terms of the first trust.

c. Each directing party appointed under the terms of the first trust.

d. The settlor of the first trust, if living.

2. To satisfy the trustee's notice obligation under this paragraph, a trustee shall provide each person entitled to receive notice under subd. 1. all of the following:

a. A copy of the proposed written instrument under which the trustee will appoint assets to a 2nd trust.

b. The proposed effective date of the appointment.

c. A copy of the trust instrument of the first trust.

d. A copy of the trust instrument of the 2nd trust.

3. A trustee may not appoint assets to the 2nd trust until 30 days after the trustee provides notice as required under this paragraph unless every person who is entitled to receive notice under subd. 1. waives the 30−day notice period by delivering a signed written instrument to the trustee. A person's waiver of the 30−day notice period does not constitute that person's consent to the trustee's appointment of assets to a 2nd trust.

4. If a person entitled to receive notice under subd. 1. delivers a written objection to the trustee before the effective date of the appointment of assets to a 2nd trust, the trustee may not appoint the assets to a 2nd trust, as specified in the trustee's notice, without obtaining court approval under par. (c) unless the written objection is withdrawn.

5. If the trustee does not receive a written objection from any person entitled to receive notice under subd. 1. before the effective date of the appointment of assets to the 2nd trust or all written objections to the proposed appointment of assets to the 2nd trust are withdrawn, the trustee may appoint the assets to a 2nd trust, as specified in the notice.

(c) 1. If a trustee chooses to proceed with court approval, including after receiving a written objection to a proposed appointment of assets, the trustee shall petition a court to approve a proposed appointment of assets to a 2nd trust under sub. (2). The trustee shall provide notice of the petition to all qualified beneficiaries of the first trust, each trust protector appointed under the first trust, each directing party appointed under the first trust, and to the settlor of the first trust, if living. The trustee shall include in the notice of the petition the proposed effective date of the appointment of assets to a 2nd trust. The trustee shall also provide to each person who is entitled to receive notice under this paragraph a copy of the proposed instrument under which the trustee will appoint assets to a 2nd trust, the proposed effective date of the appointment, a copy of the trust instrument of the first trust, and a copy of the trust instrument of the 2nd trust.

2. If a person who is entitled to receive notice under subd. 1. files an objection with the court, in determining whether to grant or deny a petition under subd. 1., the court shall consider all of the following:

a. The purpose of the proposed appointment of assets under sub. (2).

b. The reasons for any objection made by a person entitled to receive notice under subd. 1.

c. Changes in circumstances that have occurred since the creation of the first trust.

d. Whether the appointment of assets under sub. (2) complies with the requirements of this section.

3. If no person who is entitled to receive notice under subd. 1. files an objection with the court or any objection that has been filed with the court is withdrawn, the court shall enter an order approving the appointment of assets under sub. (2) as set forth in the trustee's notice unless the court determines that the appointment of assets does not comply with the requirements of this section.

(6) SUBSEQUENTLY DISCOVERED ASSETS. (a) The appointment of all of the assets of the first trust in favor of the trustee of the 2nd trust includes subsequently discovered assets otherwise belonging to the first trust and assets paid to or acquired by the first trust subsequent to the appointment in favor of the 2nd trust.

(b) Except as otherwise provided by the trustee of the first trust, the appointment of part but not all of the assets of the first trust in favor of the 2nd trust does not include subsequently discovered assets belonging to the first trust or assets paid to or acquired by the first trust subsequent to the appointment in favor of the 2nd trust, which remain the assets of the first trust.

(7) LIABILITY. (a) This section does not create or imply a duty on a trustee to appoint assets to a 2nd trust under sub. (2). A trustee that does not appoint assets to a 2nd trust under sub. (2) is not liable for the failure to do so.

(b) A trustee who appoints assets to a 2nd trust under sub. (2) is not liable to any beneficiary for any loss related to the appointment unless the trustee did not appoint the assets in good faith.

(8) MISCELLANEOUS PROVISIONS. (a) The appointment of assets to a 2nd trust under sub. (2) is not an exercise of a general power of appointment.

(b) A trustee may appoint assets to a 2nd trust under sub. (2) even if the first trust includes a spendthrift clause or a provision that prohibits amendment or revocation of the trust.

(c) This section does not limit a trustee who has a power to invade principal to appoint property in further trust to the extent the power arises under the terms of the first trust or under any other section of this chapter or under another provision of law or under common law.

(d) The restriction relating to a trustee under sub. (3) (c) does not preclude a cotrustee who does not have a beneficial interest in the first trust from appointing assets to a 2nd trust under sub. (2) even if the terms of the first trust, applicable law, or other circumstances would otherwise require the majority or unanimous action of the trustees of the first trust.

(e) For purposes of this section, if beneficiaries of a first trust are defined as a class of persons, the class shall include any person who falls within the class of persons after the trustee appoints assets to the 2nd trust.

(f) Notwithstanding s. 701.0103 (23), a trustee of a first trust who appoints assets to a 2nd trust under sub. (2) or creates a 2nd trust instrument under sub. (4) is not the settlor of the 2nd trust.

(g) To the extent a directing party or trust protector has the power to invade the principal of a first trust, as described in sub. (2), this section applies to the directing party or trust protector as if the directing party or trust protector is a trustee.

History: 2013 a. 92.

701.0419 Transfers to trusts. (1) VALIDITY AND EFFECT. The order of execution of a 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 a trust shall cause assets in such trust to be included in property administered as part of the testator's estate.

(2) GOVERNING TERMS. Property transferred or appointed by a will or by a beneficiary designation under an employee benefit plan, life insurance policy, or online tool, as defined in s. 711.03 (18), or other instrument permitting designation of a beneficiary to a trust, shall be administered in accordance with the terms of the trust as the terms of the trust may have been modified prior to the testator's or designator's death, even though the will, beneficiary

designation, online tool, or other instrument was not reexecuted or republished after exercise of the power to modify, unless the will, beneficiary designation, online tool, or other instrument expressly provides otherwise.

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

(a) If the testator was a necessary party to the revocation or other termination of the trust, the provision in the testator's will shall be invalid.

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

History: 1971 c. 66; 1991 a. 316; 2013 a. 92 s. 132; Stats. 2013 s. 701.0419; 2015 a. 300.

SUBCHAPTER V

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

701.0501 Rights of beneficiary's creditor or assignee. (1) (a) To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a judgment creditor or an assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

(b) This subsection does not apply to a trust for an individual with a disability.

(2) A trustee is not liable to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary if any of the following applies:

(a) The beneficiary's interest is protected by a spendthrift provision.

(b) The trust is a trust for an individual with a disability.

History: 2013 a. 92.

701.0502 Spendthrift provision. (1) A spendthrift provision is valid only if any of the following applies:

(a) The beneficiary is a person other than the settlor and is not treated as the settlor under s. 701.0505 (2).

(b) The trust is a trust for an individual with a disability.

(2) Subject to sub. (1), a term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, restrains both a voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary may not attach, garnish, execute on, or otherwise reach the interest or a distribution by the trustee before its receipt by the beneficiary.

(4) Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's occupancy or use in accordance with the trustee's authority under the trust instrument may not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.

History: 2013 a. 92.

701.0503 Exceptions to spendthrift provision. (1) CLAIMS FOR CHILD SUPPORT. Notwithstanding s. 701.0502, upon application of a person having a valid order directing a beneficiary to make payment for support of the beneficiary's child, the court may do any of the following:

(a) If the beneficiary is entitled to receive income or principal under the trust, order the trustee to satisfy part or all of the claim out of part or all of payments of income or principal as they are due, presently or in the future;

(b) If a beneficiary may receive income or principal at the trustee's discretion under the trust, order the trustee to satisfy part or all of the claim out of part or all of future payments of income or principal that are made pursuant to the exercise of the trustee's discretion in favor of such beneficiary.

(2) CLAIMS FOR PUBLIC SUPPORT. Notwithstanding s. 701.0502 and except as provided in sub. (3), if the settlor is legally obligated to pay for the public support of a beneficiary under s. 46.10, 49.345, or 301.12 or the beneficiary is legally obligated to pay for the beneficiary's public support or for support furnished to the beneficiary's spouse or minor child under s. 46.10, 49.345, or 301.12, upon application by the appropriate state department or county official, the court may do any of the following:

(a) If the beneficiary is entitled to receive income or principal under the trust, order the trustee to satisfy part or all of the liability out of part or all of payments of income or principal as they are due, presently or in the future;

(b) 1. Except as provided in subd. 2., if the beneficiary may receive income or principal at the trustee's discretion under the trust, order the trustee to satisfy part or all of the liability out of part or all of future payments of income or principal which are to be made pursuant to the exercise of the trustee's discretion in favor of the beneficiary.

2. In the case of a beneficiary who may receive income or principal of the trust at the trustee's discretion and who is a settlor or a spouse or minor child of the settlor, order the trustee to satisfy part or all of the liability without regard to whether the trustee has then exercised or may thereafter exercise the trustee's discretion in favor of the beneficiary.

(3) TRUST FOR AN INDIVIDUAL WITH A DISABILITY. Subsection (2) does not apply to any trust for an individual with a disability.

(4) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by a court under sub. (1) or (2) may be modified upon application of an interested person.

(5) EXEMPT ASSETS. Assets of a trust that are exempt from claims of creditors under other statutes are not subject to sub. (1) or (2).

History: 2013 a. 92 ss. 97, 103 to 107, 111, 112; Stats. 2013 s. 701.0503.

Trust income that is income to the beneficiary under federal tax law is subject to a child support order regardless of whether a distribution is made to the beneficiary. Grohmann v. Grohmann, 189 Wis. 2d 532, 525 N.W.2d 261 (1995).

In not revealing that he was a trust beneficiary, a father failed to make proper financial disclosure at the time of a divorce as was required by s. 767.127. The rationale of *Grohmann* is applicable to both grantor and nongrantor trusts if there is an obligation to report that trust's income as one's own because it is the obligation to report the income that makes the income reachable for calculations of a child support obligation. Stevenson v. Stevenson, 2009 WI App 29, 316 Wis. 2d 442, 765 N.W.2d 811, 07−2143.

701.0504 Discretionary trusts; effect of standard. (1) For purposes of this subchapter, and except as provided in sub. (3), a beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an interest in property or an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as sole trustee or cotrustee.

(2) Except as provided in this subchapter, a creditor or other claimant may not attach present or future distributions from a beneficiary's interest in property or an enforceable right, obtain an order from a court forcing the judicial sale of the interest or compelling the trustee to make distributions, or reach the interest or right by any other means, even if the trustee has abused the trustee's discretion.

(3) Subsections (1) and (2) do not apply if a beneficiary is acting as sole trustee of a trust for his or her benefit and his or her discretion to make distributions to himself or herself is not limited by

an ascertainable standard or the consent of a party holding an adverse interest to the beneficiary.

(4) (a) Except as provided in par. (b), this section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(b) The right of a beneficiary described in par. (a) may not be exercised by a creditor.

History: 2013 a. 92.

701.0505 Creditor's claim against settlor. (1) (a) Whether or not the terms of a trust include a spendthrift provision and except as provided in par. (b), the following rules apply to claims of a settlor's creditors:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust that is not a trust for an individual with a disability, upon application of a judgment creditor of the settlor, the court may, if the trust instrument requires or authorizes the trustee to make payments of income or principal to or for 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. If a trust has more than one settlor, the amount the judgment creditor of a particular settlor may reach may not exceed the settlor's interest in the trust.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) Assets of a trust that are exempt from claims of creditors under other statutes are not subject to par. (a).

(2) For purposes of this subchapter, all of the following apply:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(b) A beneficiary of a trust may not be considered a settlor solely because of a lapse, waiver, or release of any of the following:

1. A power described under par. (c).

2. The beneficiary's right to withdraw part of the trust property, to the extent that the value of the property affected by the lapse, waiver, or release in any year does not exceed the greater of the following:

a. The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal Revenue Code.

b. The amount referenced in section 2503 (b) of the Internal Revenue Code for each individual other than the beneficiary who makes a transfer to the trust or who is deemed to make a transfer to the trust pursuant to an election to split gifts under section 2513 (a) of the Internal Revenue Code.

(c) A beneficiary of a trust is not a settlor, has not made a voluntary or involuntary transfer of the beneficiary's interest in the trust, and does not have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust solely because the beneficiary holds, exercises, or allows in any capacity, any of the following:

1. A presently exercisable power to consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary if the power is any of the following:

a. Exercisable only with the consent of another person holding an interest adverse to the beneficiary's interest.

b. Limited by an ascertainable standard of the beneficiary.

2. A presently exercisable power to appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate.

3. A testamentary power of appointment.

4. A presently exercisable right described in sub. (2) (b).

(d) A beneficiary of a trust is not a settlor solely because the beneficiary is entitled to nondiscretionary distributions from the trust.

(e) 1. Contributions to the following trusts are not considered to have been contributed by the settlor:

a. An irrevocable marital trust that is treated as qualified terminable interest property under section 2523 (f) of the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

b. An irrevocable marital trust that is treated as a general power of appointment trust under section 2523 (e) of the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

c. An irrevocable trust for the settlor's spouse if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

d. An irrevocable trust for the benefit of a person, the settlor of which is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse.

e. An irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment in another person.

2. A person who would otherwise be treated as a settlor of a trust described in subd. 1. a. to e. is not treated as a settlor of the trust.

3. For purposes of this paragraph, notwithstanding s. 701.0103 (3), "beneficiary" means a person who satisfies s. 701.0103 (3) (a) or (b) and who is designated in a trust instrument or through the exercise of a special or general power of appointment.

(3) Any order entered by a court under this section is subject to modification upon application of an interested person.

History: 2013 a. 92 ss. 99, 108 to 110.

701.0506 Overdue distribution. (1) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. "Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if any of the following applies:

(a) The discretion is expressed in the form of a standard of distribution.

(b) The terms of the trust authorizing a distribution couple language of discretion with language of direction.

(2) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

History: 2013 a. 92.

701.0507 Personal obligations of trustee. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

History: 2013 a. 92.

701.0508 Debts of decedents. (1) LIMITATIONS ON CLAIMS. (a) 1. A trustee who has a duty or power to pay the debts of a dece-

dent may publish in the county in which the decedent resided, as a class 3 notice, under ch. 985, a deadline for filing claims with the trustee. The deadline shall be the date that is 4 months after the date of the first insertion of the notice.

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

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

1. The claim is a claim based on tort, on a marital property agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on unemployment compensation contributions due or benefits overpaid; a claim for funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496, 49.682, or 49.849; or a claim of the United States.

2. All of the following circumstances exist:

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

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

c. At least 30 days before the date specified in the notice under par. (a) 1., the claimant did not have actual knowledge of the date on which the claim would be barred.

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

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

(3) CLAIMS OF CREDITORS WITHOUT NOTICE. (a) A claim not barred by sub. (1) (a) 2. because of the operation of sub. (1) (b) 2. may be enforced against trust property only as provided in this subsection.

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

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

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

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

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

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

History: 1997 a. 188; 1999 a. 9; 2013 a. 20; 2013 a. 92 ss. 118, 119; Stats. 2013 s. 701.0508.

SUBCHAPTER VI

REVOCABLE TRUSTS

701.0601 Capacity of settlor of revocable trust. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

History: 2013 a. 92.

701.0602 Revocation or amendment of revocable trust. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2014.

(2) If a revocable trust is created or funded by more than one settlor, all of the following apply:

(a) To the extent the trust consists of marital or community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent the trust consists of property other than marital or community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) A settlor may revoke or amend a revocable trust by any of the following means:

(a) By substantial compliance with a method provided in the terms of the trust.

(b) If the terms of the trust do not provide a method, by any of the following means:

1. A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust.

2. Any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall transfer the trust property as the settlor directs. However, with respect to marital or community property, the trustee shall transfer the property to both spouses as marital or community property.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power of attorney.

(6) A guardian of the estate or a conservator of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship or conservatorship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked, or for distributions made pursuant to sub. (5).

History: 2013 a. 92.

701.0603 Settlor's powers; powers of withdrawal. (1) While a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee, a directing party, and a trust protector are owed exclusively to, the settlor.

(2) If a revocable trust has more than one settlor, the duties of the trustee, a directing party, and a trust protector are owed to all of the settlors.

(3) During the period in which a power of withdrawal may be exercised, the holder of the power has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

History: 2013 a. 92.

701.0604 Limitation on action contesting validity of revocable trust; distribution of trust property. (1) A person must commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of the following:

(a) One year after the settlor's death.

(b) Four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. Except as provided in s. 701.0813 (2), a trustee is not liable to any person for not providing the information described in this paragraph.

(2) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless one of the following applies:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

History: 2013 a. 92.

SUBCHAPTER VII

OFFICE OF TRUSTEE

701.0701 Accepting or declining trusteeship. (1) Except as provided in sub. (3), a person designated as trustee accepts the trusteeship by doing any of the following:

(a) Substantially complying with a method of acceptance provided in the terms of the trust.

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may do any of the following:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship in writing to the settlor or, if the settlor is dead or incapacitated, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a distributee or a permissible distributee of the trust.

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

History: 2013 a. 92.

701.0702 Trustee's bond. (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A court may not require a bond from a trust company bank, state bank, or national bank that is authorized to exercise trust powers and that has complied with s. 220.09 or 223.02 nor shall a bond be required of a religious, charitable, or educational corporation or society.

History: 2013 a. 92.

701.0703 Cotrustees. (1) Cotrustees may act only by majority decision.

(2) If a vacancy occurs in a cotrusteeship, as provided under s. 701.0704, a majority of the remaining cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or the cotrustee is otherwise temporarily incapacitated or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or the cotrustee is otherwise temporarily incapacitated, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A trustee may delegate to a cotrustee a function unless the delegation is expressly prohibited by the terms of the trust. Unless a delegation is irrevocable, a trustee may revoke a delegation previously made.

(6) Except as provided in sub. (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Each trustee shall exercise reasonable care to do all of the following:

(a) Prevent a cotrustee from committing a material breach of trust.

(b) Compel a cotrustee to redress a material breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified all cotrustees of the dissent at or before the time of the action is not liable for the action unless the action is a material breach of trust.

History: 2013 a. 92.

701.0704 Vacancy in trusteeship; appointment of successor. (1) A vacancy in a trusteeship exists if any of the following occurs:

(a) A person designated as trustee declines the trusteeship.

(b) A person designated as trustee cannot be identified or does not exist.

(c) A trustee resigns.

(d) A trustee is disqualified or removed.

(e) A trustee dies.

(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship does not need to be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship that is required to be filled shall be filled in the following order of priority:

(a) By a person designated in the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries, except that, if the trust is a trust for an individual with a disability, the person appointed under this paragraph

may not be the individual with a disability, his or her spouse, or a relative of the individual with a disability who is legally responsible for his or her support.

(c) By a person appointed by the court.

(4) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee, directing party, or trust protector whenever the court considers the appointment necessary for the administration of the trust.

History: 2013 a. 92.

701.0705 Resignation of trustee. (1) A trustee may resign in any of the following manners:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, each cotrustee, each trust protector, and each directing party.

(b) With the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

History: 2013 a. 92.

701.0706 Removal of trustee. (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if any of the following applies:

(a) The trustee has committed a material breach of trust.

(b) A lack of cooperation among cotrustees substantially impairs the administration of the trust.

(c) The court determines that removal of the trustee best serves the interests of the beneficiaries because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively.

(d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under s. 701.1001 (2) as may be necessary to protect the trust property or the interests of the beneficiaries.

History: 2013 a. 92.

701.0707 Delivery of property by former trustee. (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

History: 2013 a. 92.

701.0708 Compensation of trustee. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation or refer to another ascertainable source for determining that compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if any of the following applies:

(a) The duties of the trustee are substantially different from those contemplated when the trust was created.

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

(3) If the trustee has rendered other services in connection with the administration of the trust, the trustee may receive reasonable compensation for the other services rendered, in addition to reasonable compensation as trustee.

History: 2013 a. 92.

701.0709 Reimbursement of expenses. (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for all of the following:

(a) Expenses that were properly incurred in the administration of the trust.

(b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

History: 2013 a. 92.

701.0710 Title of trust property. A settlor or transferor may effectively transfer property to a trust by placing legal title of the property in the name of the trustee, which shall include any successor trustee regardless of whether a successor trustee is referenced in the transfer document. A transfer that places legal title in the name of the trust itself places legal title in the name of the trustee.

History: 2013 a. 92.

SUBCHAPTER VIII

DUTIES AND POWERS OF TRUSTEES, DIRECTING PARTIES, AND TRUST PROTECTORS

701.0801 Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

History: 2013 a. 92.

701.0802 Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 701.1012, a sale, encumbrance, or other transaction that involves the investment or management of trust property and is entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless any of the following applies:

(a) The transaction was authorized by the terms of the trust.

(b) The transaction was approved by the court.

(c) The beneficiary did not commence a judicial proceeding within the time allowed by s. 701.1005.

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with s. 701.1009.

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with any of the following:

(a) The trustee's spouse.

(b) The trustee's descendants, siblings, parents, or their spouses.

(c) An agent or attorney of the trustee.

(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule in s. 881.01. In addition to receiving compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled to receive a copy of the trustee's report under s. 701.0813 (3) of the rate and method by which that compensation was determined.

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(7) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee.

(b) Payment of reasonable compensation to the trustee.

(c) A transaction between a trust and another trust, a decedent's estate, a guardianship of the estate, a conservatorship, or a custodianship of which the trustee is a fiduciary or in which a beneficiary has an interest.

(d) A deposit of trust money in a regulated financial−service institution operated by the trustee.

(e) An advance by the trustee of money for the protection of the trust.

(8) The court may appoint a trustee, trust protector, or directing party to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

History: 2013 a. 92.

701.0803 Impartiality. If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests and the purposes and terms of the trust.

History: 2013 a. 92.

701.0804 Prudent administration. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

History: 2013 a. 92.

701.0805 Costs of administration. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, the skills of the trustee, and the complexity of the trust administration.

History: 2013 a. 92.

701.0806 Trustee's skills. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

History: 2013 a. 92.

701.0807 Delegation by trustee. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in each of the following:

(a) Selecting an agent.

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with sub. (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state even if the terms of the delegation provide for a different jurisdiction or venue.

(5) This section does not apply to a trustee's delegation of investment and management functions. A trustee's delegation of investment and management functions is governed by s. 881.01 (10).

History: 2013 a. 92.

701.0808 Powers to direct; directing parties. (1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(2) A settlor in a trust instrument, a court in a trust instrument or court order, or interested persons in a nonjudicial settlement agreement may appoint a directing party to direct the trustee on investment or distribution decisions or to make investment or distribution decisions regarding directed trust property. If a trustee acts in accordance with the direction of a directing party or fails to act due to lack of direction from a directing party, the trustee is not liable for any loss resulting directly or indirectly from any action taken or omitted with respect to the direction or lack of direction except for acts or omissions that are a result of the trustee's willful misconduct.

(3) A trustee does not have a duty to do any of the following:

(a) Provide advice to, consult with, monitor, or evaluate a directing party's conduct.

(b) Inform or warn a beneficiary, a 3rd party, or a directing party that the trustee disagrees with any of the directing party's actions or directions.

(c) Prevent a directing party from giving a direction or taking any action.

(d) Compel a directing party to redress the directing party's actions or directions.

(4) The administrative actions of a trustee related to matters within the scope of a directing party's power, including confirming that the directing party's directions have been carried out and recording and reporting actions taken pursuant to the directing party's direction, do not constitute either monitoring the directing party's actions or participating in the actions of the directing party.

(5) A directing party is a fiduciary and is required to act in good faith with regard to the terms of the trust and the interests of the beneficiaries. A directing party is liable for any loss that results from a breach of any of the directing party's fiduciary duties.

(6) (a) A directing party may request information about the trust from the trustee and, if the requested information is related to a power granted to the directing party, the trustee shall provide the requested information to the directing party. If a trustee is bound by any confidentiality restrictions with respect to information requested by a directing party, the trustee may require that the directing party agree to be bound by the confidentiality restric-

tions before delivering such information to the directing party. A trustee is not liable to any beneficiary for any loss or damages resulting from the trustee providing information to the directing party that is related to the power granted to the directing party.

(b) Except as otherwise provided in this chapter, a trustee does not have a duty to provide any information to the directing party that the directing party does not request.

(7) A trustee shall, in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees and costs to defend any claim made against the directing party.

(8) Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a directing party as if the directing party was a trustee.

(9) A person who accepts an appointment as a directing party of a trust submits to the jurisdiction of the courts of this state, as provided in s. 701.0202 (1).

History: 2013 a. 92, 151.

701.0809 Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property.

History: 2013 a. 92.

701.0810 Record keeping and identification of trust property. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in sub. (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of 2 or more separate trusts.

History: 2013 a. 92.

701.0811 Enforcement and defense of claims. A trustee shall take reasonable steps to enforce claims of the trust known to the trustee and to defend claims against the trust known to the trustee.

History: 2013 a. 92.

701.0812 Collecting trust property; duties of successor trustees. (1) A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a trustee or former trustee, or a trust protector or former trust protector.

(2) A successor trustee does not have a duty to examine the accounts of a former trustee.

History: 2013 a. 92.

701.0813 Duty to inform and report. (1) A trustee shall keep the distributees or permissible distributees of trust income or principal, and other qualified beneficiaries who so request, reasonably informed about the administration of the trust. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(2) A trustee shall do all of the following:

(a) Upon the request of a qualified beneficiary for a copy of the trust instrument, promptly furnish to the qualified beneficiary either a copy of the portions of the trust instrument relating to the interest of the qualified beneficiary or a copy of the trust instrument.

(b) Within a reasonable period of time after accepting a trusteeship, notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.

(c) Within a reasonable period of time after the date on which the trustee acquires knowledge of the creation of an irrevocable trust, or the date on which the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified beneficiaries of all of the following:

1. The trust's existence.

2. The identity of the settlor or settlors.

3. The name, address, and telephone number of each directing party and trust protector.

4. The right to request a copy of the documentation referred to in par. (a).

5. The right to request information under sub. (1).

6. The right to a trustee's report as provided in sub. (3).

(d) Notify the distributees or permissible distributees of trust income or principal, and other qualified beneficiaries who so request, of any change in the method or rate of the trustee's compensation.

(e) Upon receiving a petition to the court for action under ss. 701.0411 to 701.0416 that does not identify each trust protector and each directing party of the trust, notify the petitioning party of the identity of each trust protector and directing party, including the name, address, and telephone number of each trust protector and directing party, who is serving at the time the petition is filed.

(3) (a) At least annually and upon the termination of a trust, a trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, all of the following:

1. A report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation.

2. A listing of the trust assets and, if feasible, their respective market values.

(b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the former trustee shall send a report containing the information described under par. (a) 1. to the qualified beneficiaries. A personal representative or guardian may send the qualified beneficiaries a report containing the information described in par. (a) 1. on behalf of a deceased or incapacitated trustee.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(5) Subsections (2) (b) and (c) and (3) do not apply to a trustee who accepts a trusteeship before July 1, 2014, to an irrevocable trust created before July 1, 2014, or to a revocable trust that becomes irrevocable before July 1, 2014.

History: 2013 a. 92.

701.0814 Discretionary powers; tax savings. (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(2) Subject to sub. (4), and unless the terms of the trust expressly indicate that a provision of this subsection does not apply, all of the following apply:

(a) A person other than a settlor who is a beneficiary and a trustee, directing party, or trust protector of a trust that confers on the trustee, directing party, or trust protector a power to make discretionary distributions to or for the trustee's, directing party's, or trust protector's personal benefit may exercise the power only in accordance with an ascertainable standard.

(b) A trustee, directing party, or trust protector may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee, directing party, or trust protector personally owes another person.

(3) A power whose exercise is limited or prohibited by sub. (2) may be exercised by a majority of the remaining trustees, directing parties, or trust protectors whose exercise of the power is not so limited or prohibited. If the power of all trustees, directing parties, or trust protectors is so limited or prohibited, the court may appoint a trustee, directing party, or trust protector with authority to exercise the power.

(4) Subsection (2) does not apply to any of the following:

(a) A power held by the settlor's spouse who is the trustee, directing party, or trust protector of a trust for which a marital deduction, as defined in section 2056 (b) (5) or 2523 (e) of the Internal Revenue Code, was previously allowed.

(b) A trust during a period when the trust may be revoked or amended by its settlor.

(c) A trust if contributions to the trust qualify for the annual exclusion under section 2503 (c) of the Internal Revenue Code.

History: 2013 a. 92.

701.0815 General powers of trustee. (1) A trustee, without authorization by the court, may exercise the following powers:

(a) Powers conferred by the terms of the trust.

(b) Except as limited by the terms of the trust, all of the following powers:

1. All powers over the trust property that an unmarried, competent owner has over individually owned property.

2. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.

3. Any other powers conferred by this chapter.

(2) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

History: 2013 a. 92.

701.0816 Specific powers of trustee. Without limiting the authority conferred by s. 701.0815, a trustee may do all of the following:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person.

(2) Acquire or sell property, for cash or on credit, at public or private sale.

(3) Exchange, partition, or otherwise change the character of trust property.

(4) Deposit trust money in an account in a regulated financial−service institution.

(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust.

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital.

(7) With respect to a stock or other security, exercise the rights of an absolute owner, including the right to do any of the following:

(a) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement.

(b) Hold a stock or other security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery.

(c) Pay calls, assessments, and other sums chargeable or accruing against the stock or other security, and sell or exercise stock subscription or conversion rights.

(d) Deposit the stock or other security with a depository or other regulated financial−service institution.

(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust.

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired.

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, any directing party, any trust protector, and the beneficiaries against liability arising from the administration of the trust.

(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(13) With respect to possible liability for violation of environmental law, do any of the following:

(a) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property.

(b) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement.

(c) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law.

(d) Compromise claims against the trust that may be asserted for an alleged violation of environmental law.

(e) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

(15) Pay taxes; assessments; compensation of the trustee, a directing party, a trust protector, and employees and agents of the trust; and other expenses incurred in the administration of the trust.

(16) Exercise elections with respect to federal, state, and local taxes.

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of loans under this subsection.

(19) Pledge trust property to guarantee loans made by others to the beneficiary.

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed.

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary, applying it for the beneficiary's benefit, or by doing any of the following:

(a) Paying the amount to the beneficiary's conservator or the beneficiary's guardian of the estate.

(b) Paying the amount to the beneficiary's custodian under the Uniform Transfers to Minors Act under ss. 54.854 to 54.898 or the Uniform Custodial Trust Act under ss. 54.950 to 54.988, and, for that purpose, creating a custodianship or custodial trust.

(c) If the trustee does not know of a conservator, guardian of the estate, custodian, or custodial trustee, paying the amount to an adult relative or other person having legal or physical care or custody of the beneficiary or to the guardian of the person of the beneficiary, to be expended on the beneficiary's behalf.

(d) Managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property or the trustee, a directing party, or a trust protector in the performance of the trustee's, directing party's or trust protector's duties.

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's, directing party's or trust protector's powers.

(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(27) Create or fund a plan under section 529 of the Internal Revenue Code, or other college savings vehicle, for a beneficiary's benefit.

(28) Obtain digital property, as provided under s. 711.07.

History: 2013 a. 92; 2015 a. 300.

701.0817 Distribution upon termination. (1) Upon termination or partial termination of a trust, the trustee may send a proposal for distribution to the beneficiaries of the trust. The right of any beneficiary to whom the proposal is sent to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed within a reasonable time to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent any of the following applies:

(a) The release was induced by improper conduct of the trustee.

(b) The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

History: 2013 a. 92.

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

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

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

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

a. Interpret or enforce the terms of the trust at the request of the trustee.

b. Review and approve the trustee's reports or accounting.

c. Resolve disputes between the trustee or a directing party and a beneficiary.

d. Consent to or veto distributions to a beneficiary.

e. Consent to or veto investment actions.

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

a. Modify or amend the trust instrument to respond to opportunities related to, or changes in, restraints on alienation or other state laws restricting the terms of a trust, the distribution of trust property, or the administration of the trust.

b. Modify or amend the trust instrument to achieve a different tax status or to respond to changes in federal or state law.

c. Change the principal place of administration, the tax situs of the trust, or the governing law of the trust.

d. Eliminate or modify the interests of a beneficiary, add a new beneficiary or class of beneficiaries, or select a beneficiary from an indefinite class.

e. Modify the terms of a power of appointment granted under the trust.

f. Remove, replace, or appoint a trustee, trust protector, or directing party or a successor trustee, trust protector, or directing party.

g. Terminate the trust.

h. Appoint assets to a new trust under s. 701.0418.

i. Advise the trustee on matters concerning a beneficiary, including whether to provide information to a beneficiary under s. 701.0813.

j. Correct errors or ambiguities in the terms of the trust that might otherwise require court construction or defeat the settlor's intent.

3. Notwithstanding subds. 1. and 2., a trust protector who is also the settlor may exercise any power granted to the trust protector in the trust protector's personal interests.

4. Notwithstanding subd. 2., a trust protector who is also a qualified beneficiary may exercise any power granted to the trust protector that is exercisable in a nonfiduciary capacity in the trust protector's personal interests.

(c) Notwithstanding pars. (a) and (b) and any provision in the trust instrument to the contrary, a trust protector who is also serving as the trustee or a directing party shall exercise any power granted to the trust protector in a fiduciary capacity.

(3) TRUST PROTECTOR DUTIES. (a) If a power is exercisable in a fiduciary capacity, the trust protector shall act in good faith and shall exercise the power in a manner that is consistent with the terms and purposes of the trust instrument, court order, or nonjudicial settlement agreement and the interests of the beneficiaries.

(b) If a power is exercisable in a nonfiduciary capacity, the trust protector shall act in good faith unless the trust instrument, court order, or nonjudicial settlement agreement provides otherwise.

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

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

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

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

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

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

(a) Except as provided in sub. (2) (b) 3. and 4., create or expand any beneficial interest, power of appointment, right of withdrawal, or right to receive trust property as a result of the exercise of a power of appointment if the creation or expansion would benefit the trust protector, the trust protector's estate, the trust protector's creditors, or creditors of the trust protector's estate.

(b) Modify or amend a trust to do any of the following:

1. Remove a requirement pursuant to 42 USC 1396p (d) (4) to pay back a governmental entity for benefits provided to the permissible beneficiary at the death of that beneficiary.

2. Reduce or eliminate an income interest of an income beneficiary of any of the following trusts:

a. A trust for which a marital deduction has been taken for federal or state estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code or any comparable provision of applicable state law, during the life of the settlor's spouse.

b. A charitable remainder trust under section 664 of the Internal Revenue Code, during the life of the noncharitable beneficiary.

c. A trust in which the settlor has a qualified interest under section 2702 (b) of the Internal Revenue Code, during any period in which the settlor is a beneficiary.

d. A trust for which an election as a qualified Subchapter S Trust under section 1361(d) of the Internal Revenue Code is in place.

(c) Modify any beneficial interest in a trust that qualified for a marital deduction or charitable deduction from federal or state estate tax in a manner that would have caused the trust not to qualify for the deduction.

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

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

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

(9) RIGHT TO INFORMATION. (a) A trust protector may request information about the trust from the trustee and, if the requested information is related to a power granted to the trust protector, the trustee shall provide the requested information to the trust protector. If a trustee is bound by any confidentiality restrictions with respect to information requested by a trust protector, the trustee may require that the trust protector agree to be bound by the confidentiality restrictions before delivering such information to the trust protector. A trustee is not liable to any beneficiary for any loss or damages resulting from the trustee providing information to the trust protector that is related to the power granted to the trust protector.

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

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

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

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

History: 2013 a. 92.

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

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

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

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

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

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

(4) If a trust receives a marital deduction transfer, the trustee has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The trustee may not take any action or have any power that may impair the availability of the marital deduction, but this does not require the trustee to make the election under

either section 2056 (b) (7), 2056A (a) (3), or 2523 (f) of the Internal Revenue Code.

History: 2013 a. 92.

SUBCHAPTER IX

INVESTMENT MANAGEMENT OF TRUSTS

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

History: 2013 a. 92.

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

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

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

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

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

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

(a) Prepare or review investment policy statements.

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

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

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

History: 2013 a. 92.

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

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

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

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

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

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

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

(4) This section does not apply to a trust that was executed before July 1, 2014, unless the trustee notifies the qualified beneficiaries that the trustee elects to be governed by this section and provides the qualified beneficiaries with a copy of this section.

(5) Subject to sub. (4), this section applies to a life insurance contract acquired, retained, or owned by a trustee before, on, or after July 1, 2014.

History: 2013 a. 92.

SUBCHAPTER X

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

701.1001 Remedies for breach of trust. (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, a court may do any of the following:

(a) Compel the trustee to perform the trustee's duties.

(b) Enjoin the trustee from committing a breach of trust.

(c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.

(d) Order a trustee to account.

(e) Appoint an additional trustee, a directing party, or a trust protector having the duties and authority ordered by the court, including, in the case of an additional trustee, the authority to take possession of the trust property and administer the trust.

(f) Suspend the trustee.

(g) Remove the trustee as provided in s. 701.0706.

(h) Reduce the compensation of or deny compensation to the trustee.

(i) Subject to s. 701.1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and order recovery of the property or its proceeds.

(j) Order any other appropriate relief, whether provided elsewhere in this chapter, available at common law, or under equity principles.

History: 2013 a. 92.

701.1002 Damages for breach of trust; liability of successor trustee. (1) A trustee who commits a breach of trust is liable to an affected beneficiary for the greater of the following:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.

(b) The profit the trustee made by reason of the breach.

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

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

History: 2013 a. 92.

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

History: 2013 a. 92.

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

(2) Subject to sub. (3), if a trustee, directing party, or trust protector defends or prosecutes any proceeding in good faith, whether successful or not, the trustee, directing party, or trust protector is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney fees, incurred. This subsection does not preclude a court from ordering another party to reimburse the trust for these expenses and disbursements as provided in sub. (1).

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

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

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

2. Except as provided in subd. 3., if the moving party demonstrates to the court that there is a reasonable basis for the court to find that a breach of trust occurred, the court shall enter an order prohibiting the payment of further attorney fees and costs from trust property and shall order attorney fees or costs previously paid from trust property in such proceeding to be refunded, unless the court finds good cause to allow attorney fees and costs to be paid from the trust. A trustee, directing party, or trust protector may offer evidence to rebut the evidence submitted to the court by the moving party.

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

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

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

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

(f) Notice under par. (b) is not required if the action or defense is later withdrawn or dismissed by the party that is alleging a breach of trust or resolved without a determination by the court that the trustee has not committed a breach of trust.

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

History: 2013 a. 92.

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

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

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

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

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

(c) The termination of the trust.

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

History: 2013 a. 92.

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

History: 2013 a. 92.

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

History: 2013 a. 92.

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

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

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

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term was fair under the circumstances existing at the time the trust instrument was signed and that the existence and contents of the exculpatory term were adequately communicated to the settlor.

History: 2013 a. 92.

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

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

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

History: 2013 a. 92.

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

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

History: 2013 a. 92.

701.1011 Interest as general partner. (1) Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract.

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

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

History: 2013 a. 92.

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

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

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

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

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

History: 2013 a. 92.

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

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

(b) The identity of the settlor.

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

(d) The powers of the trustee.

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

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

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

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

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

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

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

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

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

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

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

History: 2013 a. 92; 2013 a. 151 s. 28.

SUBCHAPTER XI

UNIFORM PRINCIPAL AND INCOME ACT

701.1101 Short title and scope. This subchapter may be cited as the Wisconsin Uniform Principal and Income Act. Subject to s. 701.1205 (2), this subchapter applies to a trust described in s. 701.0102 and an estate that is administered in this state.

History: 2013 a. 92, 151.

701.1102 Definitions. In this subchapter:

(1) "Accounting period" means a calendar year, unless a fiduciary selects another 12−month period, and includes a portion of a calendar year or other 12−month period that begins when an income interest begins or that ends when an income interest ends.

(1g) "Asset" has the meaning given for property under s. 701.0103 (20).

(1m) Notwithstanding s. 701.0103 (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.

(2) "Fiduciary" means a personal representative or a trustee and includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function as any of those.

(3) "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in ss. 701.1115 to 701.1129.

(4) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(6) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

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

(8) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates or property held in trust in perpetuity.

(9) "Remainder beneficiary" means a person who is a beneficiary under s. 701.0103 (21) (b).

History: 2013 a. 92 ss. 179, 180, 205 to 212, 214, 215.

701.1103 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 ss. 701.1110 to 701.1114, a fiduciary:

(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 subchapter.

(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 subchapter.

(c) Shall administer a trust or estate in accordance with this 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.

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

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

History: 2013 a. 92 s. 217.

701.1104 Trustee's power to adjust. (1) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in s. 701.1103 (1), that the trustee is unable to comply with s. 701.1103 (2).

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

(a) The nature, purpose, and expected duration of the trust.

(b) The intent of the settlor.

(c) The identity and circumstances of the beneficiaries.

(d) The needs for liquidity, regularity of income, and preservation and appreciation of capital.

(e) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.

(f) The net amount allocated to income under the other subsections of this section and the increase or decrease in the value of the principal assets, which the trustee may estimate in the case of assets for which market values are not readily available.

(g) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(h) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(i) The anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) If possessing or exercising the power to make an adjustment would disqualify an estate tax or gift tax marital or charitable deduction in whole or in part.

(b) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(d) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust and for which an estate tax or gift tax charitable deduction has been taken unless both income and principal are so set aside.

(e) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.

(g) If the trustee is a beneficiary of the trust.

(h) If the trust has been converted under s. 701.1106 to a unitrust.

(i) If the trust is an express unitrust, as defined in s. 701.1107 (1).

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

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

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

History: 2013 a. 92 s. 218.

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

(a) Is given at least 30 days before the proposed effective date of the proposed action.

(b) Is given in the manner provided in ch. 879, except that notice by publication is not required.

(c) Is given to all qualified beneficiaries.

(d) States that it is given in accordance with this section and discloses the following information:

1. The identification of the trustee.

2. A description of the proposed action.

3. The time within which a beneficiary may object to the proposed action, which shall be at least 30 days after the giving of the notice.

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

(2) If a trustee gives notice of a proposed action under this section, the trustee is not required to give notice to a qualified beneficiary who consents to the proposed action in writing at any time before or after the proposed action is taken.

(3) A qualified beneficiary may object to the proposed action by giving a written objection to the trustee within the time specified in the notice under sub. (1) (d) 3.

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

(5) If a trustee receives a written objection to a proposed action within the time specified in the notice under sub. (1) (d) 3., either the trustee or the qualified beneficiary making the written objection may petition the court to have the proposed action approved, modified, or prohibited. In the court proceeding, the qualified beneficiary objecting to the proposed action has the burden of proving that the proposed action should be modified or prohibited. A qualified beneficiary who did not make the written objection may oppose the proposed action in the court proceeding.

(6) For purposes of this section, a proposed action under s. 701.1104 includes a course of action or a decision not to take action under s. 701.1104.

History: 2013 a. 92 ss. 219 to 223, 225 to 230.

701.1106 Conversion to unitrust. (1) Subject to sub. (4), a trust may be converted to a unitrust in any of the following ways:

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

1. The trustee determines that the conversion will enable the trustee to better carry out the purposes of the trust.

2. The trustee provides notice in the same manner as provided in 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 sub. (3) (a) and any other initial determinations under sub. (3) (d) that the trustee intends to follow.

3. Every qualified beneficiary consents to the conversion to a unitrust in a writing delivered to the trustee.

4. The terms of the trust describe the amount that may or must be distributed by referring to the trust income.

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

1. The trustee or qualified beneficiary has provided notice under 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 sub. (3) (a) and any other initial determinations under sub. (3) (d) that will be requested.

2. The court determines that the conversion to a unitrust will enable the trustee to better carry out the purposes of the trust.

(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).

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

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

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

(c) After a trust is converted to a unitrust, the trustee may, subject to the notice requirement under s. 701.1105 and with the consent of every qualified beneficiary, do any of the following:

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

2. Change the fixed percentage under par. (a), subject to par. (b) 2.

(d) After a trust is converted to a unitrust, a trustee may determine or change any of the following:

1. The frequency of distributions during the year.

2. Standards for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

3. The effect on the valuation of the unitrust's assets of other payments from, or contributions to, the unitrust.

4. How, and how frequently, to value the unitrust's assets.

5. The valuation dates to use.

6. Whether to omit from the calculation of the value of the unitrust's assets unitrust property occupied by or in the possession of a beneficiary.

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

8. Any other matters necessary for the proper functioning of the unitrust.

(e) The trustee may not deduct from a unitrust distribution expenses that would be deducted from income if the trust were not a unitrust.

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

1. Net income, determined as if the trust were not a unitrust.

2. Ordinary income for federal income tax purposes that is not net income under subd. 1.

3. Net realized short−term capital gains for federal income tax purposes.

4. Net realized long−term capital gain for federal income tax purposes.

5. Principal.

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

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

2. If necessary to preserve a tax benefit, provide for a distribution of net income, determined as if the trust were not a unitrust, that exceeds the unitrust distribution.

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

4. Require the unitrust to be converted back to the original trust under the creating instrument.

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

(4) (a) A trust may not be converted under this section to a unitrust if any of the following applies:

1. The trust instrument specifically prohibits the conversion.

2. Payment of the unitrust distribution will change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

3. The unitrust distribution will be made from any amount that is permanently set aside for charitable purposes under the creating instrument and for which an estate or gift tax charitable deduction has been taken, unless both income and principal are so set aside.

4. Converting to a unitrust will cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trust were not converted.

5. Converting to a unitrust will cause all or a part of the trust assets to be subject to estate or gift tax with respect to an individual and the trust assets would not be subject to estate or gift tax with respect to the individual if the trust were not converted.

6. Converting to a unitrust will result in the disallowance of an estate or gift tax marital deduction that would be allowed if the trust were not converted.

7. A trustee is a beneficiary of the trust.

(b) Notwithstanding par. (a), if a trust may not be converted to a unitrust solely because par. (a) 7. applies to a trustee, a cotrustee, if any, to whom par. (a) 7. does not apply may convert the trust to a unitrust under sub. (1) (a), unless prohibited by the creating instrument, or a court may convert the trust to a unitrust under sub. (1) (b) on the petition of a trustee or qualified beneficiary.

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

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

History: 2013 a. 92 ss. 181, 231 to 235, 237 to 242.

701.1107 Express unitrusts. (1) In this section, "express unitrust" means any trust that by its trust instrument requires the distribution at least annually of a unitrust amount equal to a fixed percentage of the net fair market value of the trust's assets, valued at least annually, other than a trust solely for charitable purposes or a charitable split−interest trust under section 664 (d) or 170 (f) (2) (B) of the Internal Revenue Code.

(2) The following apply to an express unitrust:

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

(b) Distribution of such a fixed percentage unitrust amount of not less than 3 percent nor more than 5 percent is a distribution of all of the income of the unitrust and is an income interest.

(c) Such a distribution of a fixed percentage of not less than 3 percent nor more than 5 percent is a reasonable apportionment of the total return of the trust.

(d) A trust that provides for a fixed annual percentage payout in excess of 5 percent per year of the net fair market value of the trust is considered to be a 5 percent express unitrust, paying out all of the income of the unitrust, and to have paid out principal of the trust to the extent that the fixed percentage payout exceeds 5 percent per year.

(e) The 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.

(f) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount is considered to have been made from the following sources in the following order of priority:

1. Net income determined as if the trust were not a unitrust.

2. Ordinary income for federal income tax purposes that is not net income under subd. 1.

3. Net realized short−term capital gains for federal income tax purposes.

4. Net realized long−term capital gains for federal income tax purposes.

5. Principal.

(g) The trust 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.

(h) In the absence of contrary provisions in the trust instrument of an express unitrust, the provisions of s. 701.1106 (3) (a), (d), and (e) apply.

History: 2013 a. 92 s. 243.

701.1108 Power to treat capital gains as part of a distribution. Unless prohibited by the will or trust instrument, 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.

History: 2013 a. 92 s. 244.

701.1109 Judicial review of discretionary power. (1) Nothing in this subchapter creates a duty to make an adjustment under s. 701.1104 or to convert a trust to a unitrust under s. 701.1106. Unless it determines that the decision to make an adjustment or to convert to a unitrust was an abuse of the fiduciary's discretion, a court may not grant relief from any decision a fiduciary makes regarding the exercise of a discretionary power conferred by s. 701.1104 or 701.1106.

(2) An action taken under s. 701.1104 or 701.1106 is not an abuse of a fiduciary's discretion if the fiduciary gave written notice of the proposed action under s. 701.1105 and did not receive a timely written objection to the notice. It is not an abuse

of discretion not to exercise the power to adjust under s. 701.1104 or to convert under s. 701.1106.

(3) A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(4) If the court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions that they would have occupied had the discretion not been abused, according to the following rules:

(a) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or by ordering that beneficiary to return some or all of the distribution to the trust.

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

(5) Upon petition by the fiduciary, the court having jurisdiction over a trust shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred under this section will result in an abuse of the fiduciary's discretion. The petition must describe the proposed exercise or nonexercise of the power and contain sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power. A beneficiary who challenges the proposed exercise or nonexercise of the power has the burden of establishing that it will result in an abuse of discretion.

History: 2013 a. 92 ss. 245 to 250.

701.1110 Determination and distribution of net income. In the case of an estate of a decedent or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in ss. 701.1112 to 701.1135 that apply to trustees and the rules in sub. (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

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

(a) Including in net income all income from property used to discharge liabilities.

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary, including a trustee, who receives a pecuniary amount not determined by a pecuniary formula related to a transfer tax interest at the legal rate set forth in s. 138.04 on any unpaid portion of the pecuniary amount for the period commencing one year after the decedent's death or after the income interest in the trust ends. The interest under this subsection shall be distributed from net income determined under sub. (2) or from principal to the extent that net income is insufficient. 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.

(4) A fiduciary shall distribute the net income remaining after distributions required under subs. (1) to (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.

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

History: 2013 a. 92 s. 251.

701.1111 Distribution to residuary and remainder beneficiaries. (1) Each beneficiary described in s. 701.1110 (4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not determined by a pecuniary formula.

(c) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

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

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date,

the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

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

History: 2013 a. 92 s. 252

701.1112 When right to income begins and ends. **(1)** An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust:

(a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life.

(b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate.

(c) On the date of an individual's death in the case of an asset that a 3rd party transfers to a fiduciary because of the individual's death.

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

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

History: 2013 a. 92 s. 253.

701.1113 Apportionment of receipts and disbursements when decedent dies or income interest begins. **(1)** A trustee shall allocate to principal an income receipt or disbursement other than one to which s. 701.1110 (1) applies if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate to income an income receipt or disbursement if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date of death or an income interest begins must be allocated to principal and the balance must be allocated to income.

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

History: 2013 a. 92 s. 254.

701.1114 Apportionment when income interest ends. **(1)** In this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

History: 2013 a. 92 s. 255; 2013 a. 151 s. 27.

701.1115 Character of receipts. **(1)** In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which s. 701.1116 applies, a business or activity to which s. 701.1117 applies, or an asset−backed security to which s. 701.1129 applies.

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

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(c) Money received in total or partial liquidation of the entity.

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation.

(b) If the total amount of money and property distributed in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year−end financial statements immediately preceding the initial receipt.

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

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

History: 2013 a. 92 s. 256.

701.1116 Distribution from trust or estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, s. 701.1115 or 701.1129 applies to a receipt from the trust.

History: 2013 a. 92 s. 257.

701.1117 Business and other activities conducted by trustee. **(1)** If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a trustee may maintain separate accounting records include:

(a) Retail, manufacturing, service, and other traditional business activities.

(b) Farming.

(c) Raising and selling livestock and other animals.

(d) Management of rental properties.

(e) Extraction of minerals and other natural resources.

(f) Timber operations.

(g) Activities to which s. 701.1128 applies.

History: 2013 a. 92 s. 258.

701.1118 Principal receipts. A trustee shall allocate to principal:

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

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

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

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(6) Other receipts as provided in ss. 701.1122 to 701.1129.

History: 2013 a. 92 s. 259.

701.1119 Rental property. To the extent that a trustee accounts for receipts from rental property in accordance with this 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 beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

History: 2013 a. 92 s. 260.

701.1120 Obligation to pay money. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after the trustee purchases or acquires it, an amount received in excess of its purchase price or its value when the trust acquires it must be allocated to income.

(3) This section does not apply to an obligation to which s. 701.1123, 701.1124, 701.1125, 701.1126, 701.1128, or 701.1129 applies.

History: 2013 a. 92 s. 261.

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

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

(3) This section does not apply to a contract to which s. 701.1123 applies.

History: 2013 a. 92 s. 262.

701.1122 Insubstantial allocations not required. If a trustee determines that an allocation between principal and income required by s. 701.1120 (2), 701.1123, 701.1124, 701.1125, 701.1126, or 701.1129 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in s. 701.1104 (3) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in s. 701.1104 (4) and may be released for the reasons and in the manner described in s. 701.1104 (5). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent.

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

History: 2013 a. 92 s. 263.

701.1123 Deferred compensation, annuities, and similar payments. (1) In this section:

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

(b) "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.

(c) "Plan" means a contractual, custodial, trust, or other arrangement that provides for distributions to a trust. "Plan" 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.

(d) "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 plan account 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.

(e) "Separate account" means an account established or maintained under 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.

(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 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 a payment in lieu of interest or a dividend.

(3) 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.

(4) (a) Notwithstanding sub. (3), a trustee of a marital deduction trust shall determine plan income for an accounting period as if the plan were a trust subject to this subchapter. If the trustee of a marital deduction trust 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 of the marital deduction trust.

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

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

(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.

(6) This section does not apply to a payment to which s. 701.1124 applies.

History: 2013 a. 92 ss. 182, 183, 264, 266 to 270.

701.1124 Liquidating asset. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to s. 701.1123, resources subject to s. 701.1125, timber subject to s. 701.1126, an activity subject to s. 701.1128, an asset subject to s. 701.1129, or any asset for which the trustee establishes a reserve for depreciation under s. 701.1132.

(2) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

History: 2013 a. 92 s. 271.

701.1125 Minerals, water, and other natural resources. (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources in accordance with this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) If an amount received as a royalty, shut−in−well payment, take−or−pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

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

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

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

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

History: 2013 a. 92 s. 272.

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

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest.

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber.

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

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated under par. (a), (b), or (c).

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

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

(4) If a trust owns an interest in timberland on May 17, 2005, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used

by the trustee before May 17, 2005. If the trust acquires an interest in timberland after May 17, 2005, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

History: 2013 a. 92 ss. 184, 274.

701.1127 Property not productive of income. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under s. 701.1104 and distributes to the spouse from principal in accordance with the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by s. 701.1104 (1). The trustee may decide which action or combination of actions to take.

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

History: 2013 a. 92 s. 275.

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

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

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

History: 2013 a. 92 s. 276.

701.1129 Asset−backed securities. (1) In this section, "asset−backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which s. 701.1115 or 701.1123 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset−backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

History: 2013 a. 92 s. 277.

701.1130 Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements specified in s. 701.1110 (2) (b) or (c):

(1) One−half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

(2) One−half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

History: 2013 a. 92 s. 278.

701.1131 Disbursements from principal. (1) A trustee shall make the following disbursements from principal:

(a) The remaining one−half of the disbursements described in s. 701.1130 (1) and (2).

(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale.

(c) Payments on the principal of a trust debt.

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

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

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(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 law and other payments made to comply with environmental law, statutory or common law claims by 3rd parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

History: 2013 a. 92 s. 279.

701.1132 Transfers from income to principal for depreciation. (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

(b) During the administration of a decedent's estate.

(c) Under this section if the trustee is accounting under s. 701.1117 for the business or activity in which the asset is used.

(3) An amount transferred to principal need not be held as a separate fund.

History: 2013 a. 92 s. 280.

701.1133 Transfers from income to reimburse principal. (1) If a trustee makes or expects to make a principal disbursement described in this 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.

(2) Principal disbursements to which 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:

(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs.

(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments.

(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and brokers' commissions.

(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

(e) Disbursements described in s. 701.1131 (1) (g).

(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 sub. (1).

History: 2013 a. 92 s. 281.

701.1134 Income taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

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

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

(b) From principal to the extent that receipts from the entity are allocated only to principal.

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

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

(4) After applying subs. (1) to (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

History: 2013 a. 92 ss. 185, 282 to 287.

701.1135 Adjustments between principal and income because of taxes. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

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

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate or trust or of a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

History: 2013 a. 92 s. 290.

701.1136 Income payments and accumulations. (1) DISTRIBUTION OF INCOME. Except as otherwise determined by the trustee or a court under s. 701.1106 with respect to unitrust distributions, if a beneficiary is entitled to receive income from a trust, but the trust instrument fails to specify how frequently it is to be paid, the trustee shall distribute at least annually the income to which such beneficiary is entitled.

(2) PERMITTED ACCUMULATIONS. No provision directing or authorizing accumulation of income is invalid.

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

(4) DISPOSITION OF ACCUMULATED INCOME. Income not required to be distributed by the 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.

History: 2005 a. 10; 2013 a. 92 s. 292; Stats. 2013 s. 701.1136.

SUBCHAPTER XII

MISCELLANEOUS PROVISIONS

701.1201 Private foundations. (1) (a) In the administration of any trust that is a private foundation, as defined in section 509 of the Internal Revenue Code, a charitable trust, as described in section 4947 (a) (1) of the Internal Revenue Code, or a split−interest trust as described in section 4947 (a) (2) of the Internal Revenue Code, all of the following acts shall be prohibited:

1. Engaging in any act of self−dealing, as defined in section 4941 (d) of the Internal Revenue Code, that would give rise to any liability for the tax imposed by section 4941 (a) of the Internal Revenue Code.

2. Retaining any excess business holdings, as defined in section 4943 (c) of the Internal Revenue Code, that would give rise to any liability for the tax imposed by section 4943 (a) of the Internal Revenue Code.

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

4. Making any taxable expenditures, as defined in section 4945 (d) of the Internal Revenue Code, that would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code.

(b) This subsection does not apply either to those split−interest trusts or to amounts thereof that are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code.

(2) In the administration of any trust that is a private foundation, as defined in section 509 of the Internal Revenue Code, or that is a charitable trust, as described in section 4947 (a) (1) of the Internal Revenue Code, 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 section 4942 (a) of the Internal Revenue Code.

(3) Subsections (1) and (2) do not apply to any trust to the extent that a court of competent jurisdiction determines that the application would be contrary to the terms of the trust and that the same may not properly be changed to conform to such subsections.

History: 1971 c. 66; 1991 a. 39; 2013 a. 92 ss. 174, 175; Stats. 2013 s. 701.1201.

701.1202 Electronic records and signatures. The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and supersede, modify, and limit the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031.

History: 2013 a. 92.

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

History: 2013 a. 92.

701.1204 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under trust instruments.

History: 1997 a. 188; 2013 a. 92 s. 300; Stats. 2013 s. 701.1204.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

701.1205 Applicability. (1) Except as otherwise provided in sub. (2) and ss. 701.0602, 701.0813, and 701.0903 (4), this chapter is applicable to a trust existing on July 1, 2014, 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 July 1, 2014, is unconstitutional, it shall not affect application of the provision to a trust created after that date.

(2) Subchapter XI of this chapter applies to a trust or decedent's estate existing on July 1, 2014, and to a trust or decedent's estate created or coming into existence after that date, except as otherwise expressly provided in subch. XI or by the decedent's will or the terms of the trust. With respect to a trust or decedent's estate existing on July 1, 2014, ss. 701.1110 to 701.1135 shall apply at the beginning of the trust's or estate's first accounting period, as defined in s. 701.1102 (1), that begins on or after July 1, 2014.

(3) (a) Except as provided in par. (b), this chapter applies to a judicial proceeding concerning a trust commenced before, on, or after July 1, 2014.

(b) If a court finds that application of a particular provision of this chapter to a judicial proceeding commenced before July 1, 2014, will substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, the particular provision of this chapter does not apply to that judicial proceeding and the court shall apply ch. 701, 2011 stats., as the court finds to be necessary to prevent interference with the effective conduct of the judicial proceeding and to avoid prejudicing the rights of the parties.

History: 1971 c. 66; 1977 c. 309; 2005 a. 10, 216; 2013 a. 92 ss. 191, 296 to 298; Stats. 2013 s. 701.1205; 2013 a. 151.