

# State of Wisconsin



2023 Senate Bill 759

Date of enactment:  
Date of publication\*:

## 2023 WISCONSIN ACT

AN ACT *to repeal* 701.0110 (1) (a), (b) and (c), 701.0405 (1) and 701.0418; *to renumber* 701.0304, 701.0305 (1), 701.0305 (2), 701.0305 (3), 701.0602 (3) (b) 1., 701.0602 (3) (b) 2. and 701.0802 (5); *to renumber and amend* 701.0103 (24), 701.0110 (1) (intro.), 701.0302, 711.04 (1) and 766.58 (13) (b); *to consolidate, renumber and amend* 701.0602 (3) (intro.), (a) and (b) (intro.); *to amend* 30.541 (3) (d) 1. a., 101.9211 (4) (a) 1., 342.17 (4) (a) 1., 700.16 (1) (c), 700.27 (1) (d), 701.0103 (4), 701.0103 (9), 701.0103 (18), 701.0103 (21) (intro.), 701.0103 (23), 701.0103 (27), 701.0103 (30), 701.0109 (title), 701.0109 (3), 701.0110 (2), 701.0110 (3), 701.0111 (4), 701.0111 (5) (d), 701.0111 (6), 701.0203 (1), 701.0302 (title), 701.0303 (4), 701.0303 (5), 701.0303 (6) (intro.), 701.0303 (6) (a), 701.0303 (6) (b), 701.0303 (6) (c), 701.0303 (6) (d), 701.0402 (1) (e), 701.0408, 701.0410 (2), 701.0410 (3), 701.0411 (1), 701.0411 (2) (a), 701.0411 (2) (b), 701.0411 (7), 701.0414 (4), 701.0415, 701.0416, 701.0505 (1) (a) 2., 701.0505 (2) (e) 3., 701.0602 (1), 701.0602 (4), 701.0702 (3), 701.0706 (2) (c), 701.0706 (2) (d), 701.0707 (2), 701.0813 (1), (2) (d) and (3) (a) (intro.), 701.0813 (2) (a), 701.0813 (3) (b), 701.0813 (5), 701.0817 (3) (b), 701.1005 (1), 701.1005 (2), 701.1009 (2), 701.1105 (1) (b), 701.1136 (1), 711.04 (2), 711.05 (2) (b), 711.06 (2) (intro.), 711.06 (2) (b), 711.07 (3) (b), 711.13, 766.01 (9) (a), 766.31 (7) (b), 766.58 (13) (c), 766.59 (1), 766.63 (1), 851.21 (2) (e), 854.13 (1) (c), 856.29, 859.02 (3) and 865.08 (6); *to repeal and recreate* 701.0103 (21) (a) and (b), 701.0508, 701.0818 (2) (b) 2. h. and chapter 702; and *to create* 701.0102 (12m), 701.0103 (1m), 701.0103 (1n), 701.0103 (3) (c), 701.0103 (3m), 701.0103 (3r), 701.0103 (3u), 701.0103 (3x), 701.0103 (5g), 701.0103 (5w), 701.0103 (11p), 701.0103 (15m), 701.0103 (17m), 701.0103 (19r), 701.0103 (19v), 701.0103 (21m), 701.0103 (23m), 701.0109 (5), 701.0111 (5) (m), 701.0111 (7), 701.0113, 701.0201 (3) (km), 701.0201 (4), 701.0302 (1), 701.0303 (6) (e), 701.0304 (2), 701.0306, 701.0307 (title), 701.0308, 701.0401 (5m), 701.0411 (1m), 701.0411 (2) (intro.), 701.0509, 701.0605, 701.0704 (1) (g), 701.0802 (5) (b), 701.0802 (9), 701.0813 (3) (c), 701.0813 (6) and (7), 701.0815 (3), 701.0816 (29), 701.0816 (30), subchapter XIII of chapter 701 [precedes 701.1301], 711.03 (4m), 711.04 (1) (b), 711.04 (1) (c), 711.04 (1) (d), 766.01 (9) (e), 766.01 (9) (f), 766.31 (7) (g), 766.58 (7) (c), 766.58 (13) (b) 2. and 3., 766.625, 766.70 (3) (dm), 814.66 (1) (o) and 905.03 (2m) of the statutes; **relating to:** trust administration, the Uniform Powers of Appointment Act, the Uniform Trust Decanting Act, disclosure of certain digital property, and the classification of certain digital property as individual property for purposes of determining marital property.

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

**SECTION 1.** 30.541 (3) (d) 1. a. of the statutes is amended to read:

30.541 (3) (d) 1. a. Evidence satisfactory to the department of the appointment of a trustee in bankruptcy, of a certification of trust under s. 701.1013 or the appointment of a trustee, or of the issuance of domiciliary letters

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

testamentary or other letters authorizing the administration of a decedent's estate, ~~letters of guardianship, conservatorship, special administration, or letters of trust.~~

**SECTION 2.** 101.9211 (4) (a) 1. of the statutes is amended to read:

101.9211 (4) (a) 1. Evidence satisfactory to the department of the appointment of a trustee in bankruptcy, of a certification of trust under s. 701.1013 or the appointment of a trustee, or of the issuance of domiciliary letters testamentary or other letters authorizing the administration of a decedent's estate, ~~letters of guardianship, conservatorship, special administration, or letters of trust.~~

**SECTION 3.** 342.17 (4) (a) 1. of the statutes is amended to read:

342.17 (4) (a) 1. Evidence satisfactory to the department of the issuance of ~~the letters testamentary or other letters authorizing the administration of an estate, letters of guardianship, or letters of trust, appointment of a trustee in bankruptcy, of a certification of trust under s. 701.1013 or the appointment of a testamentary trustee, or of the appointment of the trustee in bankruptcy issuance of domiciliary letters or other letters authorizing the administration of a decedent's estate, guardianship, conservatorship, special administration, or trust;~~

**SECTION 4.** 700.16 (1) (c) of the statutes is amended to read:

700.16 (1) (c) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power of appointment is exercised if the power of appointment is a general power of appointment, as defined in s. ~~702.02(5)~~ 702.102(7), even if the general power of appointment is exercisable only by will. In the case of other powers of appointment the permissible period is computed from the time the power of appointment is created but facts at the time the power of appointment is exercised are considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of creation of the power of appointment plus 30 years.

**SECTION 5.** 700.27 (1) (d) of the statutes is amended to read:

700.27 (1) (d) "Power of appointment" has the meaning given in s. ~~702.02(6)~~ 702.102(15).

**SECTION 6.** 701.0102 (12m) of the statutes is created to read:

701.0102 (12m) An account that is part of a qualified ABLE program under section 529A (b) of the Internal Revenue Code.

**SECTION 7.** 701.0103 (1m) of the statutes is created to read:

701.0103 (1m) "Animal protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

**SECTION 8.** 701.0103 (1n) of the statutes is created to read:

701.0103 (1n) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

**SECTION 9.** 701.0103 (3) (c) of the statutes is created to read:

701.0103 (3) (c) Is an identified charitable organization that will or may receive distributions under the terms of the trust.

**SECTION 10.** 701.0103 (3m) of the statutes is created to read:

701.0103 (3m) "Broad limited power of appointment" has the meaning given in s. 702.102 (4).

**SECTION 11.** 701.0103 (3r) of the statutes is created to read:

701.0103 (3r) "Charitable interest" means an interest in a trust that satisfies any of the following:

(a) It is held by an identified charitable organization and makes the organization a qualified beneficiary.

(b) It benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(c) It is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

**SECTION 12.** 701.0103 (3u) of the statutes is created to read:

701.0103 (3u) "Charitable organization" means any of the following:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes.

(b) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

**SECTION 13.** 701.0103 (3x) of the statutes is created to read:

701.0103 (3x) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

**SECTION 14.** 701.0103 (4) of the statutes is amended to read:

701.0103 (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.

**SECTION 15.** 701.0103 (5g) of the statutes is created to read:

701.0103 (5g) "Court" means the court that is identified in s. 701.0203 (1).

**SECTION 16.** 701.0103 (5w) of the statutes is created to read:

701.0103 (5w) "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is

determined is a distributee or permissible distributee of trust income or principal or is the holder of a presently exercisable general power of appointment.

**SECTION 17.** 701.0103 (9) of the statutes is amended to read:

701.0103 (9) “General power of appointment” has the meaning given in s. ~~702.02 (5)~~ 702.102 (7).

**SECTION 18.** 701.0103 (11p) of the statutes is created to read:

701.0103 (11p) “Identified charitable organization” means 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 current beneficiary.

**SECTION 19.** 701.0103 (15m) of the statutes is created to read:

701.0103 (15m) “Issue” has the meaning given in s. 851.13.

**SECTION 20.** 701.0103 (17m) of the statutes is created to read:

701.0103 (17m) “Powerholder” has the meaning given in s. 702.102 (14).

**SECTION 21.** 701.0103 (18) of the statutes is amended to read:

701.0103 (18) “Power of appointment” has the meaning given in s. ~~702.02 (6)~~ 702.102 (15).

**SECTION 22.** 701.0103 (19r) of the statutes is created to read:

701.0103 (19r) “Presently exercisable power of appointment” has the meaning given in s. 702.102 (16).

**SECTION 23.** 701.0103 (19v) of the statutes is created to read:

701.0103 (19v) “Presumptive remainder beneficiary” means, 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, a beneficiary that on the date the beneficiary’s qualification is determined, would be any of the following:

(a) A distributee or permissible distributee of trust income or principal if the interests of any current beneficiary terminated on that date without causing the trust to terminate.

(b) A distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(c) If the terms of the trust do not provide for its termination, a distributee or permissible distributee of income or principal of the trust if all the current beneficiaries of the trust were deceased or no longer exist.

**SECTION 24.** 701.0103 (21) (intro.) of the statutes is amended to read:

701.0103 (21) (intro.) “Qualified beneficiary” means a beneficiary ~~who that~~, on the date ~~on which~~ the beneficiary’s qualification is determined, ~~satisfies is~~ any of the following:

**SECTION 25.** 701.0103 (21) (a) and (b) of the statutes are repealed and recreated to read:

701.0103 (21) (a) A current beneficiary.

(b) A presumptive remainder beneficiary.

**SECTION 26.** 701.0103 (21m) of the statutes is created to read:

701.0103 (21m) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**SECTION 27.** 701.0103 (23) of the statutes is amended to read:

701.0103 (23) “Settlor” Except as otherwise provided in ss. 701.0113 and 701.1325, “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.

**SECTION 28.** 701.0103 (23m) of the statutes is created to read:

701.0103 (23m) “Sign” means, with present intent to authenticate or adopt a record, to do any of the following:

(a) Execute or adopt a tangible symbol.

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

**SECTION 29.** 701.0103 (24) of the statutes is renumbered 701.0103 (16m) and amended to read:

701.0103 (16m) “~~Special~~ Nongeneral power of appointment” has the meaning given in s. ~~702.02 (7)~~ 702.102 (11).

**SECTION 30.** 701.0103 (27) of the statutes is amended to read:

701.0103 (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, or as may be established by court order or nonjudicial settlement agreement.

**SECTION 31.** 701.0103 (30) of the statutes is amended to read:

701.0103 (30) “Trust instrument” means ~~an instrument, including any amendments or modifications to the instrument under s. 701.0111 or subch. IV, that is executed a record signed~~ by the settlor that contains terms of to create 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, or by any person to create a 2nd trust as provided under subch. XIII, that contains some or all of the terms of the trust, and includes any amendments or modifications.

**SECTION 32.** 701.0109 (title) of the statutes is amended to read:

**701.0109 (title) Methods and waiver of notice; waiver.**

**SECTION 33.** 701.0109 (3) of the statutes is amended to read:

701.0109 (3) Notice ~~under this chapter or~~ the sending of a document, or the right to object granted under this chapter may be waived by the person to be notified ~~or~~ sent the document, or who has the right to object.

**SECTION 34.** 701.0109 (5) of the statutes is created to read:

701.0109 (5) If notice is given to a trustee and more than one person is serving as trustee, notice given to any trustee is considered to be given to all persons serving as trustee, except that if a corporate trustee or an attorney licensed to practice in this state is serving as a trustee, notice must be given to all such corporate trustees and attorney trustees.

**SECTION 35.** 701.0110 (1) (intro.) of the statutes is renumbered 701.0110 (1) and amended to read:

701.0110 (1) ~~A~~ An identified 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 identified charitable organization, on the date on which the identified charitable organization's qualification is being determined, satisfies one of the following: is a current beneficiary or a presumptive remainder beneficiary.

**SECTION 36.** 701.0110 (1) (a), (b) and (c) of the statutes are repealed.

**SECTION 37.** 701.0110 (2) of the statutes is amended to read:

701.0110 (2) ~~A~~ An animal protector or a person appointed to enforce a trust created for ~~the care of an animal or another~~ a noncharitable purpose without an ascertainable beneficiary as provided in either s. 701.0408 or 701.0409 has the rights of a qualified beneficiary under this chapter.

**SECTION 38.** 701.0110 (3) of the statutes is amended to read:

701.0110 (3) The attorney general of this state has the rights of a qualified beneficiary under this chapter 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 there is no identified charitable organization has been expressly designated to receive distribution under the terms of a charitable trust that would qualify under sub. (1).~~

**SECTION 39.** 701.0111 (4) of the statutes is amended to read:

701.0111 (4) A nonjudicial settlement agreement is valid only to the extent it includes terms and conditions that could be properly approved, ordered, directed, or

otherwise determined by a court under this chapter or other applicable law.

**SECTION 40.** 701.0111 (5) (d) of the statutes is amended to read:

701.0111 (5) (d) The resignation or appointment of a trustee or the removal of a trustee and replacement with a suitable successor trustee.

**SECTION 41.** 701.0111 (5) (m) of the statutes is created to read:

701.0111 (5) (m) The modification or termination of a trust.

**SECTION 42.** 701.0111 (6) of the statutes is amended to read:

701.0111 (6) Any interested person or other person affected 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, ordered, directed, or otherwise determined.

**SECTION 43.** 701.0111 (7) of the statutes is created to read:

701.0111 (7) Notice of any nonjudicial settlement agreement shall be given to the settlor, if living, the trustee, each trust protector, and each directing party at least 30 days before the proposed effective date of the nonjudicial settlement agreement. Notice is considered to be waived by any person who is a party to the agreement.

**SECTION 44.** 701.0113 of the statutes is created to read:

**701.0113 Insurable interest of trustee. (1)** In this section:

(a) "Relative" means a spouse or individual related within the 1st, 2nd, or 3rd degree of kinship under s. 990.001 (16).

(b) "Settlor" means a person that executes a trust instrument and includes a person for whom a fiduciary or agent is acting.

(2) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued, all of the following apply:

(a) The insured is any of the following:

1. A settlor of the trust.

2. An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(b) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who have any of the following:

1. An insurable interest in the life of the insured.

2. A substantial interest engendered by love or affection in the continuation of the life of the insured and, if not included under subd. 1., the beneficiary is a relative or stepchild of the insured.

**SECTION 45.** 701.0201 (3) (km) of the statutes is created to read:

701.0201 (3) (km) Releasing a trustee, directing party, trust protector, or other person acting in a fiduciary capacity from liability for an action relating to the trust.

**SECTION 46.** 701.0201 (4) of the statutes is created to read:

701.0201 (4) 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.

**SECTION 47.** 701.0203 (1) of the statutes is amended to read:

701.0203 (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.~~

**SECTION 48.** 701.0302 (title) of the statutes is amended to read:

**701.0302 (title) Representation by holder of general power of appointment powerholder of certain powers of appointment.**

**SECTION 49.** 701.0302 of the statutes is renumbered 701.0302 (2) and amended to read:

701.0302 (2) To the extent there is no conflict of interest between a holder of a general power of appointment powerholder and a person the persons represented with respect to the particular question or dispute, the holder powerholder of a nongeneral power of appointment other than a broad limited power of appointment may represent and bind the person all persons or all members of a class of persons, including permissible appointees and takers in default, whose interests, as a permissible appointee, a taker in default, or otherwise, are subject to may be limited by the exercise or nonexercise of the power.

**SECTION 50.** 701.0302 (1) of the statutes is created to read:

701.0302 (1) The powerholder of a general power of appointment exercisable in favor of the powerholder or the powerholder's estate or the powerholder of a broad limited power of appointment may represent and bind all persons, including permissible appointees and takers in default, whose interests may be eliminated by the exercise or nonexercise of the power. For purposes of this subsection, a general power of appointment does not

include powers of appointment exercisable only in favor of the creditors of the powerholder, the creditors of the powerholder's estate, or both.

**SECTION 51.** 701.0303 (4) of the statutes is amended to read:

701.0303 (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.~~

**SECTION 52.** 701.0303 (5) of the statutes is amended to read:

701.0303 (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.~~

**SECTION 53.** 701.0303 (6) (intro.) of the statutes is amended to read:

701.0303 (6) (intro.) A parent may represent and bind the parent's minor or unborn child, such child's minor and unborn issue, and the minor and unborn issue of a then deceased child. If a disagreement arises between parents seeking to represent the same ~~minor child or unborn child~~ individual, representation is determined as follows:

**SECTION 54.** 701.0303 (6) (a) of the statutes is amended to read:

701.0303 (6) (a) If only one parent is a beneficiary of the trust that is the subject of the representation, that parent may represent and bind the minor ~~child~~ or unborn child, such child's minor and unborn issue, and the minor and unborn issue of a then deceased child.

**SECTION 55.** 701.0303 (6) (b) of the statutes is amended to read:

701.0303 (6) (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 and bind the minor ~~child~~ or unborn child, such child's minor and unborn issue, and the minor and unborn issue of a then deceased child.

**SECTION 56.** 701.0303 (6) (c) of the statutes is amended to read:

701.0303 (6) (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 and bind the minor ~~child~~ or unborn child, such child's minor and unborn issue, and the minor and unborn issue of a then deceased child.

**SECTION 57.** 701.0303 (6) (d) of the statutes is amended to read:

701.0303 (6) (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 and bind the minor ~~child~~ or unborn child, such child's

minor and unborn issue, and the minor and unborn issue of a then deceased child.

**SECTION 58.** 701.0303 (6) (e) of the statutes is created to read:

701.0303 (6) (e) If an individual that is the subject of the representation is eligible to be represented by more than one ancestor under this subsection, the individual's nearest ancestor may represent and bind such individual.

**SECTION 59.** 701.0304 of the statutes is renumbered 701.0304 (1).

**SECTION 60.** 701.0304 (2) of the statutes is created to read:

701.0304 (2) (a) In this subsection:

1. "Contingent successor remainder beneficiary" means a beneficiary who would succeed to the interest of a presumptive remainder beneficiary if the presumptive remainder beneficiary and all of the current beneficiaries failed to take such interest.

2. "More remote contingent successor remainder beneficiary" means any contingent successor remainder beneficiary whose interest arises only upon the failure of the interest of another contingent successor remainder beneficiary.

(b) A presumptive remainder beneficiary or a person authorized to represent the presumptive remainder beneficiary under sub. (1) may represent and bind a contingent successor remainder beneficiary or a more remote contingent successor remainder beneficiary for the same purposes, in the same circumstances, and to the same extent as an ascertainable beneficiary may represent and bind a minor or person who is incapacitated, unborn, or not reasonably ascertainable.

(c) If a presumptive remainder beneficiary does not represent a more remote contingent successor remainder beneficiary, a contingent successor remainder beneficiary may represent and bind a more remote contingent successor remainder beneficiary for the same purposes, in the same circumstances, and to the same extent as an ascertainable beneficiary may represent and bind a minor or person who is incapacitated, unborn, or not reasonably ascertainable.

(d) A contingent successor remainder beneficiary or a more remote contingent successor remainder beneficiary may be represented under pars. (b) and (c) whether or not the contingent successor remainder beneficiary or more remote contingent successor remainder beneficiary lacks capacity.

(e) Under pars. (b) and (c), the difference between a beneficiary's interest as a presumptive remainder beneficiary or contingent successor remainder beneficiary does not constitute a conflict of interest as to any more remote contingent successor remainder beneficiary.

**SECTION 61.** 701.0305 (1) of the statutes is renumbered 701.0305.

**SECTION 62.** 701.0305 (2) of the statutes is renumbered 701.0307 (1).

**SECTION 63.** 701.0305 (3) of the statutes is renumbered 701.0307 (2).

**SECTION 64.** 701.0306 of the statutes is created to read:

**701.0306 Designated representative.** (1) If specifically nominated in the trust instrument, one or more persons may be designated to represent and bind a beneficiary and receive any notice, information, accounting, or report. The trust instrument may also authorize any one or more persons to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report.

(2) Except as otherwise provided in this chapter, a person designated in sub. (1) may not represent and bind a beneficiary while that person is serving as trustee.

(3) Except as otherwise provided in this chapter, a person designated in sub. (1) may not represent and bind another beneficiary if the person designated also is a beneficiary, unless one of the following applies:

(a) That person was named by the settlor.

(b) That person is one of the following:

1. The beneficiary's spouse.

2. A grandparent or descendant of a grandparent of the beneficiary.

3. A grandparent or descendant of a grandparent of the beneficiary's spouse.

**SECTION 65.** 701.0307 (title) of the statutes is created to read:

**701.0307 (title) Role of a representative or guardian ad litem.**

**SECTION 66.** 701.0308 of the statutes is created to read:

**701.0308 Liability of representative.** No representative or guardian ad litem is liable to the beneficiary whose interests are represented, or to anyone claiming through that beneficiary, for any actions or omissions to act made in good faith.

**SECTION 67.** 701.0401 (5m) of the statutes is created to read:

701.0401 (5m) A declaration of an intent to create a trust with the intention that the trust will later be funded by assets of the person who created the trust or by another person with legal authority to fund the trust. The person making the declaration is considered to have created the trust, regardless of whether the person funds the trust with the person's own assets.

**SECTION 68.** 701.0402 (1) (e) of the statutes is amended to read:

701.0402 (1) (e) The same person is not the sole trustee and sole beneficiary, and there are no remainder beneficiaries other than the person's estate.

**SECTION 69.** 701.0405 (1) of the statutes is repealed.

**SECTION 70.** 701.0408 of the statutes is amended to read:

**701.0408 Trust for care of animal.** (1) ~~A~~ An animal trust may be created to provide for the care of an ani-

mal alive during the settlor's lifetime. The animal trust terminates upon the death of the animal or, if the animal 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 an animal 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 an animal protector. 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 an animal protector.~~

(3) Property of ~~a~~ an animal 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 animal 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.

**SECTION 71.** 701.0410 (2) of the statutes is amended to read:

701.0410 (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~~ Except as provided in s. 701.0411 (1m), a trustee does not have standing to oppose a proposed modification or termination commenced under s. 701.0411 (1).

**SECTION 72.** 701.0410 (3) of the statutes is amended to read:

701.0410 (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 that has~~ an individual with a disability as a beneficiary 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.

**SECTION 73.** 701.0411 (1) of the statutes is amended to read:

701.0411 (1) ~~A~~ Except as provided in sub. (1m), 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.

**SECTION 74.** 701.0411 (1m) of the statutes is created to read:

701.0411 (1m) A trust described in 42 USC 1396p (d) (4) may be terminated or modified under sub. (1) only with consent of the trustee, and is not considered revocable because it lacks ascertainable remainder beneficiaries.

**SECTION 75.** 701.0411 (2) (intro.) of the statutes is created to read:

701.0411 (2) (intro.) With the approval of the court, any of the following may occur:

**SECTION 76.** 701.0411 (2) (a) of the statutes is amended to read:

701.0411 (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.

**SECTION 77.** 701.0411 (2) (b) of the statutes is amended to read:

701.0411 (2) (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.

**SECTION 78.** 701.0411 (7) of the statutes is amended to read:

701.0411 (7) A party proposing to modify or terminate a trust under sub. (1) ~~or~~ (2), or (6) 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.

**SECTION 79.** 701.0414 (4) of the statutes is amended to read:

701.0414 (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).

**SECTION 80.** 701.0415 of the statutes is amended to read:

**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 intention if it is proved by clear and convincing evidence ~~that both~~ what the settlor's intent intention was and that 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.

**SECTION 81.** 701.0416 of the statutes is amended to read:

**701.0416 Modification or termination to achieve settlor's tax objectives.** To achieve the settlor's tax objectives, the court may modify the terms of a trust or terminate a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification or termination 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.

**SECTION 82.** 701.0418 of the statutes is repealed.

**SECTION 83.** 701.0505 (1) (a) 2. of the statutes is amended to read:

701.0505 (1) (a) 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. A settlor's right to receive reimbursement for income taxation arising from grantor trust treatment of the trust pursuant to sections 671 to 679 of the Internal Revenue Code is not considered a right to income or principal for purposes of this section. 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.

**SECTION 84.** 701.0505 (2) (e) 3. of the statutes is amended to read:

701.0505 (2) (e) 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 nongeneral or general power of appointment.

**SECTION 85.** 701.0508 of the statutes is repealed and recreated to read:

**701.0508 Debts of deceased settlor. (1) DEADLINE ON CLAIMS.** A claimant must assert a claim for payment of a debt of a deceased settlor within the time for such claims under applicable law. For purposes of this section, a debt incurred by a trustee of a revocable trust before the death of a settlor of the revocable trust shall be treated in the same manner as a debt of the settlor. A trustee of a trust that was revocable at the settlor's death may shorten the time period and set a deadline for filing claims with the trustee by doing any of the following:

(a) Publishing a legal notice as a class 3 notice under ch. 985 in the county in which the deceased settlor resided. The legal notice shall identify the name, address,

and any other contact information of the trustee or other person with whom claims must be filed. The deadline for a claim by any claimant who is not known by the trustee shall be the earlier of the date that is 4 months after the date of the first insertion of the legal notice or, if sub. (6) is applicable, the deadline prescribed under s. 859.01.

(b) Giving notice to a potential claimant. The notice shall include a copy of the legal notice, if published, and shall identify the name, address, and any other contact information of the trustee or other person with whom claims must be filed and shall state that any claim by the potential claimant must be filed not later than the date that is 30 days from the date notice is given to the potential claimant or the deadline specified in the legal notice. If a legal notice has not been published, the deadline shall be 4 months from the date the trustee provides notice to the potential claimant.

(c) Publishing a legal notice and not giving a separate notice to a potential claimant who is known to the trustee. The deadline for a claim when a legal notice has been published but notice is not given to a known potential claimant is the later of the date that is one year from the date of the settlor's death or the deadline specified in the legal notice.

(2) EXCEPTIONS TO DEADLINES ON CLAIMS. A claim that is not filed on or before an applicable deadline specified under sub. (1) is not barred if the claim is a claim based on tort, a marital property agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), Wisconsin income, franchise, sales, withholding, gift, or death taxes, unemployment compensation contributions due or benefits overpaid, funeral or administrative expenses, a claim of this state under s. 46.27 (7g), 2017 stats., or s. 49.496, 49.682, or 49.849, or a claim of the United States.

(3) FILING OF CLAIMS. (a) A claim is considered filed if the claimant provides notice of the claim to the trustee or other person with whom claims must be filed as prescribed under sub. (1) (a) or (b).

(b) A claim is considered filed if the deceased settlor is subject to a probate proceeding in this state and a claim is filed with the court under ch. 859.

(c) If an action is pending against a deceased settlor at the time of the settlor's 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 sub. (1) gives the plaintiff the same rights against the trust as the filing of a claim.

(4) EFFECT OF STATUTE OF LIMITATIONS. (a) A claim that was barred by a statute of limitations at the time of the deceased settlor's death is barred and the claimant may not pursue a claim against the trustee, the trust property, or recipients with respect to trust property.



(b) A claim not barred by a statute of limitations at the time of the settlor's death shall not be barred thereafter by a statute of limitations if the claim is filed on or before the deadline for filing a claim under sub. (1).

(c) A claim that is not filed or is filed after the deadline for filing a claim under sub. (1) is barred and the claimant may not pursue a claim against the trustee, the trust property, or recipients with respect to trust property.

(d) The deadlines established under sub. (1) do not extend the time for commencement of a claim beyond the time provided by any statute of limitations applicable to that claim.

(5) **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.

(6) **COORDINATION WITH PROBATE.** If a legal notice has been published with respect to the estate of a deceased settlor who died domiciled in this state, property of a trust that was revocable at the settlor's death shall be treated as property of the estate solely for purposes of administering claims under ch. 859. The trustee shall be subject to the jurisdiction of the court in which the estate administration is pending. A personal representative, as defined in s. 851.23, shall provide notice to the trustee regarding claims filed against the estate. A claim barred under ch. 859 may not be satisfied from property of a trust that was revocable at the settlor's death. The trustee and qualified beneficiaries shall have standing to file an objection, offset, or counterclaim with respect to claims filed against the estate. Nothing in this subsection causes property of the trust that otherwise would be exempt from claims to be subject to claims filed against the settlor's estate. If the trust is not referenced in a deceased settlor's will, the trustee of a trust that was revocable at the settlor's death shall provide notice to a personal representative of the settlor's estate, if any, of the existence of such trust.

**SECTION 86.** 701.0509 of the statutes is created to read:

**701.0509 Procedures for claims for debts of a deceased settlor; revocable trusts.** (1) **SCOPE OF APPLICABILITY.** The procedures under this section apply only to claims against a trust that was revocable by the settlor until the settlor's death.

(2) **FORM AND VERIFICATION OF CLAIMS; TRUSTEE RESPONSE TO CLAIMS.** (a) *General requirements.* A claim shall be in writing, shall describe the nature and amount of the claim, if ascertainable, shall identify the name, address, and any other contact information of the claimant, and shall be sworn to by the claimant or a person on the claimant's behalf that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made on the claim that are not cred-

ited, and that there are no offsets to the knowledge of the affiant, except as stated in the claim.

(b) *Requirements when claim founded on written instrument.* If a claim is founded on a written instrument that is available, the original instrument or a copy of the original instrument shall be attached to the claim.

(c) *Trustee response to a claim.* A trustee does not need to respond to a claim until after the expiration of the deadline for filing a claim against the trust under s. 701.0508. Within 30 days after the later of the receipt of the claim or 30 days after the expiration of the deadline, the trustee shall make a good faith determination of whether the claim is valid, absolute, contingent, or invalid, or whether the trustee will object to the claim, and the trustee shall inform the claimant of the determination. If the trustee decides to object to the claim, the claim may be compromised as provided in sub. (10) or contested as provided under sub. (11). If the trustee determines the claim is invalid, the claimant may object to that determination under sub. (11). If the trustee fails to respond within the applicable period, the claim shall be presumed valid and the claimant may seek enforcement under sub. (11).

(3) **CLAIMS NOT DUE.** If a claim will become due at some future time, the trustee may, or the court with respect to a contested claim may order the trustee to, do any of the following:

(a) Pay the claim in full.

(b) Pay the claim at the present value and in the same manner as in the case of an absolute claim that has been allowed.

(c) Retain sufficient funds to satisfy the claim upon maturity.

(d) Obtain a bond to be given by the distributees for payment in satisfaction of the claim and order the trust to be administered as if the claim had not been filed.

(4) **SECURED CLAIMS.** (a) When a claimant holds any security for a claim, the security shall be described in the written claim given to the trustee. The security is sufficiently described if the security document is described by date and by the recording or filing data.

(b) Payment of the claim shall be made on the basis of one of the following:

1. If the creditor surrenders the security, the full amount of the claim.

2. If the creditor realizes on the security before receiving payment, upon the full amount of the claim allowed less the fair value of the security.

(5) **CONTINGENT CLAIMS.** If the amount or validity of a claim cannot be determined until some time in the future, the claim is a contingent claim regardless of whether the claim is based on an event that occurred in the past or on an event that may occur in the future. Except for claims of the type not required to be filed under s. 701.0508 (2), contingent claims must be filed

with the trustee as provided under sub. (2). If the trustee determines the claim to be valid subject to the contingency, the determination shall state the nature of the contingency. If the trustee determines the claim to be valid and absolute before distribution of the trust, the claim shall be paid in the same manner as absolute claims of the same class. In all other cases the trustee, or the court in the case of a contested claim, may provide for the payment of contingent claims in any of the following methods:

(a) The claimant and trustee may determine, by agreement, arbitration, or compromise, the value of the claim, according to its probable present worth, and it shall be paid in the same manner as a valid and absolute claim.

(b) The trustee may, or the court may order the trustee to, in the case of a contested claim, make distribution of the trust but retain sufficient funds to pay the claim if and when the same becomes absolute. For this purpose, the trust may not be required to remain intact longer than 2 years after distribution of the remainder of the trust has been made, and if the claim has not become absolute within that time, distribution shall be made to the distributees of the retained funds, after paying any costs and expenses accruing during such period, but the distributees shall be liable to the claimant to the extent provided in sub. (6), if the contingent claim thereafter becomes absolute. When distribution is so made to distributees, the trustee or the court may require the distributees to give bond for the satisfaction of their liability to the contingent claimant.

(c) The trustee may require, or the court, in the case of a contested claim, may order, distribution of the trust as though the contingent claim did not exist, but the distributees shall be liable to the claimant as limited by sub. (7), if the contingent claim thereafter becomes absolute. The trustee or the court may require the distributees to give bond for the satisfaction of their liability to the contingent claimant.

(d) Any other method the trustee determines or the court, in the case of a contested claim, orders.

**(6) PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES.** If a contingent claim is filed and the trustee determines the claim to be valid subject to the contingency and all of the assets of the trust, including the fund set apart for the payment of the claim, have been distributed, the claimant may recover on the claim against those distributees, or the persons who furnish bond for the distributees, whose distributive shares have been increased by reason of the fact that the amount of the claim as finally determined was not paid prior to final distribution, if a proceeding for the claim is commenced in court within 6 months after the claim becomes absolute. A distributee or the person who furnishes bond for the distributee shall not be liable for an amount exceeding that person's proportionate share of the trust subject to the claim, nor for

an amount greater than the value of the property that that person received from the trust, the value to be determined as of the time of distribution to the distributee.

**(7) PRIORITY OF PAYMENT OF CLAIMS AND ALLOWANCES.** (a) *Classes and priority.* At the time a claim is determined to be valid, the claim shall be classified in one of the categories under subds. 1. to 8. The trustee shall pay an absolute claim if the trustee reasonably believes the assets of the trust are sufficient to pay the claim. If the applicable assets of the trust are insufficient to pay the claim in full, the trustee shall make payment in the following order:

1. Costs and expenses of administration.
2. Reasonable funeral and burial expenses.
3. Provisions for the family of the deceased settlor under ss. 861.31, 861.33, and 861.35, which sections are incorporated by reference and applied as if the trust is an estate.
4. Reasonable and necessary expenses of the last illness of the deceased settlor, including compensation of persons attending the deceased settlor.
5. All debts, charges, or taxes owing to the United States, this state, or a governmental subdivision or municipality of this state.
6. Wages, including pension, welfare, and vacation benefits, due to employees that have been earned within 3 months before the date of the death of the deceased settlor, not to exceed \$300 in value to each employee.
7. Property assigned to the surviving spouse or surviving domestic partner under s. 861.41, which section is incorporated by reference and applied as if the trust is an estate.
8. All other claims allowed.

(b) *No preference within classes.* Preference shall not be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over a claim not due.

**(8) EXECUTION AND LEVIES PROHIBITED.** Garnishment, attachment, or execution shall not issue against, nor shall any levy be made against, any property of the trust under any judgment or cause of action against a deceased settlor or the trustee, but this subsection shall not be construed to prevent the enforcement of mortgages, pledges, liens, or other security agreements upon real or personal property in an appropriate proceeding.

**(9) QUALIFIED BENEFICIARIES AND CLAIMANTS MAY BE INFORMED OF CLAIMS.** After the deadline for filing a claim against the trust under s. 701.0508, any qualified beneficiary or claimant may make a written request to the trustee for a statement listing all claims that have been filed against the trust. The statement provided by the trustee shall show each claim, the name of the claimant, a brief description of the basis of the claim, the amount claimed, and the trustee's determination of whether the claim is valid, absolute, contingent, or invalid, or whether the trustee will object to the claim in whole or in part. The

trustee shall provide notice of the statement to the requester, including any representative under subch. III within 5 business days of the receipt of the request. The requester shall, within 5 business days of receiving notice of the statement from the trustee, inform the trustee whether the requester agrees or objects to the trustee's determination on whether to allow the claim in whole or in part or whether to object to the claim. Failure on the part of any party to comply with this subsection does not affect the jurisdiction of the court to intervene in the administration of the claim.

**(10) COMPROMISE OF CLAIMS.** When a claim against a trust has been filed and payment of the claim is pending, the claimant and trustee may, if it appears to be in the best interest of the trust, compromise the claim, whether due or not due, absolute or contingent, or liquidated or unliquidated. If an objection to the claim has been filed by a qualified beneficiary or another claimant, no compromise of the claim may be made without the consent of the objector.

**(11) CONTEST AND ENFORCEMENT OF CLAIMS; COURT PROCEDURE.** (a) *Initiation.* Any person may initiate a court proceeding to contest or enforce a claim, object to denial of a claim, or assert an offset or counterclaim, including the trustee, a qualified beneficiary or representative under subch. III on behalf of a qualified beneficiary, or a claimant. Such persons may initiate the court proceeding by petitioning the court to exercise jurisdiction over the claim and any objection, offset, or counterclaim. The petition shall be served upon or mailed to each person who has standing to object to the claim and filed with the court within 60 days after the trustee's response or failure to respond to the claim under sub. (2) (c), or, in the case of an objection by a qualified beneficiary or representative of the qualified beneficiary or another potential claimant, within 30 days after the copy of the claim was mailed to or served upon the objector. The trustee shall not be obligated to assert any offset or counterclaim in court and may, if the trustee deems it to be in the best interest of the trust, assert the offset or counterclaim in any separate action otherwise authorized by law outside the court proceedings. Any offset or counterclaim so asserted shall be deemed denied by the original claimant.

(b) *Procedure.* If any claim, offset, or counterclaim is contested, the court may require the issues to be made definite, fix a date for pretrial conference, and direct the manner in which pleadings, if any, shall be exchanged. The court shall set a time for trial upon its own motion or upon the motion of any party.

**(12) PROMPT JUDGMENT.** The hearing on any contested claim, offset, or counterclaim may be adjourned from time to time, but the hearing shall be concluded as soon as practicable.

**(13) JUDGMENT ON CLAIMS.** The court shall enter a judgment on contested claims and any offsets and counterclaims asserted, stating how much was allowed for or

against the trust in each case. The judgment shall set a date by which payment shall be made. If the balance as to any claimant is in favor of the trust, the payment of the claim may be enforced as with any other judgment.

**(14) DELAY OF PAYMENT OF CLAIMS WHEN FUNDS ARE INSUFFICIENT.** If it appears at any time that the trust is or may be insolvent, that there are insufficient funds on hand for payment of claims in full, or that there is other good cause for delaying payment, the trustee shall provide notice of the delay to the claimants and any other person with standing to object and may petition the court for any order that the trustee deems necessary.

**(15) CLAIMANT'S ACTION FOR PROPERTY FRAUDULENTLY TRANSFERRED BY DECEASED SETTLOR.** Whenever there is reason to believe that the assets of the trust may be insufficient to pay the deceased settlor's debts, and the deceased settlor transferred any property with intent to defraud the deceased settlor's creditors or to avoid any duty, or executed conveyances void as against creditors, any claimant whose claim has been allowed may, on behalf of all, bring an action to reach any property and subject it to sale. The claimant's action shall not be brought to trial until the insufficiency of the assets of the trust is ascertained. If it is found likely that the assets may be insufficient, the action shall be brought to trial. If the action is tried, any property that ought to be subjected to the payment of the debts of the deceased settlor shall be sold in the action and the net proceeds used to pay such debts and to reimburse the claimant for the reasonable expenses and attorney fees incurred by the claimant in such action, as approved by the court.

**(16) ENCUMBERED ASSETS; PAYMENT OF DEBT.** (a) *Rights of secured claimants not affected.* Nothing in this subchapter shall affect or prevent any action or proceeding to enforce any mortgage, pledge, lien, or other security agreement against property of the trust.

(b) *Payment.* When any property in the trust is encumbered by mortgage, pledge, lien, or other security agreement, the trustee may pay the encumbrance or any part of the encumbrance, renew or extend any obligation secured by the encumbrance, or may convey or transfer the encumbered assets to the creditor in satisfaction of the claimant's lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim.

**(17) TORT CLAIMS.** (a) *Filed within time limited.* If a claim based on a cause of action in tort or for contribution resulting from a cause of action in tort is filed on or before the deadline for filing a claim under s. 701.0508, the claimant will receive the same protection in regard to payment as a claimant who has filed a required claim.

(b) *Not filed within time limited.* A cause of action against a deceased settlor in tort or for contribution resulting from a cause of action in tort is not defeated by failure to file the claim or commence or continue an action against the trustee on or before the deadline for filing a claim under s. 701.0508 against a trust, but the fail-

ure to file the claim with the trustee relieves the trustee of all responsibility to protect the rights of the claimant, and the claimant shall not be granted any of the protections under sub. (5). If the claim is determined to be valid and absolute through court–approved settlement or adjudication and a certified copy of the settlement or judgment is filed with the trustee and there are sufficient funds in the trust to pay the claim, the claim shall be paid prior to the distribution of the trust. After the trust has been distributed or if there are not sufficient funds in the trust, a claimant whose claim has been determined to be valid and absolute through court–approved settlement or through adjudication may proceed against the distributees, but no distributee may be liable for an amount greater than that allowed under sub. (6).

**(18) PAYMENT OF UNFILED CLAIMS.** A trustee may pay a debt of a deceased settlor prior to the expiration of the deadline for filing claims under s. 701.0508 whether or not a claim is filed if the trustee reasonably believes that the debt is owed and that the assets of the trust are sufficient to satisfy all of the deceased settlor’s debts.

**(19) LAST ILLNESS AND FUNERAL EXPENSE OF DECEASED SPOUSE.** The reasonable expense of the last illness and funeral may, if properly presented, be paid by the trustee of a deceased settlor’s trust and, if so paid, shall be recognized as valid expenditures even though the surviving spouse of the deceased settlor could have been held liable for the expense.

**SECTION 87.** 701.0602 (1) of the statutes is amended to read:

701.0602 (1) Unless the terms of a trust expressly provide that the trust is irrevocable, there is a rebuttable presumption that 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.

**SECTION 88.** 701.0602 (3) (intro.), (a) and (b) (intro.) of the statutes are consolidated, renumbered 701.0602 (3) (intro.) and amended to read:

701.0602 (3) (intro.) 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) (intro.) If, or if~~ the terms of the trust do not provide a method, by any of the following means:

**SECTION 89.** 701.0602 (3) (b) 1. of the statutes is renumbered 701.0602 (3) (am).

**SECTION 90.** 701.0602 (3) (b) 2. of the statutes is renumbered 701.0602 (3) (bm).

**SECTION 91.** 701.0602 (4) of the statutes is amended to read:

701.0602 (4) Upon revocation of a revocable trust, the trustee shall transfer the trust property to the settlor or 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 or as both spouses direct.

**SECTION 92.** 701.0605 of the statutes is created to read:

**701.0605 Future interests in trust.** Subject to s. 701.1204, unless a contrary intention is found, if a person has a future interest in property under a revocable trust and, under the terms of the trust, the person has the right to possession and enjoyment of the property at the settlor’s death, the right to possession and enjoyment is contingent on the person surviving the settlor. Extrinsic evidence may be used to show contrary intent.

**SECTION 93.** 701.0702 (3) of the statutes is amended to read:

701.0702 (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.~~

**SECTION 94.** 701.0704 (1) (g) of the statutes is created to read:

701.0704 (1) (g) Any other event occurs resulting in no person acting as trustee.

**SECTION 95.** 701.0706 (2) (c) of the statutes is amended to read:

701.0706 (2) (c) ~~The court determines that removal~~ Removal of the trustee ~~best serves the interests of the beneficiaries is appropriate~~ because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively.

**SECTION 96.** 701.0706 (2) (d) of the statutes is amended to read:

701.0706 (2) (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, ~~the court finds that the~~ 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.

**SECTION 97.** 701.0707 (2) of the statutes is amended to read:

701.0707 (2) A trustee who has resigned or been removed shall proceed ~~expeditiously~~ within a reasonable time to deliver the trust property within the trustee’s possession to the cotrustee, successor trustee, or other person entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

**SECTION 98.** 701.0802 (5) of the statutes is renumbered 701.0802 (5) (a).

**SECTION 99.** 701.0802 (5) (b) of the statutes is created to read:

701.0802 (5) (b) A trust company acting in any fiduciary capacity with respect to a trust may purchase any service or product, including insurance or securities underwritten or otherwise distributed by the trust com-

pany or by an affiliate, through or directly from the trust company or an affiliate of a syndicate or selling group that includes the trust company of an affiliate, provided the purchase otherwise complies with the prudent investor rule in s. 881.01 and with s. 881.015. Compensation for the service or product must be reasonable and not prohibited by the instrument governing the fiduciary relationship. The compensation for the service or product may be in addition to the compensation that the trust company is otherwise entitled to receive.

**SECTION 100.** 701.0802 (9) of the statutes is created to read:

701.0802 (9) A trustee is not liable for releasing information, including a copy of all or any portion of the trust instrument, to any deceased settlor's heir-at-law or other person indicating that the person is not a beneficiary of the trust if the trustee reasonably believes that doing so will not harm the beneficiaries of the trust and that doing so will reduce the likelihood of litigation involving the trust.

**SECTION 101.** 701.0813 (1), (2) (d) and (3) (a) (intro.) of the statutes are amended to read:

701.0813 (1) A trustee shall keep the ~~distributees or permissible distributees of trust income or principal, current beneficiaries~~ and other qualified presumptive remainder 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) (d) Notify the ~~distributees or permissible distributees of trust income or principal, current beneficiaries~~ and other qualified presumptive remainder beneficiaries who so request, of any change in the method or rate of the trustee's compensation.

(3) (a) (intro.) At Subject to par. (c), 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, current beneficiaries and to other qualified presumptive remainder beneficiaries who request it, all of the following:

**SECTION 102.** 701.0813 (2) (a) of the statutes is amended to read:

701.0813 (2) (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 or, upon the request of a settlor for a copy of the trust instrument, promptly furnish to the settlor a copy of the trust instrument.

**SECTION 103.** 701.0813 (3) (b) of the statutes is amended to read:

701.0813 (3) (b) ~~Upon Subject to par. (c), 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.

**SECTION 104.** 701.0813 (3) (c) of the statutes is created to read:

701.0813 (3) (c) A trustee may limit the report to a qualified beneficiary of a specific dollar amount or specific property to information that relates to the specific dollar amount or specific property.

**SECTION 105.** 701.0813 (5) of the statutes is amended to read:

701.0813 (5) Subsections (2) (b) ~~and (c), and (d)~~ 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.

**SECTION 106.** 701.0813 (6) and (7) of the statutes are created to read:

701.0813 (6) The trustee has no duty to provide information about the administration of the trust to the settlor, but the trustee may provide such information if the trustee chooses to do so.

(7) The trust instrument may expand, restrict, eliminate, or otherwise vary the right of a beneficiary or class of beneficiaries to be informed of the beneficiary's interest in a trust or to receive any or all information concerning the trust, and may do so for any period of time, including for the lifetime of a beneficiary or a class of beneficiaries. If there is no current acting representative of such a beneficiary or class of beneficiaries in accordance with the trust instrument, and a provision to appoint such a representative is not provided for in the trust instrument, the trustee may appoint a representative for a beneficiary or class of beneficiaries whose rights to information have been restricted or eliminated by the trust instrument.

**SECTION 107.** 701.0815 (3) of the statutes is created to read:

701.0815 (3) A trustee has no power to give warranties in a sale, mortgage, or lease that are binding on the trustee personally.

**SECTION 108.** 701.0816 (29) of the statutes is created to read:

701.0816 (29) Fund a trust or account that meets the requirements under 42 USC 1396p (d) (4) (A) or (C) for the benefit of an individual with a disability.

**SECTION 109.** 701.0816 (30) of the statutes is created to read:

701.0816 (30) Fund an account that is part of an ABLE program under section 529A of the Internal Revenue Code for a beneficiary's benefit.

**SECTION 110.** 701.0817 (3) (b) of the statutes is amended to read:

701.0817 (3) (b) The beneficiary, at the time of the release, did not know of the beneficiary’s rights or have a reasonable opportunity to know of the material facts relating to the breach.

**SECTION 111.** 701.0818 (2) (b) 2. h. of the statutes is repealed and recreated to read:

701.0818 (2) (b) 2. h. Exercise a decanting power under subch. XIII or direct an authorized fiduciary, as defined in s. 701.1302 (1), to exercise a decanting power under subch. XIII.

**SECTION 112.** 701.1005 (1) of the statutes is amended to read:

701.1005 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the earlier of either the date on which the beneficiary or a representative of the beneficiary waived the right to a report under s. 701.0813 (4) or the date on which the beneficiary or a representative of the beneficiary was sent a report or other record that adequately disclosed the existence of a potential claim for breach of trust.

**SECTION 113.** 701.1005 (2) of the statutes is amended to read:

701.1005 (2) A report or other record 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.

**SECTION 114.** 701.1009 (2) of the statutes is amended to read:

701.1009 (2) At the time of the consent, release, or ratification, the beneficiary did not have knowledge or a reasonable opportunity to obtain knowledge of the beneficiary’s rights or of the material facts relating to the breach.

**SECTION 115.** 701.1105 (1) (b) of the statutes is amended to read:

701.1105 (1) (b) Is given in the manner provided in ~~ch. 879, except that notice by publication is not required s. 701.0109.~~

**SECTION 116.** 701.1136 (1) of the statutes is amended to read:

701.1136 (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~~ a current beneficiary is to receive income from the trust, the trustee shall distribute ~~at least annually~~ the income to which ~~such~~ the current beneficiary is entitled at least annually.

**SECTION 117.** Subchapter XIII of chapter 701 [precedes 701.1301] of the statutes is created to read:

#### CHAPTER 701

#### SUBCHAPTER XIII

#### UNIFORM TRUST DECANTING ACT

**701.1301 Short title.** This subchapter may be cited as the Uniform Trust Decanting Act.

**701.1302 Definitions.** In this subchapter:

(1) “Authorized fiduciary” means any of the following:

(a) A trustee, a directing party, or another fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries.

(b) A special fiduciary appointed under s. 701.1309.

(c) A special-needs fiduciary under s. 701.1313.

(d) A trust protector who has been granted a decanting power, which may be exercised in a fiduciary or non-fiduciary capacity, under s. 701.0818 (2) (b) 2. h.

(2) “Decanting power” means the power of an authorized fiduciary under this subchapter to distribute property of a first trust to one or more 2nd trusts or to modify the terms of the first trust.

(3) “Expanded distributive discretion” means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(4) “First trust” means a trust over which an authorized fiduciary may exercise the decanting power.

(5) “First-trust instrument” means the trust instrument for a first trust.

(6) “Reasonably definite standard” means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of section 674 (b) (5) (A) of the Internal Revenue Code and any applicable regulations.

(7) “Second trust” means any of the following:

(a) A first trust after modification under this subchapter.

(b) A trust to which a distribution of property from a first trust is or may be made under this subchapter.

(8) “Second-trust instrument” means the trust instrument for a 2nd trust.

**701.1303 Scope.** (1) Except as otherwise provided in subs. (2) and (3), this subchapter applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(2) This subchapter does not apply to a trust held solely for charitable purposes.

(3) Subject to s. 701.1315, a trust instrument may restrict or prohibit exercise of the decanting power.

(4) This subchapter does not limit the power of an authorized fiduciary or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this subchapter, common law, a court order, or a nonjudicial settlement agreement.

(5) This subchapter does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

**701.1304 Fiduciary duty.** (1) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust. If a trustee or other authorized fiduciary is directed by another authorized fiduciary to exercise the decanting power, the trustee or other directed authorized fiduciary shall act to comply with the exercise of the decanting power and the trustee or other directed authorized fiduciary shall not be liable for the action regardless of any fiduciary duty that the trustee or other directed authorized fiduciary might otherwise have.

(2) This subchapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this subchapter.

(3) Except as otherwise provided in a first–trust instrument, for purposes of this subchapter and ss. 701.0801 and 701.0802 (2), the terms of the first trust are deemed to include the decanting power.

**701.1305 Application; governing law.** This subchapter applies to a trust created before, on, or after the effective date of this section .... [LRB inserts date], if any of the following applies:

(1) The trust has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state.

(2) The trust provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of any of the following:

(a) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state.

(b) Construction of terms of the trust.

(c) Determining the meaning or effect of terms of the trust.

**701.1306 Reasonable reliance.** A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this subchapter, law of this state other than this subchapter, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

**701.1307 Notice; exercise of decanting power.** (1) In this section, a notice period begins on the day notice is given under sub. (3) and ends 30 days after the day notice is given.

(2) Except as otherwise provided in this subchapter, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(3) Except as otherwise provided in sub. (6), an authorized fiduciary shall give notice of the intended exercise of the decanting power not later than 30 days before the exercise to all of the following:

(a) Each settlor of the first trust, if living or then in existence.

(b) Each qualified beneficiary of the first trust.

(c) Each holder of a presently exercisable power of appointment over any part or all of the first trust.

(d) Each person that currently has the right to remove or replace the authorized fiduciary.

(e) Each directing party, trust protector, or other fiduciary of the first trust.

(f) Each directing party, trust protector, or other fiduciary of the 2nd trust.

(g) If s. 701.1314 (2) applies, the attorney general.

(4) An authorized fiduciary is not required to give notice under sub. (3) to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(5) A notice under sub. (3) must do all of the following:

(a) Specify the manner in which the authorized fiduciary intends to exercise the decanting power.

(b) Specify the proposed effective date for exercise of the power.

(c) Include a copy of the first–trust instrument.

(d) Include a copy of all 2nd–trust instruments.

(6) The decanting power may be exercised before expiration of the notice period under sub. (1) if all persons entitled to receive notice waive the period in a signed record.

(7) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under s. 701.1309 asserting any of the following:

(a) That an attempted exercise of the decanting power is ineffective because it did not comply with this subchapter or was an abuse of discretion or breach of fiduciary duty.

(b) That s. 701.1322 applies to the exercise of the decanting power.

(8) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under sub. (3) if the authorized fiduciary acted with reasonable care to comply with sub. (3).

**701.1309 Court involvement.** (1) On application of an authorized fiduciary, a person entitled to notice under s. 701.1307 (3), a beneficiary, or with respect to a charitable interest the attorney general or other person that has standing to enforce the charitable interest, the court may do any of the following:

(a) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this subchapter and consistent with the fiduciary duties of the authorized fiduciary.

(b) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this subchapter and to exercise the decanting power.

(c) Approve an exercise of the decanting power.

(d) Determine that a proposed or attempted exercise of the decanting power is ineffective for any of the following reasons:

1. After applying s. 701.1322, the proposed or attempted exercise does not or did not comply with this subchapter.

2. The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty.

3. The proposed or attempted exercise is expressly prohibited under the terms of the first trust.

(e) Determine the extent to which s. 701.1322 applies to a prior exercise of the decanting power.

(f) Provide instructions to the trustee regarding the application of s. 701.1322 to a prior exercise of the decanting power.

(g) Order other relief to carry out the purposes of this subchapter.

(2) On application of an authorized fiduciary, the court may approve any of the following:

(a) An increase in the fiduciary's compensation under s. 701.1316.

(b) A modification under s. 701.1318 of a provision granting a person the right to remove or replace the fiduciary.

**701.1310 Formalities.** An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by s. 701.1307, identify the first trust and the 2nd trust or trusts and state the property of the first trust being distributed to each 2nd trust and the property, if any, that remains in the first trust.

**701.1311 Decanting power under expanded distributive discretion.** (1) In this section:

(a) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(b) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(c) "Vested interest" means any of the following:

1. A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power.

2. A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property.

3. A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar

amount, or a percentage of value of some or all of the trust property.

4. A presently exercisable general power of appointment.

5. A right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(2) Subject to sub. (3) and s. 701.1314, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Subject to s. 701.1313, in an exercise of the decanting power under this section, a 2nd trust may not do any of the following:

(a) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in sub. (4).

(b) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in sub. (4).

(c) Reduce or eliminate a vested interest.

(d) Fail to be a trust described in 42 USC 1396p (d) (4) (A) or (C) if the first trust is a trust described in 42 USC 1396p (d) (4) (A) or (C).

(4) Subject to sub. (3) (c) and s. 701.1314, in an exercise of the decanting power under this section, a 2nd trust may be a trust created or administered under the law of any jurisdiction and may do any of the following:

(a) Retain a power of appointment granted in the first trust.

(b) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment.

(c) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary.

(d) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(5) A power of appointment described in sub. (4) (a) to (d) may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(6) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over



which the authorized fiduciary has expanded distributive discretion.

**701.1312 Decanting power under limited distributive discretion.** (1) In this section, “limited distributive discretion” means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(2) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Under this section and subject to s. 701.1314, a 2nd trust may be created or administered under the law of any jurisdiction. Under this section, the 2nd trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

(3m) Notwithstanding sub. (3), an authorized fiduciary exercising the decanting power under this section may grant to a beneficiary of the 2nd trust a testamentary power of appointment exercisable in favor of the creditors of the beneficiary’s estate, but only if the authorized fiduciary concludes the granting of such power will be unlikely to adversely affect the beneficial interest of the presumptive remainder beneficiaries of the first trust.

(4) A power to make a distribution under a 2nd trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if any of the following applies:

(a) The distribution is applied for the benefit of the beneficiary.

(b) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter.

(c) The distribution is made as permitted under the terms of the first–trust instrument and the 2nd–trust instrument for the benefit of the beneficiary.

(5) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

**701.1313 Trust for beneficiary with disability.** (1) In this section:

(a) “Beneficiary with a disability” means a beneficiary of a first trust who the special–needs fiduciary believes in good faith is an individual with a disability.

(b) “Special–needs fiduciary” means, with respect to a trust that has a beneficiary with a disability, any of the following:

1. A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries.

2. If no trustee or fiduciary has discretion under subd. 1., a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries.

3. If no trustee or fiduciary has discretion under subds. 1. and 2., a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(c) “Special–needs trust” means a trust the trustee believes would not be considered a resource for purposes of determining whether an individual with a disability is eligible for the supplemental security income program or the medical assistance program.

(2) A special–needs fiduciary may exercise the decanting power under s. 701.1311 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if all of the following apply:

(a) A 2nd trust is a special–needs trust that benefits the beneficiary with a disability.

(b) The special–needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(3) In an exercise of the decanting power under this section, the following rules apply:

(a) Notwithstanding s. 701.1311 (3) (b), the interest in the 2nd trust of a beneficiary with a disability may do any of the following:

1. Be an account in a pooled trust for the benefit of the beneficiary with a disability described in 42 USC 1396p (d) (4) (C) that includes the trust retention provisions permitted by 42 USC 1396p (d) (4) (C) (iv).

2. Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 USC 1396p (d) (4) (A) or (C).

(b) Section 701.1311 (3) (c) does not apply to the interests of the beneficiary with a disability.

(c) Except as affected by any change to the interests of the beneficiary with a disability or by the effects on remainder beneficiaries of a transfer to a 2nd trust under par. (a), if the special needs fiduciary has limited distributive discretion over the principal of the 2nd trust, or if there are 2 or more 2nd trusts, the 2nd trusts in the aggregate must grant each other beneficiary of the first trust beneficial interests in the 2nd trusts that are substantially similar to the beneficiary’s beneficial interests in the first trust.

**701.1314 Protection of charitable interest.** (1) In this section:

(a) “Determinable charitable interest” means an interest that is all of the following:

1. A charitable interest.
2. Entitled to receive a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time.
3. Unconditional or held solely for charitable purposes.

(b) “Unconditional” means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the Internal Revenue Code, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(2) The attorney general may represent and bind a charitable interest only when the attorney general has the rights of a qualified beneficiary as provided in s. 701.0110 (3).

(3) If a first trust contains a charitable interest, the 2nd trust or trusts may not do any of the following:

- (a) Diminish the charitable interest.
- (b) Diminish the interest of an identified charitable organization that holds the charitable interest.
- (c) Alter any charitable purpose stated in the first-trust instrument.
- (d) Alter any condition or restriction related to the charitable interest.

(3m) Notwithstanding subs. (3) and (5), if the first trust is an account in a pooled trust described in 42 USC 1396p (d) (4) (C), the 2nd trust may be an account in another pooled trust described in 42 USC 1396p (d) (4) (C) or a trust described in 42 USC 1396p (d) (4) (A) regardless of any of the following:

- (a) Any effect on a charitable interest in property that is permitted to be retained in the first trust under 42 USC 1396p (d) (4) (C) (iv).
- (b) Any effect the trust retention and Medicaid reimbursement provisions of the 2nd trust may have on a charitable interest in the first trust.
- (c) Any change in the identified charitable organization.
- (d) Any change in the governing law or principal place of administration of the trust.

(4) If there are 2 or more 2nd trusts, the 2nd trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of sub. (3).

(5) If a first trust contains a determinable charitable interest, the 2nd trust or trusts that include a charitable interest pursuant to sub. (3) must be administered under the law of this state unless any of the following applies:

(a) The attorney general, after receiving notice under s. 701.1307, fails to object in a signed record delivered to the authorized fiduciary within the notice period.

(b) The attorney general consents in a signed record to the 2nd trust or trusts being administered under the law of another jurisdiction.

(c) The court approves the exercise of the decanting power.

(d) The identified charitable organization consents in a signed record delivered to the authorized fiduciary.

(6) This subchapter does not limit the powers and duties of the attorney general under the laws of this state other than this subchapter.

**701.1315 Trust limitation on decanting.** (1) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of any of the following:

- (a) The decanting power.
- (b) A power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(2) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of any of the following:

- (a) The decanting power.
- (b) A power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(3) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary’s interest does not preclude exercise of the decanting power.

(4) Subject to subs. (1) and (2), an authorized fiduciary may exercise the decanting power under this subchapter even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(5) If a first-trust instrument contains an express restriction described in sub. (2), the provision must be included in the 2nd-trust instrument.

**701.1316 Change in compensation.** (1) If a first-trust instrument specifies an authorized fiduciary’s compensation, the fiduciary may not exercise the decanting power to increase the fiduciary’s compensation above the specified compensation unless any of the following applies:

- (a) All qualified beneficiaries of the 2nd trust consent to the increase in a signed record.
- (b) The increase is approved by the court.

(2) If a first-trust instrument does not specify an authorized fiduciary’s compensation, the fiduciary may not exercise the decanting power to increase the fiducia-

ry's compensation above the compensation permitted by this chapter unless any of the following applies:

(a) All qualified beneficiaries of the 2nd trust consent to the increase in a signed record.

(b) The increase is approved by the court.

(3) A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subs. (1) and (2).

(4) This section does not apply to a decanting from a first trust that is a pooled trust described in 42 USC 1396p (d) (4) (C), or to a decanting to a 2nd trust that is a pooled trust described in 42 USC 1396p (d) (4) (C).

**701.1317 Relief from liability and indemnification.** (1) Except as otherwise provided in this section, a 2nd-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument unless any of the following applies:

(a) All the qualified beneficiaries of the 2nd trust consent to the relief from liability in a signed record.

(b) The relief from liability is approved by the court.

(2) A 2nd-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(3) Absent consent of all qualified beneficiaries or the approval of the court, the 2nd-trust instrument may not reduce the aggregate fiduciary liability of all fiduciaries of the 2nd trust.

(4) Subject to sub. (3), a 2nd-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, directing parties, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this subchapter.

**701.1318 Removal or replacement of authorized fiduciary.** (1) An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless any of the following applies:

(a) The person holding the power consents to the modification in a signed record and the modification applies only to the person.

(b) The person holding the power and the qualified beneficiaries of the 2nd trust consent to the modification in a signed record and the modification grants a substantially similar power to another person.

(c) The court approves the modification and the modification grants a substantially similar power to another person.

(2) This section does not apply to a decanting from a first trust that is a pooled trust described in 42 USC

1396p (d) (4) (C), or to a decanting to a 2nd trust that is a pooled trust described in 42 USC 1396p (d) (4) (C).

**701.1319 Tax-related limitations.** (1) In this section:

(a) "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under sections 671 to 677 of the Internal Revenue Code or section 679 of the Internal Revenue Code.

(b) "Nongrantor trust" means a trust that is not a grantor trust.

(c) "Qualified benefits property" means property subject to the minimum distribution requirements of section 401 (a) (9) of the Internal Revenue Code, and any applicable regulations, or to any similar requirements that refer to section 401 (a) (9) of the Internal Revenue Code or the regulations.

(2) An exercise of the decanting power is subject to the following limitations:

(a) If a first trust contains property that qualified, or would have qualified but for provisions of this subchapter other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the 2nd-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(b) If the first trust contains property that qualified, or would have qualified but for provisions of this subchapter other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the 2nd-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(c) If the first trust contains property that qualified, or would have qualified but for provisions of this subchapter other than this section, for the exclusion from the gift tax described in section 2503 (b) of the Internal Revenue Code, the 2nd-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under section 2503 (b) of the Internal Revenue Code. If the first trust contains property that qualified, or would have qualified but for provisions of this subchapter other than this section, for the exclusion from the gift tax described in the Internal Revenue Code section 2503 (b)

by application of section 2503 (c) of the Internal Revenue Code, the 2nd–trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under section 2503 (c) of the Internal Revenue Code.

(d) If the property of the first trust includes shares of stock in an S corporation, as defined in section 1361 of the Internal Revenue Code, and the first trust is, or but for provisions of this subchapter other than this section would be, a permitted shareholder under any provision of section 1361 of the Internal Revenue Code, an authorized fiduciary may exercise the power with respect to part or all of the S–corporation stock only if any 2nd trust receiving the stock is a permitted shareholder under section 1361 (c) (2) of the Internal Revenue Code. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this subchapter other than this section would be, a qualified subchapter S trust within the meaning of section 1361 (d) of the Internal Revenue Code, the 2nd–trust instrument must not include or omit a term that prevents the 2nd trust from qualifying as a qualified subchapter S trust.

(e) If the first trust contains property that qualified, or would have qualified but for provisions of this subchapter other than this section, for a zero inclusion ratio for purposes of the generation–skipping transfer tax under section 2642 (c) of the Internal Revenue Code, the 2nd–trust instrument must not include or omit a term that, if included in or omitted from the first–trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under section 2642 (c) of the Internal Revenue Code.

(f) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the 2nd–trust instrument may not include or omit any term that, if included in or omitted from the first–trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under section 401 (a) (9) of the Internal Revenue Code and any applicable regulations, or any similar requirements that refer to section 401 (a) (9) of the Internal Revenue Code or the regulations. If an attempted exercise of the decanting power violates this paragraph, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and s. 701.1322 applies to the separate share.

(g) If the first trust qualifies as a grantor trust because of the application of section 672 (f) (2) (A) of the Internal Revenue Code, the 2nd trust may not include or omit a term that, if included in or omitted from the first–trust instrument, would have prevented the first trust from qualifying under section 672 (f) (2) (A) of the Internal Revenue Code.

(h) In this paragraph, “tax benefit” means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to par. (i), a 2nd–trust instrument may not include or omit a term that, if included in or omitted from the first–trust instrument, would have prevented qualification for a tax benefit if all of the following apply:

1. The first–trust instrument expressly indicates an intent to qualify for the benefit or the first–trust instrument clearly is designed to enable the first trust to qualify for the benefit.

2. The transfer of property held by the first trust or the first trust qualified, or but for provisions of this subchapter other than this section, would have qualified for the tax benefit.

(i) Subject to par. (d), all of the following apply:

1. Except as otherwise provided in par. (g), the 2nd trust may be a nongrantor trust, even if the first trust is a grantor trust.

2. Except as otherwise provided in par. (j), the 2nd trust may be a grantor trust, even if the first trust is a nongrantor trust.

(j) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and any of the following applies:

1. The first trust and a 2nd trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the 2nd trust does not grant an equivalent power to the settlor or other person.

2. The first trust is a nongrantor trust and a 2nd trust is a grantor trust, in whole or in part, with respect to the settlor, unless any of the following applies:

a. The settlor has the power at all times to cause the 2nd trust to cease to be a grantor trust.

b. The first–trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the 2nd–trust instrument contains the same provision.

**701.1320 Duration of 2nd trust.** (1) Subject to sub. (2), a 2nd trust may have a duration that is the same as or different from the duration of the first trust.

(2) To the extent that property of a 2nd trust is attributable to property of the first trust, the property of the 2nd trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation that apply to property of the first trust.

**701.1321 Need to distribute not required.** An authorized fiduciary may exercise the decanting power whether or not under the first trust’s discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

**701.1322 Saving provision.** (1) If exercise of the decanting power would be effective under this subchapter except that the 2nd–trust instrument in part does not comply with this subchapter, the exercise of the power is effective and the following rules apply with respect to the principal of the 2nd trust attributable to the exercise of the power:

(a) A provision in the 2nd–trust instrument that is not permitted under this subchapter is void to the extent necessary to comply with this subchapter.

(b) A provision required by this subchapter to be in the 2nd–trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this subchapter.

(2) If a trustee or other fiduciary of a 2nd trust determines that sub. (1) applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary’s duties.

**701.1323 Trust for care of animal.** (1) The decanting power may be exercised over an animal trust that has an animal protector to the extent the trust could be decanted under this subchapter if each animal that benefits from the trust were an individual, if the animal protector consents in a signed record to the exercise of the power.

(2) An animal protector has the rights under this subchapter of a qualified beneficiary.

(3) Notwithstanding any other provision of this subchapter, if a first trust is an animal trust, in an exercise of the decanting power, the 2nd trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

**701.1324 Terms of 2nd trust.** A reference in this chapter to a trust instrument or terms of the trust includes a 2nd–trust instrument and the terms of the 2nd trust.

**701.1325 Settlor.** (1) For purposes of law of this state other than this subchapter and subject to sub. (2), a settlor of a first trust is deemed to be the settlor of the 2nd trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(2) In determining settlor intent with respect to a 2nd trust, the intent of a settlor of the first trust, a settlor of the 2nd trust, and the authorized fiduciary may be considered.

**701.1326 Later–discovered property.** (1) Except as otherwise provided in sub. (3), if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more 2nd trusts, later–discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the 2nd trust or trusts.

(2) Except as otherwise provided in sub. (3), if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more 2nd trusts, later–discovered property belonging to the

first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(3) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a 2nd trust for disposition of later–discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

**701.1327 Obligations.** A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the 2nd trust after exercise of the decanting power.

**SECTION 118.** Chapter 702 of the statutes is repealed and recreated to read:

**CHAPTER 702**  
**UNIFORM POWERS OF APPOINTMENT**  
**ACT**  
**SUBCHAPTER I**  
**GENERAL PROVISIONS**

**702.101 Short title.** This act may be cited as the Uniform Powers of Appointment Act.

**702.102 Definitions.** In this chapter:

(1) “Appointee” means a person to which a powerholder makes an appointment of appointive property.

(2) “Appointive property” means the property or property interest subject to a power of appointment.

(3) “Blanket–exercise clause” means a clause in an instrument that exercises a power of appointment and is not a specific–exercise clause. “Blanket–exercise clause” includes a clause that does any of the following:

(a) Expressly uses the words “any power” in exercising a power of appointment the powerholder has.

(b) Expressly uses the words “any property” in appointing any property over which a powerholder has a power of appointment.

(c) Disposes of all property subject to disposition by the powerholder.

(4) “Broad limited power of appointment” means a power of appointment exercisable in favor of anyone other than the powerholder, the powerholder’s estate, the powerholder’s creditors, or the creditors of the powerholder’s estate.

(5) “Donor” means a person that creates a power of appointment.

(6) “Exclusionary power of appointment” means a power of appointment exercisable in favor of one or more permissible appointees to the exclusion of the other permissible appointees.

(7) “General power of appointment” means a power of appointment exercisable in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate.

(8) “Gift–in–default clause” means a clause that identifies a taker in default of appointment.

(9) “Impermissible appointee” means a person that is not a permissible appointee.

(10) “Instrument” means a writing.

(11) “Nongeneral power of appointment” means a power of appointment that is not a general power of appointment.

(12) “Permissible appointee” means a person in whose favor a powerholder may exercise a power of appointment.

(13) “Person” means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(14) “Powerholder” means a person in which a donor creates a power of appointment.

(15) “Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. “Power of appointment” does not include a power of attorney.

(16) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. “Presently exercisable power of appointment” includes a power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time, and only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified time, but does not include a power exercisable only at the powerholder’s death.

(17) “Specific-exercise clause” means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

(18) “Taker in default of appointment” means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) “Terms of the instrument” means the manifestation of the intent of the maker of the instrument regarding the instrument’s provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

**702.103 Governing law.** Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the creation, revocation, or amendment of a power of appointment is governed by the law of the donor’s domicile at the relevant time. The exercise, release, or disclaimer of a power of appointment, or the revocation or amendment of an exercise, release, or disclaimer of a power of appointment is governed by the law of the powerholder’s domicile at the relevant time.

**702.104 Common law and principles of equity.** The common law and principles of equity supplement

this chapter, except to the extent modified by this chapter or any other state law.

**702.105 Default rules.** The terms of a governing instrument prevail over any provision of this subchapter.

## SUBCHAPTER II

### CREATION, REVOCATION, AND AMENDMENT

#### OF POWER OF APPOINTMENT

**702.201 Creation of power of appointment.** (1) A power of appointment is created only if the instrument creating the power satisfies all of the following:

(a) The instrument is valid under applicable law.

(b) Except as provided in sub. (2), the instrument governs the disposition of the appointive property.

(c) The terms of the instrument manifest the donor’s intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1) (b) does not apply to a power of appointment that is created by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) A power of appointment may be created in an unborn or unascertained powerholder.

**702.202 Nontransferability.** A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power of appointment, the power lapses.

**702.203 Presumption of unlimited authority.** Subject to ss. 702.204 and 702.205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, a power of appointment is all of the following:

(1) A presently exercisable power of appointment.

(2) An exclusionary power of appointment.

(3) A general power of appointment.

**702.204 Exception to presumption of unlimited authority.** Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is a nongeneral power of appointment if all of the following apply:

(1) The power is exercisable only at the powerholder’s death.

(2) The permissible appointees of the power are a defined and limited class that does not include the powerholder’s estate, the powerholder’s creditors, or the creditors of the powerholder’s estate.

**702.205 Rules of classification.** (1) In this section, “adverse party” means a person with a substantial beneficial interest in appointive property that would be affected adversely by a powerholder’s exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is a nongeneral power of appointment.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is an exclusionary power of appointment.

**702.206 Power to revoke or amend.** A donor may revoke or amend a power of appointment only to the extent that any of the following applies:

(1) The instrument creating the power is revocable by the donor.

(2) The donor reserves a power of revocation or amendment over the power of appointment in the instrument.

### SUBCHAPTER III

#### EXERCISE OF POWER OF APPOINTMENT

**702.301 Requisites for exercise of power of appointment.** (1) (a) A power of appointment is exercised only if all of the following apply:

1. The instrument exercising the power is valid under applicable law.

2. The terms of the instrument exercising the power do all of the following:

a. Manifest the powerholder's intent to exercise the power.

b. Subject to s. 702.304, satisfy the requirements of exercise, if any, imposed by the donor.

(b) A power of appointment is exercised under par. (a) only to the extent the appointment is a permissible exercise of the power.

(2) If the donor requires the consent of the donor or any other person for the exercise of a power of appointment, the consent must be expressed in the instrument exercising the power of appointment or in a separate written instrument, signed in either case by the persons whose consent is required. If any person whose consent is required dies or becomes legally incapable of consenting, the power of appointment may be exercised by the powerholder without the consent of that person unless the terms of the instrument creating the power of appointment manifest a contrary intent.

(3) (a) Except as provided in par. (b) and unless the terms of the instrument creating a power of appointment manifest a contrary intent, if a power of appointment is vested in 2 or more persons, the joint powerholders may only exercise the power of appointment unanimously.

(b) If a power of appointment is vested in 2 or more persons and one or more of the joint powerholders die, become incapable of exercising the power of appointment, or renounce, release, or disclaim the power of appointment, the power of appointment may be exercised unanimously by the other powerholders.

**702.302 Intent to exercise: determining intent from residuary clause.** (1) In this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if all of the following apply:

(a) The terms of the instrument containing the residuary clause do not manifest a contrary intent.

(b) The power of appointment is a general power of appointment exercisable in favor of the powerholder's estate.

(c) There is no gift-in-default clause in the instrument creating the power of appointment or the gift-in-default clause in the instrument creating the power of appointment is ineffective.

(d) The powerholder did not release the power of appointment.

#### **702.303 Intent to exercise: after-acquired power.**

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent, all of the following apply:

(1) Except as otherwise provided in sub. (2), a blanket-exercise clause extends to a power of appointment acquired by the powerholder after executing the instrument containing the clause.

(2) If the powerholder is also the donor of the power of appointment, a blanket-exercise clause does not extend to the power of appointment unless there is not a gift-in-default clause or the gift-in-default clause is ineffective.

**702.304 Substantial compliance with donor-imposed formal requirement.** A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if all of the following apply:

(1) The powerholder knows of and intends to exercise the power of appointment.

(2) The powerholder's manner of attempted exercise of the power of appointment does not impair a material purpose of the donor in imposing the requirement.

**702.305 Permissible appointment.** (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the pow-

erholder or the creditors of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power of appointment may do any of the following:

(a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.

(b) Create a general or nongeneral power of appointment in a permissible appointee that may be exercisable in favor of persons other than permissible appointees of the original nongeneral power of appointment.

(c) Create a nongeneral power of appointment in any person to appoint to one or more of the permissible appointees of the original nongeneral power of appointment.

**702.306 Appointment to a deceased appointee.** Subject to s. 854.06, an exercise of a power of appointment is ineffective to the extent it is in favor of a deceased appointee.

**702.307 Impermissible appointment.** (1) Except as otherwise provided in s. 702.306, an exercise of a power of appointment is ineffective to the extent it is in favor of an impermissible appointee.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

**702.308 Selective allocation doctrine.** If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

**702.309 Capture doctrine: disposition of ineffectively appointed property under general power.** To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment, all of the following apply:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, the ineffectively appointed property passes to one of the following:

1. If the powerholder is a permissible appointee and living, the powerholder.

2. If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee.

(b) If there is no taker under par. (a), the ineffectively appointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**702.310 Disposition of unappointed property under released or unexercised general power.** To the

extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, all of the following apply:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, except as otherwise provided in par. (b), the unappointed property passes to any of the following:

1. If the powerholder is a permissible appointee and living, the powerholder.

2. If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee.

(b) To the extent the powerholder released the power, or if there is no taker under par. (a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**702.311 Disposition of unappointed property under released or unexercised nongeneral power of appointment.** To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment, all of the following apply:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) (a) If there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective, the unappointed property passes to the permissible appointees if all of the following apply:

1. The permissible appointees are defined and limited.

2. The terms of the instrument creating the power do not manifest a contrary intent.

(b) If there is no taker under par. (a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**702.312 Disposition of unappointed property if partial appointment to taker in default.** Unless the terms of an instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

**702.313 Appointment to taker in default.** If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is considered not to have been exercised and the appointee takes under the gift-in-default clause.

**702.314 Powerholder's authority to revoke or amend exercise.** A powerholder may revoke or amend an exercise of a power of appointment only to the extent that any of the following applies:



(1) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is a nongeneral power of appointment, the terms of the instrument creating the power of appointment do not prohibit the reservation.

(2) The terms of the instrument creating the power of appointment provide that the exercise of the power of appointment is revocable or amendable.

**702.315 Presumption of nonexercise of a power of appointment.** (1) A personal representative, trustee, or other fiduciary who holds property subject to a power of appointment may administer that property as if the power of appointment was not exercised if the personal representative, trustee, or other fiduciary has no notice of the existence of any of the following within 6 months after the death of the powerholder:

(a) A document purporting to be a will of the powerholder if the power of appointment is exercised by the will.

(b) Other documentation of the powerholder purporting to exercise the power of appointment if the power of appointment is exercisable other than by a will.

(2) A personal representative, trustee, or other fiduciary who acts in good faith is not liable to any person for administering property as if a power of appointment was not exercised as provided in sub. (1).

#### SUBCHAPTER IV

#### DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

**702.401 Disclaimer.** (1) A powerholder may disclaim all or part of a power of appointment as provided under ss. 700.27 and 854.13.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property, as provided under ss. 700.27 and 854.13.

**702.402 Authority to release.** A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

**702.403 Method of release.** A powerholder of a releasable power of appointment may release the power in whole or in part by any of the following methods:

(1) Substantial compliance with a method provided in the terms of the instrument creating the power.

(2) If the terms of the instrument creating the power do not provide a method, a writing that manifests the powerholder's intent by clear and convincing evidence.

**702.404 Revocation of amendment of release.** A powerholder may revoke or amend a release of a power of appointment only to the extent that any of the following applies:

(1) The instrument of release is revocable by the powerholder.

(2) The powerholder reserves a power of revocation or amendment in the instrument of release.

**702.405 Power to contract: presently exercisable power of appointment.** A powerholder of a presently exercisable power of appointment may contract to do any of the following:

(1) Not to exercise the power.

(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

**702.406 Power to contract: power of appointment not presently exercisable.** A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if all of the following apply:

(1) The powerholder is also the donor of the power.

(2) The powerholder reserved the power in a revocable trust.

**702.407 Remedy for breach of contract to appoint or not to appoint.** The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

#### SUBCHAPTER V

#### RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

**702.501 Creditor claim: general power created by powerholder.** (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by a powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in ch. 242 and any other applicable law relating to fraudulent conveyances.

(3) Subject to sub. (2), appointive property subject to a general power of appointment created by a powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to subs. (2) and (3), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by a powerholder is subject to a claim of a creditor of any of the following:

(a) If the power of appointment is a presently exercisable power of appointment, the powerholder, to the same extent as if the powerholder owned the appointive property.

(b) If the power of appointment is exercisable at the powerholder's death, the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid.

**702.502 Creditor claim: general power not created by powerholder.** (1) Except as otherwise provided in sub. (2), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of any of the following:

(a) If the power of appointment is a presently exercisable power of appointment, the powerholder to the extent the powerholder's property is insufficient.

(b) If the power of appointment is exercisable at the powerholder's death, the powerholder's estate or revocable trust, subject to the right of a decedent to direct the source from which liabilities are paid, but only to the extent of the powerholder's exercise of that general power of appointment and only to the extent that the claim of the creditor has been filed and allowed in the powerholder's estate or filed with and approved by the trustee of a revocable trust but not paid because the assets of the estate or revocable trust are insufficient. For purposes of this paragraph, a revocable trust is a trust that is revocable, as defined in s. 701.0103 (22), by the powerholder or jointly by the powerholder and the powerholder's spouse.

(2) Subject to s. 702.504 (3), a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 USC 2041 (b) (1) (A) or 2514 (c) (1), is considered for purposes of this subchapter as a nongeneral power of appointment.

(3) If during the powerholder's lifetime, the powerholder exercises a general power of appointment created by a person other than the powerholder, a creditor of the powerholder can reach the appointed interests to the same extent that under the law relating to fraudulent conveyances the creditor could reach property that the powerholder has owned and transferred during the powerholder's lifetime.

**702.503 Power to withdraw.** (1) For purposes of this subchapter, and except as otherwise provided in sub. (2), a power to withdraw property from a trust is considered, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds 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 considered to make a transfer to the trust pursuant to an election to split gifts under section 2513 (a) of the Internal Revenue Code.

**702.504 Creditor claim: nongeneral power of appointment.** (1) Except as otherwise provided in subs. (2) and (3), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the law relating to fraudulent conveyances.

(3) For purposes of this subchapter, if the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated as a general power of appointment.

**702.505. Third parties in good faith protected.** Any person acting without actual notice of claims of creditors under this subchapter incurs no liability to those creditors for transferring property that is subject to a power of appointment or that has been appointed. A purchaser without actual notice and for a valuable consideration takes an interest in property, legal or equitable, and takes the interest free of any rights that a powerholder's creditor may have under this subchapter.

#### SUBCHAPTER VI

#### MISCELLANEOUS PROVISIONS

**702.601 Recording instruments relating to a power of appointment.** (1) Each of the following instruments relating to a power of appointment is entitled to be recorded as a conveyance upon compliance with s. 706.05 (1):

(a) An instrument, other than a will, exercising a power of appointment.

(b) An instrument expressing consent to exercise a power of appointment.

(c) A disclaimer.

(d) A release.

(2) If a power of appointment is exercised by a will, a certified copy of the will and of the certificate of probate thereof may be recorded.

**702.602 Uniformity of application and construction.** In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**702.603 Relation to electronic signatures in global and national commerce act.** (1) Except as provided in sub. (2), this chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.

(2) This chapter does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

**702.604 Applicability.** (1) (a) This chapter applies to a power of appointment created before, on, or after the effective date of this paragraph .... [LRB inserts date].

(b) This chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this paragraph .... [LRB inserts date].

(c) This chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this paragraph .... [LRB inserts date], unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies.

(d) A rule of construction or presumption in this chapter applies to an instrument executed before the effective date of this paragraph .... [LRB inserts date], unless there is a clear indication of a contrary intent in the terms of the instrument.

(e) Except as otherwise provided in pars. (a) to (d), this chapter does not apply to an action taken before the effective date of this paragraph .... [LRB inserts date].

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under a law of this state other than this chapter before the effective date of this subsection .... [LRB inserts date], the law continues to apply to the right.

**SECTION 119.** 711.03 (4m) of the statutes is created to read:

711.03 (4m) “Consent instrument” means a written notarized document in physical or electronic form evidencing the user’s consent to the disclosure of the contents of electronic communications to a then acting fiduciary.

**SECTION 120.** 711.04 (1) of the statutes is renumbered 711.04 (1) (intro.) and amended to read:

711.04 (1) (intro.) A user may use an online tool to direct the custodian to disclose or not disclose to a designated recipient ~~or not to disclose~~ some or all of the user’s digital property, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in ~~a~~ any of the following:

(a) A will, trust, ~~power of attorney~~, or any other governing instrument.

**SECTION 121.** 711.04 (1) (b) of the statutes is created to read:

711.04 (1) (b) A power of attorney.

**SECTION 122.** 711.04 (1) (c) of the statutes is created to read:

711.04 (1) (c) A consent instrument.

**SECTION 123.** 711.04 (1) (d) of the statutes is created to read:

711.04 (1) (d) Any other record.

**SECTION 124.** 711.04 (2) of the statutes is amended to read:

711.04 (2) If a user has not used an online tool to give direction under sub. (1), or if the custodian has not provided an online tool, the user may allow or prohibit disclosure to a fiduciary of some or all of the user’s digital property, including the content of electronic communications sent or received by the user, in a will, trust, any other governing instrument, power of attorney, or ~~any other governing consent~~ instrument.

**SECTION 125.** 711.05 (2) (b) of the statutes is amended to read:

711.05 (2) (b) Unless the user provided direction using an online tool, a copy of the user’s will, certification of trust under s. 701.1013, ~~or other governing instrument~~, or consent instrument evidencing the deceased user’s consent to disclosure of the content of electronic communications.

**SECTION 126.** 711.06 (2) (intro.) of the statutes is amended to read:

711.06 (2) DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS; PRINCIPAL. (intro.) To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal, or to the extent a consent instrument expressly consents to the disclosure to the agent the content of electronic communications sent or received by the principal, and unless directed otherwise by the principal or the court, a custodian shall grant an agent authority over the content of electronic communications or disclose to the agent the content of electronic communications if the agent gives the custodian all of the following:

**SECTION 127.** 711.06 (2) (b) of the statutes is amended to read:

711.06 (2) (b) An original or a copy of the power of attorney that expressly grants the agent authority over the content of electronic communications of the principal or the consent instrument that expressly grants consent to disclosure to the agent of the content of electronic communications of the principal.

**SECTION 128.** 711.07 (3) (b) of the statutes is amended to read:

711.07 (3) (b) A consent instrument or certification of the trust under s. 701.1013 that includes an original or successor user’s consent to disclosure of the content of electronic communications to the trustee.

**SECTION 129.** 711.13 of the statutes is amended to read:

**711.13 Marital property classification of digital property.** ~~Chapter 766 Section 766.625~~ governs the classification of digital property of a ~~user who is married~~ person.

**SECTION 130.** 766.01 (9) (a) of the statutes is amended to read:

766.01 (9) (a) Except as provided in pars. (b) to (d) (f), property is “held” by a person only if a document of title to the property is registered, recorded, or filed in a public office in the name of the person or a writing that customarily operates as a document of title to the type of property is issued for the property in the person’s name.

**SECTION 131.** 766.01 (9) (e) of the statutes is created to read:

766.01 (9) (e) 1. An account, as defined in s. 711.03 (1), and the digital property in the account, including the content of an electronic communication, as defined in s. 711.03 (6), are “held” by a person who is the user, as defined in s. 711.03 (28).

2. The catalogue of electronic communications, as defined in s. 711.03 (4), or similar identifying information for digital property in an account, is “held” by a person who holds such digital property, including the content of such electronic communications, under subd. 1.

3. For purposes of subds. 1. and 2., “person” has the meaning given under s. 711.03 (19).

**SECTION 132.** 766.01 (9) (f) of the statutes is created to read:

766.01 (9) (f) A right or interest in digital property, not titled in the name of either spouse, that has been identified as having been originally created, purchased, or otherwise acquired by a spouse is “held” by that spouse.

**SECTION 133.** 766.31 (7) (b) of the statutes is amended to read:

766.31 (7) (b) ~~In~~ Except as provided in s. 766.625 (2) (b) 1., in exchange for or with the proceeds of other individual property of the spouse.

**SECTION 134.** 766.31 (7) (g) of the statutes is created to read:

766.31 (7) (g) By classification under s. 766.625 (2), designating an account and the digital property in an account, including the content of electronic communications, as defined in s. 711.03 (6), as the individual property of the holding spouse.

**SECTION 135.** 766.58 (7) (c) of the statutes is created to read:

766.58 (7) (c) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies digital property as marital property does not affect the operation of s. 766.625 (2).

**SECTION 136.** 766.58 (13) (b) of the statutes is renumbered 766.58 (13) (b) 1. and amended to read:

766.58 (13) (b) 1. After the death of a spouse, if an estate administration proceeding is filed, no action concerning a marital property agreement may be brought later than 6 months after the inventory is filed under s. 858.01. If an amended inventory is filed, the action may be brought within 6 months after the filing of the amended inventory if the action relates to information

contained in the amended inventory that was not contained in a previous inventory.

**SECTION 137.** 766.58 (13) (b) 2. and 3. of the statutes are created to read:

766.58 (13) (b) 2. After the death of a spouse, if no estate administration proceeding is filed, no action concerning a marital property agreement may be brought later than 8 months after the death of the spouse.

3. If an action concerning a marital property agreement is barred under subd. 2. and an estate administration proceeding is thereafter commenced, any judgment in an action concerning a marital property agreement not barred under subd. 1. may be recovered only from the estate of the deceased spouse.

**SECTION 138.** 766.58 (13) (c) of the statutes is amended to read:

766.58 (13) (c) The court may extend the 6-month period under par. (b) 1. for cause if a motion for extension is made within the applicable 6-month period.

**SECTION 139.** 766.59 (1) of the statutes is amended to read:

766.59 (1) ~~A~~ Except as provided in s. 766.625 (2) (b) 2., a spouse may unilaterally execute a written statement which classifies the income attributable to all or certain of that spouse’s property other than marital property as individual property.

**SECTION 140.** 766.625 of the statutes is created to read:

**766.625 Classification of digital property, including the content of electronic communications.** (1) GENERAL. Except as otherwise determined under sub. (2), classification of digital property, including the content of electronic communications, is determined under s. 766.31.

(2) EXCEPTIONS. (a) *Digital property in an account.* An account and the digital property held in an account, as defined in s. 766.01 (9) (e), including the content of electronic communications, as defined in s. 711.03 (6), not otherwise classified as individual property under s. 766.31 (6) and (7) (a) to (d), is classified as the individual property of the holding spouse, regardless of the classification of property used to create, purchase, or otherwise acquire the account and digital property held in the account, unless the nonholding spouse can prove that any of the following apply:

1. ‘Creation.’ The account or the digital property in the account was not originally created, purchased, or otherwise acquired exclusively for the personal, noneconomic purposes of the holding spouse.

2. ‘Use.’ The account or the digital property in the account has at any time been used for purposes other than the personal, noneconomic purposes of the holding spouse.

(b) *Exchanges; income.* Notwithstanding par. (a), with respect to an account and the digital property held

in the account, as defined in s. 766.01 (9) (e), including the content of electronic communications, as defined in s. 711.03 (6), classified as individual property solely by reason of par. (a), all of the following apply:

1. ‘Exchanges; Proceeds.’ Section 766.31 (7) (b) does not apply, and in the event of a sale, exchange, or other disposition, property received in exchange for such account, or the digital property in the account, is classified as marital property.

2. ‘Income.’ Section 766.59 does not apply, and income during marriage and after the determination date attributable to the account, or the digital property in the account, is classified as marital property.

**SECTION 141.** 766.63 (1) of the statutes is amended to read:

766.63 (1) Except as provided otherwise in ss. 766.61 and 766.62, and ~~766.625 (2)~~, mixing marital property with property other than marital property reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced.

**SECTION 142.** 766.70 (3) (dm) of the statutes is created to read:

766.70 (3) (dm) An interest in a digital property account, as defined in s. 711.03 (1).

**SECTION 143.** 814.66 (1) (o) of the statutes is created to read:

814.66 (1) (o) For filing a petition to commence a judicial proceeding under ch. 701, \$250.

**SECTION 144.** 851.21 (2) (e) of the statutes is amended to read:

851.21 (2) (e) A beneficiary of a trust created under documents offered for probate as the will of the decedent upon the admission of the decedent’s will to probate and the ~~issuance of letters of trust to~~ court’s appointment of the trustee.

**SECTION 145.** 854.13 (1) (c) of the statutes is amended to read:

854.13 (1) (c) “Power of appointment” has the meaning given in s. ~~702.02 (6)-702.102 (15)~~.

**SECTION 146.** 856.29 of the statutes is amended to read:

**856.29 Letters issued to trustee Appointment of testamentary trust trustee.** If the will of the decedent provides for a testamentary trust, ~~letters of trust shall be issued to~~ the court shall appoint the trustee upon admission of the will to probate at the same time that letters are granted to the personal representative, unless the court otherwise directs. ~~Upon issuance of letters of trust, the~~

~~The trustee so appointed shall continue to be interested in the estate, and beneficiaries in the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). Letters of trust shall not be required to evidence the authority of a testamentary trustee and a certification of trust under s. 701.1013 shall be sufficient evidence of such authority.~~ This section shall apply to wills admitted to informal probate and letters issued in informal administrations.

**SECTION 147.** 859.02 (3) of the statutes is amended to read:

859.02 (3) Failure of a claimant timely to file a claim against a decedent’s estate does not bar the claimant from satisfying the claim ~~not otherwise barred~~ from property other than the decedent’s estate.

**SECTION 148.** 865.08 (6) of the statutes is amended to read:

865.08 (6) If the will of the decedent provides for a testamentary trust, ~~letters of trust shall be issued by the probate registrar to~~ shall appoint the trustee upon admission of the will to informal probate at the same time that letters are granted to the personal representative. ~~Letters of trust shall not be required to evidence the authority of the appointed trustee and a certification of trust under s. 701.1013 shall be sufficient evidence of such authority.~~ The probate registrar shall determine if bond shall be required and, if so, the amount thereof, and for such purpose the probate registrar shall have the authority granted to the court by, and shall proceed pursuant to s. 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and beneficiaries of the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). ~~The administration of the trust shall be administered under supervision of the court under~~ governed by ch. 701.

**SECTION 149.** 905.03 (2m) of the statutes is created to read:

905.03 (2m) PRIVILEGE WHEN CLIENT IS A FIDUCIARY. When a lawyer represents a client who is serving as a personal representative, trustee, trust protector, directing party, guardian, conservator, guardian ad litem, attorney in fact for financial matters, health care agent, or other fiduciary, the lawyer’s client is the person who is acting as a fiduciary, and not anyone to whom the client owes fiduciary or other duties, and communication between the lawyer and such a client is protected from disclosure to the same extent as if the client was not acting as a fiduciary. The privilege may be claimed by the client, or otherwise as provided in sub. (3), even against anyone to whom the client owes fiduciary or other duties.