

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 578**

(SENATE AUTHORS: COHEN, Latz and Newman)

DATE	D-PG	OFFICIAL STATUS
02/05/2015	214	Introduction and first reading Referred to Judiciary
02/26/2015		Comm report: To pass as amended Second reading

A bill for an act

1.1 relating to trusts; establishing the Minnesota Trust Code; recodifying certain  
 1.2 provisions; modifying power of appointments; making conforming and technical  
 1.3 changes; amending Minnesota Statutes 2014, sections 48.01, subdivision 2;  
 1.4 48A.07, subdivision 6; 317A.161, subdivision 24; 353.95, subdivision 4; 500.17,  
 1.5 subdivision 2; 501B.31, subdivisions 2, 4, 5; 501B.41, subdivision 3; 501B.46;  
 1.6 508.62; 508A.62; 524.2-804, subdivision 1; 524.5-417; 529.06; 529.12; 529.14;  
 1.7 proposing coding for new law in Minnesota Statutes, chapters 502; 507;  
 1.8 proposing coding for new law as Minnesota Statutes, chapter 501C; repealing  
 1.9 Minnesota Statutes 2014, sections 501B.01; 501B.012; 501B.02; 501B.03;  
 1.10 501B.04; 501B.05; 501B.06; 501B.07; 501B.08; 501B.09; 501B.12; 501B.13;  
 1.11 501B.14; 501B.15; 501B.151; 501B.152; 501B.154; 501B.155; 501B.16;  
 1.12 501B.17; 501B.18; 501B.19; 501B.20; 501B.21; 501B.22; 501B.23; 501B.24;  
 1.13 501B.25; 501B.56; 501B.561; 501B.57; 501B.571; 501B.59; 501B.60; 501B.61;  
 1.14 501B.62; 501B.63; 501B.64; 501B.65; 501B.665; 501B.67; 501B.68; 501B.69;  
 1.15 501B.705; 501B.71; 501B.72; 501B.73; 501B.74; 501B.75; 501B.76; 501B.79;  
 1.16 501B.80; 501B.81; 501B.82; 501B.87; 501B.88; 501B.89; 501B.895; 501B.90;  
 1.17 502.62; 502.63; 502.64; 502.65; 502.66; 502.67; 502.68; 502.69; 502.70; 502.71;  
 1.18 502.72; 502.73; 502.74; 502.75; 502.76; 502.77; 502.78; 502.79.

1.20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

**ARTICLE 1**

**GENERAL PROVISIONS**

1.23 Section 1. **[501C.0101] SHORT TITLE.**

1.24 This chapter may be cited as the "Minnesota Trust Code."

1.25 Sec. 2. **[501C.0102] SCOPE.**

1.26 This chapter applies to express trusts, charitable or noncharitable, and trusts created  
 1.27 pursuant to a statute, judgment, or decree that require the trust to be administered in the  
 1.28 manner of an express trust. Sections 501C.0201 to 501C.0208 do not apply to trusts in the

2.1 nature of mortgages or to trusts commonly known as voting trusts. Sections 501C.0201 to  
2.2 501C.0208 apply, unless otherwise provided in the trust instrument, to trusts established in  
2.3 connection with bonds issued under chapter 469, and, at the sole election of the issuer of  
2.4 bonds issued under chapter 469, without a trust indenture, to the pledges and other bond  
2.5 covenants made by the issuer in one or more resolutions with respect to the bonds. If the  
2.6 issuer elects to apply sections 501C.0201 to 501C.0208, for such purposes only, pledges  
2.7 and other bond covenants shall be deemed the "trust," the resolution or resolutions shall be  
2.8 deemed the "trust instrument," and the issuer shall be deemed the "trustee" notwithstanding  
2.9 the absence of any fiduciary responsibility owed by the "issuer" toward the bondholders.  
2.10 Nothing in this section precludes the issuer from seeking approval under sections  
2.11 501C.0201 to 501C.0208 of the creation of any express trust under a trust indenture and  
2.12 the appointment of a trustee to act as fiduciary for the benefit of the bondholders. As used  
2.13 in sections 501C.0201 to 501C.0208, "beneficiary" includes a bondholder.

2.14 **Sec. 3. [501C.0103] DEFINITIONS.**

2.15 In this chapter:

2.16 (a) "Action" with respect to an act of a trustee includes a failure to act.

2.17 (b) "Ascertainable standard" means a standard relating to an individual's health,  
2.18 education, support, or maintenance within the meaning of section 2041(b)(1)(A) or  
2.19 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this act.

2.20 (c) "Beneficiary" means a person that:

2.21 (1) has a present or future beneficial interest in a trust, vested or contingent; or

2.22 (2) in a capacity other than that of trustee, holds a power of appointment over trust  
2.23 property.

2.24 (d) "Charitable trust" means a trust, or portion of a trust, created for a charitable  
2.25 purpose described in section 501B.35.

2.26 (e) "Conservator" means a person who is appointed by a court to manage the estate  
2.27 of a protected person under sections 524.5-101 to 524.5-903.

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

2.30 (g) "Guardian" means a person who has qualified as a guardian of a minor or  
2.31 incapacitated person pursuant to testamentary or court appointment, but excludes one who  
2.32 is a guardian ad litem, under sections 524.5-101 to 524.5-903.

2.33 (h) "Interests of the beneficiaries" means the beneficial interests provided in the  
2.34 terms of the trust.

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

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

3.5 (k) "Power of withdrawal" means a presently exercisable general power of  
3.6 appointment other than a power:

3.7 (1) exercisable by a trustee and limited by an ascertainable standard; or

3.8 (2) exercisable by another person only upon consent of the trustee or a person  
3.9 holding an adverse interest.

3.10 (l) "Property" means anything that may be the subject of ownership, whether real or  
3.11 personal, legal or equitable, or any interest therein.

3.12 (m) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's  
3.13 qualification is determined:

3.14 (1) a distributee or permissible distributee of trust income or principal;

3.15 (2) a distributee or permissible distributee of trust income or principal if the interests  
3.16 of the distributees described in clause (1) terminated on that date without causing the  
3.17 trust to terminate; or

3.18 (3) a distributee or permissible distributee of trust income or principal if the trust  
3.19 terminated on that date.

3.20 (n) "Revocable," as applied to a trust, means revocable by the settlor without the  
3.21 consent of the trustee or a person holding an adverse interest.

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

3.26 (p) "Spendthrift provision" means a term of a trust which restricts both voluntary  
3.27 and involuntary transfer of a beneficiary's interest.

3.28 (q) "State" means a state of the United States, the District of Columbia, Puerto  
3.29 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
3.30 jurisdiction of the United States. The term includes an Indian tribe or band recognized by  
3.31 federal law or formally acknowledged by a state.

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

3.35 (s) "Trust instrument" means an instrument executed by the settlor that contains  
3.36 terms of the trust, including any amendments thereto.

4.1 (t) "Trustee" includes an original, additional, and successor trustee, and a cotrustee,  
4.2 whether or not appointed or confirmed by a court.

4.3 **Sec. 4. [501C.0104] KNOWLEDGE.**

4.4 (a) Subject to paragraph (b), a person has knowledge of a fact if the person:

4.5 (1) has actual knowledge of it;

4.6 (2) has received a notice or notification of it; or

4.7 (3) from all the facts and circumstances known to the person at the time in question,  
4.8 has reason to know it.

4.9 (b) An organization that conducts activities through employees has notice or  
4.10 knowledge of a fact involving a trust only from the time the information was received  
4.11 by an employee having responsibility to act for the trust, or would have been brought  
4.12 to the employee's attention if the organization had exercised reasonable diligence.

4.13 An organization exercises reasonable diligence if it maintains reasonable policies  
4.14 and procedures for communicating significant information to the employee having  
4.15 responsibility to act for the trust and there is reasonable compliance with the policies and  
4.16 procedures. Reasonable diligence does not require an employee of the organization to  
4.17 communicate information unless the communication is part of the individual's regular  
4.18 duties or the individual knows a matter involving the trust would be materially affected  
4.19 by the information.

4.20 (c) With respect to a conveyance of real property, an organization or other person  
4.21 shall be deemed to have knowledge of facts disclosed by a title examination in accordance  
4.22 with applicable customs and standards.

4.23 **Sec. 5. [501C.0105] DEFAULT AND MANDATORY RULES.**

4.24 (a) Except as otherwise provided in the terms of a trust, this chapter governs the  
4.25 duties and powers of a trustee, relations among trustees, and the rights and interests of  
4.26 a beneficiary.

4.27 (b) The terms of a trust prevail over any provision of this chapter except:

4.28 (1) the requirements for creating a trust;

4.29 (2) the duty of a trustee to act in good faith and in accordance with the terms and  
4.30 purposes of the trust and the interests of the beneficiaries;

4.31 (3) the requirement that a trust and its terms be for the benefit of its beneficiaries,  
4.32 and that the trust have a purpose that is lawful, not contrary to public policy, and possible  
4.33 to achieve;

5.1 (4) the power of the court to modify or terminate a trust under sections 501C.0410  
 5.2 to 501C.0416;

5.3 (5) the effect of a spendthrift provision and the rights of certain creditors and  
 5.4 assignees to reach a trust as provided in sections 501C.0501 to 501C.0507;

5.5 (6) the power of the court under section 501C.0702 to require, dispense with,  
 5.6 or modify or terminate a bond;

5.7 (7) the power of the court under section 501C.0708, paragraph (b), to adjust a  
 5.8 trustee's compensation specified in the terms of the trust which is unreasonably low or high;

5.9 (8) the effect of an exculpatory term under section 501C.1008;

5.10 (9) the rights under sections 501C.1010 to 501C.1013 of a person other than a  
 5.11 trustee or beneficiary;

5.12 (10) periods of limitation for commencing a judicial proceeding;

5.13 (11) the power of the court to take such action and exercise such jurisdiction as may  
 5.14 be necessary in the interests of justice; and

5.15 (12) the subject-matter jurisdiction of the court as provided in section 501C.0202  
 5.16 and venue for commencing a proceeding as provided in section 501C.0207, except as  
 5.17 provided in section 501C.0102.

5.18 **Sec. 6. [501C.0106] COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.**

5.19 The common law of trusts and principles of equity supplement this chapter, except  
 5.20 to the extent modified by this chapter or another law of this state.

5.21 **Sec. 7. [501C.0107] GOVERNING LAW.**

5.22 (a) The meaning and legal effect of the terms of a trust are determined by:

5.23 (1) the law of the jurisdiction designated in the terms of the trust unless the  
 5.24 application of that jurisdiction's law is contrary to a strong public policy of the jurisdiction  
 5.25 having the most significant relationship to the matter at issue. The mere fact that a  
 5.26 jurisdiction having the most significant relationship to the matter at issue has a law  
 5.27 contrary to the law of the designated jurisdiction does not, standing alone, indicate a  
 5.28 strong public policy contrary to that of the designated jurisdiction; or

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

5.31 (b) For purposes of this section, factors to consider in determining which jurisdiction  
 5.32 has the most significant relationship to the matter at issue include the place of the trust's  
 5.33 creation, the location of trust property, and the domicile of the settlor, the trustee, and the  
 5.34 beneficiaries.

6.1        **Sec. 8. [501C.0108] PRINCIPAL PLACE OF ADMINISTRATION.**

6.2            (a) Without precluding other means for establishing a sufficient connection with  
6.3 the designated jurisdiction, terms of a trust designating the initial principal place of  
6.4 administration are valid and controlling if:

6.5            (1) a trustee's principal place of business is located in, or a trustee is a resident  
6.6 of, the designated jurisdiction; or

6.7            (2) all or part of the administration occurs in the designated jurisdiction.

6.8            (b) A trustee is under a continuing duty to administer the trust at a place appropriate  
6.9 to its purposes, its administration, and the interests of the beneficiaries.

6.10           (c) Without precluding the right of the court to order, approve, or disapprove a  
6.11 transfer, the trustee, in furtherance of the duty prescribed by paragraph (b), may transfer  
6.12 the trust's principal place of administration to another state or to a jurisdiction outside of  
6.13 the United States.

6.14           (d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a  
6.15 trust's principal place of administration not less than 60 days before initiating the transfer;  
6.16 provided that the trustee may initiate the transfer at any time after the notice if all of the  
6.17 qualified beneficiaries agree in writing to an earlier effective date or waive the right to  
6.18 object to the transfer in writing, or upon court approval. The notice of proposed transfer  
6.19 must include:

6.20           (1) the name of the jurisdiction to which the principal place of administration is to  
6.21 be transferred;

6.22           (2) the address and telephone number at the new location at which the trustee can  
6.23 be contacted;

6.24           (3) an explanation of the reasons for the proposed transfer;

6.25           (4) the date on which the proposed transfer is anticipated to occur; and

6.26           (5) the date, not less than 60 days after giving the notice, by which the qualified  
6.27 beneficiary must notify the trustee of an objection to the proposed transfer.

6.28           (e) The authority of a trustee under this section to transfer a trust's principal place of  
6.29 administration terminates if a qualified beneficiary notifies the trustee of an objection to  
6.30 the proposed transfer on or before the date specified in the notice. If the trustee receives  
6.31 an objection from a qualified beneficiary, the trustee shall not transfer the principal place  
6.32 of administration absent court approval.

6.33           (f) Notwithstanding paragraphs (a) to (e), a trustee may transfer some or all of the  
6.34 trust's assets to a successor trustee designated in the terms of the trust or appointed pursuant  
6.35 to section 501C.0704 even if the successor trustee has a principal place of business or  
6.36 residence in a jurisdiction that is different from the trust's principal place of administration.

7.1        **Sec. 9. [501C.0109] METHODS AND WAIVER OF NONJUDICIAL NOTICE.**

7.2        (a) Notice to a person under this chapter or the sending of a document to a person  
 7.3 under this chapter must be accomplished in a manner reasonably suitable under the  
 7.4 circumstances and that is likely to result in receipt of the notice or document. Permissible  
 7.5 methods of notice or for sending a document include first-class mail, personal delivery,  
 7.6 delivery to the person's last known place of residence or place of business, or a properly  
 7.7 directed facsimile or electronic message.

7.8        (b) Notice otherwise required under this chapter or a document otherwise required to  
 7.9 be sent under this chapter need not be provided to a person whose identity is unknown or  
 7.10 whose location is unknown and not reasonably ascertainable by the trustee after making  
 7.11 reasonable efforts to locate the person.

7.12        (c) Notice under this chapter or the sending of a document under this chapter may be  
 7.13 waived in writing by the person to be notified or sent the document.

7.14        (d) Notice of a judicial proceeding must be given as provided in sections 501C.0201  
 7.15 to 501C.0208.

7.16        **Sec. 10. [501C.0110] OTHERS TREATED AS QUALIFIED BENEFICIARIES.**

7.17        (a) Whenever notice to qualified beneficiaries of a trust is required under this  
 7.18 chapter, the trustee must also give notice to any other beneficiary who has sent the trustee  
 7.19 a request for notice.

7.20        (b) A charitable organization expressly designated to receive distributions under  
 7.21 the terms of a charitable trust has the rights of a qualified beneficiary under this chapter  
 7.22 if the charitable organization, on the date the charitable organization's qualification is  
 7.23 being determined:

7.24        (1) is a distributee or permissible distributee of trust income or principal;

7.25        (2) would be a distributee or permissible distributee of trust income or principal  
 7.26 upon the termination of the interests of other distributees or permissible distributees then  
 7.27 receiving or eligible to receive distributions; or

7.28        (3) would be a distributee or permissible distributee of trust income or principal if  
 7.29 the trust terminated on that date.

7.30        (c) The attorney general of this state has the rights of a qualified beneficiary with  
 7.31 respect to a charitable trust having its principal place of administration in this state.

7.32        **Sec. 11. [501C.0111] NONJUDICIAL SETTLEMENT AGREEMENTS.**

8.1 (a) For purposes of this section, "interested persons" means persons whose consent  
 8.2 would be required in order to achieve a binding settlement were the settlement to be  
 8.3 approved by the court.

8.4 (b) Except as otherwise provided in paragraph (c), interested persons may enter into  
 8.5 a binding nonjudicial settlement agreement with respect to any matter involving a trust.

8.6 (c) A nonjudicial settlement agreement is valid only to the extent it does not violate  
 8.7 a material purpose of the trust and includes terms and conditions that could be properly  
 8.8 approved by the court under this chapter or other applicable law.

8.9 (d) Matters that may be resolved by a nonjudicial settlement agreement include:

8.10 (1) the interpretation or construction of the terms of the trust;

8.11 (2) the approval of a trustee's report or accounting;

8.12 (3) direction to a trustee to refrain from performing a particular act or the grant to a  
 8.13 trustee of any necessary or desirable power;

8.14 (4) the resignation or appointment of a trustee and the determination of a trustee's  
 8.15 compensation;

8.16 (5) transfer of a trust's principal place of administration; and

8.17 (6) liability of a trustee for an action relating to the trust.

8.18 (e) Any interested person may request that the court approve a nonjudicial settlement  
 8.19 agreement, to determine whether the representation as provided in sections 501C.0301 to  
 8.20 501C.0305 was adequate, and to determine whether the agreement contains terms and  
 8.21 conditions the court could have properly approved.

8.22 **Sec. 12. [501C.0112] RULES OF CONSTRUCTION.**

8.23 The rules of construction that apply in this state to the interpretation of and  
 8.24 disposition of property by will also apply as appropriate to the interpretation of the terms  
 8.25 of a trust and the disposition of the trust property.

8.26 **ARTICLE 2**

8.27 **JUDICIAL PROCEEDINGS**

8.28 **Section 1. [501C.0201] ROLE OF COURT IN ADMINISTRATION OF TRUST**  
 8.29 **AND NATURE OF JUDICIAL PROCEEDING.**

8.30 (a) An interested person may petition the district court and invoke its jurisdiction  
 8.31 as provided in sections 501C.0201 to 501C.0208 for those matters specified in section  
 8.32 501C.0202.

8.33 (b) As used in sections 501C.0201 to 501C.0208, "interested person" includes an  
 8.34 acting trustee, any person named as successor trustee under the trust instrument, any



9.1 person seeking court appointment as trustee whether or not named in the trust instrument,  
 9.2 a beneficiary, a creditor, and any other person having a property or other right in or claim  
 9.3 against the assets of the trust. Interested person also includes a fiduciary representing an  
 9.4 interested person and any other person acting in a representative capacity as provided in  
 9.5 sections 501C.0301 to 501C.0305, any person who takes action with respect to a trust in  
 9.6 the absence of an acting trustee or otherwise within the meaning of section 501C.0701,  
 9.7 an agent to whom a trustee has delegated a duty or power within the meaning of section  
 9.8 501C.0807, and any person with a power to direct the trustee within the meaning of  
 9.9 section 501C.0808. The meaning of interested person, as it relates to a particular person,  
 9.10 may vary from time to time and must be determined according to the particular purposes  
 9.11 of, and matter involved in, any petition.

9.12 (c) The petition shall specify whether the interested person is invoking the  
 9.13 jurisdiction of the district court as an in rem proceeding or as an in personam proceeding.  
 9.14 If the petition designates an in rem proceeding, the district court's in rem jurisdiction is  
 9.15 invoked, and sections 501C.0203, subdivision 1, and 501C.0204, subdivision 1, govern  
 9.16 the proceeding. If the petition designates an in personam proceeding, the district court's in  
 9.17 personam jurisdiction is invoked, and sections 501C.0203, subdivision 2, and 501C.0204,  
 9.18 subdivision 2, govern the proceeding.

9.19 (1) In the absence of a designation of an in rem or an in personam proceeding by  
 9.20 the petitioner, the district court's in rem jurisdiction is invoked, and sections 501C.0203,  
 9.21 subdivision 1, and 501C.0204, subdivision 1, govern the proceeding.

9.22 (2) If the district court's in rem jurisdiction is invoked, the district court shall retain  
 9.23 jurisdiction as a proceeding in rem, until jurisdiction is transferred to another court or  
 9.24 terminated by court order.

9.25 (3) If the district court's in personam jurisdiction is invoked, the trust is not subject  
 9.26 to continuing jurisdiction unless otherwise ordered by the court.

9.27 (4) Notwithstanding the designation of in personam jurisdiction as set forth in the  
 9.28 petition, the district court, on the request of any interested person, may invoke the in rem  
 9.29 jurisdiction of the district court and require compliance with the order for hearing and  
 9.30 notice provisions set forth in section 501C.0203, subdivision 1.

9.31 (d) A trust is not subject to continuing court supervision as a court-supervised trust  
 9.32 except as provided in section 501C.0205 or as otherwise ordered by the court. If the  
 9.33 district court assumes court supervision of the trust, all further court proceedings with  
 9.34 respect to the trust shall be maintained under the district court's in rem jurisdiction.

9.35 **Sec. 2. [501C.0202] SUBJECT MATTER OF JUDICIAL PROCEEDINGS.**

- 10.1 A judicial proceeding involving a trust may relate to one or more of the following  
10.2 matters:
- 10.3 (1) to confirm an action taken by a trustee;  
10.4 (2) upon the filing of an account, to settle and allow the account;  
10.5 (3) to determine the persons having an interest in the income or principal of the trust  
10.6 and the nature and extent of their interests;  
10.7 (4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from  
10.8 the terms of a trust, including a proceeding involving section 501B.31;  
10.9 (5) to approve payment of the trustee's, attorney, or accountant fees, or any other  
10.10 fees to be charged against the trust;  
10.11 (6) to confirm the appointment of a trustee;  
10.12 (7) to accept a trustee's resignation and discharge the trustee from the trust as  
10.13 provided in section 501C.0705;  
10.14 (8) to require a trustee to account;  
10.15 (9) to remove a trustee as provided in section 501C.0706;  
10.16 (10) to appoint a successor trustee when required by the terms of the trust instrument  
10.17 or when by reason of death, resignation, removal, or other cause there is no acting trustee;  
10.18 (11) to appoint an additional trustee or special fiduciary whether or not a vacancy in  
10.19 trusteeship exists as provided in section 501C.0704;  
10.20 (12) to confirm an act taken by a person with respect to a trust while there was no  
10.21 acting trustee or otherwise in compliance with section 501C.0701;  
10.22 (13) to subject a trust to or remove a trust from continuing court supervision under  
10.23 section 501C.0205;  
10.24 (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee  
10.25 notwithstanding any contrary provision of the trust instrument;  
10.26 (15) to suspend the powers and duties of a trustee in military service or war service,  
10.27 in accordance with section 525.95, and to order further action authorized in that section;  
10.28 (16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in  
10.29 accordance with section 501B.41, relating to charitable trusts;  
10.30 (17) to determine the validity of a disclaimer under sections 524.2-1101 to  
10.31 524.2-1116;  
10.32 (18) to transfer the trust's principal place of administration as provided in section  
10.33 501C.0108;  
10.34 (19) to redress a breach of trust;  
10.35 (20) to terminate a trust;  
10.36 (21) to divide a trust or to merge two or more trusts as provided in section 501C.0417;

11.1 (22) to approve a nonjudicial settlement as provided in section 501C.0111;  
 11.2 (23) to approve, modify, or object to a proposed trust decanting as provided in  
 11.3 section 502.851; or  
 11.4 (24) to instruct the trustee regarding any matter involving the trust's administration  
 11.5 or the discharge of the trustee's duties, including a request for instructions and an action to  
 11.6 declare rights.

11.7 **Sec. 3. [501C.0203] ORDER FOR HEARING AND NOTICE.**

11.8 Subdivision 1. **In rem judicial proceedings.** Upon the filing of a petition under the  
 11.9 district court's in rem jurisdiction by an interested person, the court shall, by order, fix a time  
 11.10 and place for a hearing. Notice of the judicial proceeding must be given by an interested  
 11.11 person as follows: (1) by publishing, at least 20 days before the date of the hearing, a copy  
 11.12 of the order for hearing one time in a legal newspaper for the county in which the petition is  
 11.13 filed; and (2) by mailing, at least 15 days before the date of the hearing, a copy of the order  
 11.14 for hearing to those current trustees and qualified beneficiaries of the trust whose identity  
 11.15 is known and whose location is known or reasonably ascertainable to the petitioner after  
 11.16 making reasonable efforts to locate such persons. In the case of a qualified beneficiary who  
 11.17 is a minor or an incapacitated person as defined in section 524.5-102, notice of the judicial  
 11.18 proceeding shall also be given to any representative person acting on behalf of the qualified  
 11.19 beneficiary in accordance with the provisions of sections 501C.0301 to 501C.0305 who is  
 11.20 known to the petitioner. The district court shall have the discretion to order that notice of  
 11.21 the judicial proceeding may be given in any other manner as the court directs.

11.22 Subd. 2. **In personam judicial proceedings.** Upon the filing of a petition under the  
 11.23 district court's in personam jurisdiction by an interested person, the court shall, by order,  
 11.24 fix a time and place for hearing. Notice of the judicial proceeding must be given by an  
 11.25 interested person to the current trustees and the qualified beneficiaries in the same manner  
 11.26 as set forth under Rule 4 of the Rules of Civil Procedure by serving a copy of the order for  
 11.27 hearing and the petition at least 15 days prior to the hearing unless waived in writing by the  
 11.28 current trustees and the qualified beneficiaries. In the case of a qualified beneficiary who is  
 11.29 a minor or an incapacitated person as defined in section 524.5-102, notice of the judicial  
 11.30 proceeding shall also be given to any representative person acting on behalf of the qualified  
 11.31 beneficiary in accordance with the provisions of sections 501C.0301 to 501C.0305 who is  
 11.32 known to the petitioner. The district court shall have the discretion to order that notice of  
 11.33 the judicial proceeding may be given in any other manner as the court directs.

11.34 **Sec. 4. [501C.0204] ORDER AND APPEAL.**

12.1 Subdivision 1. **In rem judicial proceedings.** Upon the hearing of a petition  
 12.2 under the district court's in rem jurisdiction, the court shall make an order it considers  
 12.3 appropriate. The order is binding in rem upon the trust estate and upon the interests of all  
 12.4 beneficiaries, vested or contingent, even though unascertained or not in being. An appeal  
 12.5 from an order which, in effect, determines the petition may be taken by any party after  
 12.6 service by any party of written notice of its filing as provided under the Rules of Appellate  
 12.7 Procedure or, if no notice is served, within six months after the filing of the order.

12.8 Subd. 2. **In personam judicial proceedings.** Upon the hearing of a petition under  
 12.9 the district court's in personam jurisdiction, the court shall make an order it considers  
 12.10 appropriate. The order is binding on (1) a party who is served with notice of the judicial  
 12.11 proceeding, (2) a party who appears in the judicial proceeding, and (3) any other party who  
 12.12 may be bound by such parties as described in sections 501C.0301 to 501C.0305. An appeal  
 12.13 from an order which, in effect, determines the petition may be taken by any party after  
 12.14 service by any party of written notice of its filing as provided under the Rules of Appellate  
 12.15 Procedure or, if no notice is served, within six months after the filing of the order.

12.16 **Sec. 5. [501C.0205] COURT-SUPERVISED TRUSTS.**

12.17 (a) A person appointed as trustee of a trust or any interested person may file in the  
 12.18 district court an ex parte petition to confirm the appointment of the trustee and specify  
 12.19 the manner in which the trustee must qualify for appointment. Any such petition must be  
 12.20 filed as an in rem proceeding in compliance with section 501C.0203, subdivision 1. Upon  
 12.21 consideration of the petition, the court shall make an order it considers appropriate.

12.22 (b) A trustee whose appointment has been confirmed by court order under this  
 12.23 section or a trustee otherwise subject to continuing court supervision by court order must  
 12.24 file with the court administrator of the district court an inventory containing a list of all  
 12.25 property belonging to the trust. The trustee shall render to the court, at least annually, a  
 12.26 verified account containing a complete inventory of the trust assets and itemized principal  
 12.27 and income accounts. This section does not apply to trusts established in connection with  
 12.28 bonds issued under chapter 469.

12.29 **Sec. 6. [501C.0206] PERSONAL JURISDICTION OVER TRUSTEE AND**  
 12.30 **BENEFICIARY.**

12.31 (a) By accepting the trusteeship of a trust having its principal place of administration  
 12.32 in this state or by moving the principal place of administration to this state, the trustee  
 12.33 submits to the personal jurisdiction of the courts of this state regarding any matter  
 12.34 involving the trust.

13.1 (b) With respect to their interests in the trust, the beneficiaries of a trust having  
 13.2 its principal place of administration in this state are subject to the personal jurisdiction  
 13.3 of the courts of this state regarding any matter involving the trust. By not releasing or  
 13.4 disclaiming the beneficiary's beneficial interest in the trust, a beneficiary of a trust having  
 13.5 its principal place of administration in this state submits to the personal jurisdiction of the  
 13.6 courts of this state regarding any matter involving the trust.

13.7 (c) This section does not preclude other methods of obtaining personal jurisdiction  
 13.8 over a trustee, beneficiary, or other person receiving property from the trust.

13.9 **Sec. 7. [501C.0207] VENUE.**

13.10 (a) Except as otherwise provided in paragraph (b), venue for a judicial proceeding  
 13.11 involving a trust is as follows:

13.12 (1) in the case of a trust created by will, in the district court for (i) the county of this  
 13.13 state where the will was probated, (ii) the county of this state where a trustee having  
 13.14 custody of part or all of the trust assets resides or has a trust office, or (iii) the county of  
 13.15 this state in which the trust's principal place of administration is or will be located upon  
 13.16 approval by the court;

13.17 (2) in the case of a nontestamentary trust, in the district court for (i) the county  
 13.18 of this state where a trustee having custody of part or all of the trust assets resides or  
 13.19 has a trust office, or (ii) the county of this state in which the trust's principal place of  
 13.20 administration is or will be located upon approval by the court; or

13.21 (3) in the case of a trust holding real property, in the district court for any county in  
 13.22 which the real estate is situated.

13.23 (b) In the case of a trust with respect to which there have been prior court  
 13.24 proceedings in this state, a petition under sections 501C.0201 to 501C.0206 must be filed  
 13.25 in the court in which the prior proceedings were held, absent approval from the prior court.

13.26 **Sec. 8. [501C.0208] APPLICATION.**

13.27 Sections 501C.0201 to 501C.0207 do not limit or abridge the power or jurisdiction  
 13.28 of the court over trusts, trustees, and beneficiaries.

### 13.29 **ARTICLE 3**

### 13.30 **REPRESENTATION**

13.31 **Section 1. [501C.0301] REPRESENTATION: BASIC EFFECT.**

14.1 (a) Notice to a person who may represent and bind another person under sections  
14.2 501C.0302 to 501C.0305 has the same effect as if notice were given directly to the  
14.3 other person.

14.4 (b) The consent of a person who may represent and bind another person under  
14.5 sections 501C.0302 to 501C.0305 is binding on the person represented unless the person  
14.6 represented objects to the representation before the consent would otherwise have been  
14.7 effective. The provisions of this paragraph shall not apply to representation under section  
14.8 501C.0302.

14.9 (c) Except as otherwise provided in sections 501C.0411 and 501C.0602, a person  
14.10 who under sections 501C.0302 to 501C.0305 may represent a settlor who lacks capacity  
14.11 may receive notice and give a binding consent on the settlor's behalf.

14.12 (d) A settlor may not represent and bind a beneficiary under sections 501C.0302  
14.13 to 501C.0305 with respect to the termination or modification of a trust under section  
14.14 501C.0411, paragraph (a).

14.15 (e) The settlor or another person, including one or more beneficiaries of the trust,  
14.16 designated by the terms of the trust instrument to receive information from the trustee  
14.17 concerning the administration of the trust and the material facts necessary to protect the  
14.18 beneficiaries' interests in the manner described in section 501C.0813, paragraph (b), shall  
14.19 be a representative of the beneficiaries with respect to the limitations period on judicial  
14.20 proceedings against a trustee under section 501C.1005, paragraph (a).

14.21 **Sec. 2. [501C.0302] REPRESENTATION BY HOLDER OF A GENERAL**  
14.22 **POWER.**

14.23 For purposes of giving notice, waiving notice, initiating a proceeding, granting  
14.24 consent or approval, or objecting with regard to any proceedings under this chapter, the  
14.25 sole holder or all co-holders of a presently exercisable or testamentary general power  
14.26 of appointment, power of revocation, or unlimited power of withdrawal are deemed  
14.27 to represent and act for beneficiaries to the extent that their interests as permissible  
14.28 appointees, takers in default, or otherwise are subject to the power.

14.29 **Sec. 3. [501C.0303] REPRESENTATION BY FIDUCIARIES AND PARENTS.**

14.30 (a) To the extent there is no conflict of interest between the representative and the  
14.31 person represented or among those being represented with respect to a particular question  
14.32 or dispute:

14.33 (1) a conservator may represent and bind the estate that the conservator controls;

15.1 (2) an agent having authority to act with respect to the particular question or dispute  
 15.2 may represent and bind the principal;

15.3 (3) a trustee may represent and bind the beneficiaries of the trust;

15.4 (4) a personal representative of a decedent's estate may represent and bind persons  
 15.5 interested in the estate; and

15.6 (5) a parent may represent and bind the parent's minor or unborn child if a  
 15.7 conservator for the child has not been appointed.

15.8 (b) If a disagreement arises between parents seeking to represent the same minor  
 15.9 child:

15.10 (1) the parent who is a beneficiary of the trust that is the subject of the representation  
 15.11 is entitled to represent the minor child;

15.12 (2) if both parents are beneficiaries of the trust that is the subject of the representation,  
 15.13 the parent who is a lineal descendent of the settlor is entitled to represent the minor child;

15.14 (3) if neither parent is a beneficiary of the trust that is the subject of the representation,  
 15.15 the parent who is a lineal descendent of the settlor is entitled to represent the minor child; or

15.16 (4) if neither parent is a beneficiary or a lineal descendent of the settlor of the  
 15.17 trust that is the subject of the representation, a guardian ad litem must be appointed to  
 15.18 represent the minor child.

15.19 **Sec. 4. [501C.0304] REPRESENTATION BY PERSON HAVING**  
 15.20 **SUBSTANTIALLY IDENTICAL INTEREST.**

15.21 Unless otherwise represented under section 501C.0302, 501C.0303, or 501C.0305, a  
 15.22 minor, an incapacitated or unborn individual, or a person whose identity or location is  
 15.23 unknown and not reasonably ascertainable after making reasonable efforts to locate such  
 15.24 person, may be represented by and bound by another having a substantially identical  
 15.25 interest with respect to the particular question or dispute, but only to the extent there is no  
 15.26 conflict of interest between the representative and the person represented.

15.27 **Sec. 5. [501C.0305] REPRESENTATION BY COURT; APPOINTMENT OF**  
 15.28 **REPRESENTATIVE.**

15.29 (a) In any in rem proceeding, if a person with an interest in a trust is a minor or an  
 15.30 incapacitated person as defined in section 524.5-102 and has no conservator within the  
 15.31 state, or if a person with an interest in a trust is unborn, unascertained or a person whose  
 15.32 identity or address is unknown and not reasonably ascertainable, the court shall represent  
 15.33 that person, unless the court appoints a representative to represent the person.

16.1 (b) As to any other matter arising under this chapter, whether or not a judicial  
 16.2 proceeding concerning the trust is pending, if the court determines that a person  
 16.3 with an interest in a trust is not represented under sections 501C.0301 to 501C.0304,  
 16.4 or that the otherwise available representation might be inadequate, the court may  
 16.5 appoint a representative on behalf of such unrepresented person. The appointment of a  
 16.6 representative pursuant to this section shall constitute a determination by the court that  
 16.7 such appointment is appropriate.

16.8 (c) Any representative provided for in this section may be appointed upon  
 16.9 application of the trustee or of any other person with an interest in a trust, or by the court  
 16.10 on its own motion.

16.11 (d) In making decisions, the court or a representative, as the case may be, may  
 16.12 consider general benefit accruing to the living members of the represented person's family.

#### 16.13 **ARTICLE 4**

#### 16.14 **CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST**

##### 16.15 **Section 1. [501C.0401] METHODS OF CREATING TRUST.**

16.16 (a) A trust may be created by:

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

16.19 (2) declaration by the owner of property that the owner holds identifiable property  
 16.20 as trustee; or

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

16.22 (b) If a transfer of property is made to one person and the purchase price is paid by  
 16.23 another person, a resulting trust is presumed to arise in favor of the person by whom  
 16.24 the purchase price is paid, except:

16.25 (1) if the person by whom the purchase price was paid manifests a contrary intention,  
 16.26 no resulting trust is presumed to arise;

16.27 (2) if the transferee is a spouse, child, or other natural object of bounty of the payor,  
 16.28 a gift in favor of the transferee is presumed and no resulting trust is presumed to arise; and

16.29 (3) if the transfer is made to accomplish an illegal purpose, no resulting trust is  
 16.30 presumed to arise unless it is needed to prevent unjust enrichment of the transferee.

16.31 (c) Every legal estate and interest not embraced in an express trust and not otherwise  
 16.32 disposed of remains in the settlor.

##### 16.33 **Sec. 2. [501C.0402] REQUIREMENTS FOR CREATION.**

16.34 (a) A trust is created only if:



17.1 (1) the settlor has capacity to transfer property free from trust, except that if a trust is  
 17.2 a revocable trust, the settlor has capacity as required under section 501C.0601;

17.3 (2) the settlor indicates an intention to create the trust;

17.4 (3) the trust has a definite beneficiary or is:

17.5 (i) a charitable trust; or

17.6 (ii) a trust for a noncharitable purpose, as provided in section 501C.0409; and

17.7 (4) the trustee has duties to perform.

17.8 (b) A beneficiary is definite if the beneficiary can be ascertained now or in the  
 17.9 future, subject to any applicable rule against perpetuities.

17.10 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If  
 17.11 the power is not exercised within a reasonable time, the power fails and the property  
 17.12 subject to the power passes to the persons who would have taken the property if the power  
 17.13 had not been conferred.

17.14 (d) No trust is invalid or terminated, and title to trust assets is not merged, because  
 17.15 the trustee or trustees are the same person or persons as the beneficiaries of the trust.

17.16 (e) Passive trusts of real or personal property are abolished. An attempt to create a  
 17.17 passive trust vests the entire estate granted in the beneficiary.

17.18 **Sec. 3. [501C.0403] TRUSTS CREATED IN OTHER JURISDICTIONS.**

17.19 A trust not created by will is validly created if its creation complies with the law  
 17.20 of jurisdiction in which the trust instrument is executed, or the law of the jurisdiction in  
 17.21 which, at the time of execution:

17.22 (1) the settlor was domiciled, had a place of abode, or was a national;

17.23 (2) a trustee was domiciled or had a place of business; or

17.24 (3) any trust property was located.

17.25 **Sec. 4. [501C.0404] TRUST PURPOSES.**

17.26 A trust may be created only to the extent its purposes are lawful, not contrary to  
 17.27 public policy, and possible to achieve. A trust and its terms must be for the benefit of its  
 17.28 beneficiaries.

17.29 **Sec. 5. [501C.0406] CREATION OF TRUST INDUCED BY FRAUD, DURESS,**  
 17.30 **OR UNDUE INFLUENCE.**

17.31 A trust is void to the extent its creation was induced by fraud, duress, or undue  
 17.32 influence.

18.1       Sec. 6. **[501C.0407] EVIDENCE OF ORAL TRUST.**

18.2             The formal expression of intent to create a trust can be either written or oral subject  
18.3 to the requirements of sections 513.04 and 524.2-502. The creation of an oral trust and its  
18.4 terms must be established by clear and convincing evidence.

18.5       Sec. 7. **[501C.0409] NONCHARITABLE TRUST WITHOUT ASCERTAINABLE**  
18.6 **BENEFICIARY.**

18.7             Except as otherwise provided by law, the following rules apply:

18.8             (1) A trust may be created for a noncharitable purpose without a definite or definitely  
18.9 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected  
18.10 by the trustee. The trust may not be enforced for more than 21 years.

18.11            (2) A trust authorized by this section may be enforced by a person appointed in the  
18.12 terms of the trust or, if no person is so appointed, by a person appointed by the court.

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

18.18       Sec. 8. **[501C.0410] MODIFICATION OR TERMINATION OF TRUST;**  
18.19 **PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

18.20            (a) In addition to the methods of termination prescribed by sections 501C.0411 to  
18.21 501C.0414, a trust terminates to the extent the trust is revoked or expires pursuant to its  
18.22 terms, no purpose of the trust remains to be achieved, or the purposes of the trust have  
18.23 become unlawful, contrary to public policy, or impossible to achieve.

18.24            (b) A proceeding to approve or disapprove a proposed modification or termination  
18.25 under sections 501C.0411 to 501C.0416, or trust combination or division under section  
18.26 501C.0417, may be commenced by a trustee or beneficiary, and a proceeding to approve  
18.27 or disapprove a proposed modification or termination under section 501C.0411 may be  
18.28 commenced by the settlor.

18.29       Sec. 9. **[501C.0411] MODIFICATION OR TERMINATION OF**  
18.30 **NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.**

18.31            (a) A noncharitable irrevocable trust may be modified or terminated upon consent of  
18.32 the settlor and all beneficiaries, even if the modification or termination is inconsistent with  
18.33 a material purpose of the trust. A settlor's power to consent to a trust's modification or

19.1 termination may be exercised by an agent under a power of attorney only to the extent  
 19.2 expressly authorized by the power of attorney or the terms of the trust; by the settlor's  
 19.3 conservator with the approval of the court supervising the conservatorship if an agent is  
 19.4 not so authorized; or by the settlor's guardian with the approval of the court supervising  
 19.5 the guardianship if an agent is not so authorized and a conservator has not been appointed.

19.6 (b) A noncharitable irrevocable trust may be terminated upon consent of all of the  
 19.7 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve  
 19.8 any material purpose of the trust. A noncharitable irrevocable trust may be modified  
 19.9 upon consent of all of the beneficiaries if the court concludes that modification is not  
 19.10 inconsistent with a material purpose of the trust.

19.11 (c) The court is not precluded from modifying or terminating a trust because the  
 19.12 trust instrument contains spendthrift provisions.

19.13 (d) Upon termination of a trust under paragraph (a) or (b), the trustee shall distribute  
 19.14 the trust property as agreed by the beneficiaries.

19.15 (e) If not all of the beneficiaries consent to a proposed modification or termination  
 19.16 of the trust under paragraph (a) or (b), the modification or termination may be approved  
 19.17 by the court if the court is satisfied that:

19.18 (1) if all of the beneficiaries had consented, the trust could have been modified or  
 19.19 terminated under this section; and

19.20 (2) the interests of a beneficiary who does not consent will be adequately protected.

19.21 **Sec. 10. [501C.0412] MODIFICATION OR TERMINATION BECAUSE OF**  
 19.22 **UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER**  
 19.23 **TRUST EFFECTIVELY.**

19.24 (a) The court may modify the administrative or dispositive terms of a trust or  
 19.25 terminate the trust if, because of circumstances not anticipated by the settlor, modification  
 19.26 or termination will further the purposes of the trust. To the extent practicable, the  
 19.27 modification must be made in accordance with the settlor's probable intention.

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

19.30 (c) Upon termination of a trust under this section, the trustee shall distribute the trust  
 19.31 property in a manner consistent with the order of the court.

19.32 **Sec. 11. [501C.0414] MODIFICATION OR TERMINATION OF UNECONOMIC**  
 19.33 **TRUST.**

20.1 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of  
20.2 trust property having a total value less than \$50,000 may terminate the trust if the  
20.3 trustee concludes that the value of the trust property is insufficient to justify the cost  
20.4 of administration.

20.5 (b) The court may modify or terminate a trust or remove the trustee and appoint a  
20.6 different trustee if it determines that the value of the trust property is insufficient to justify  
20.7 the cost of administration.

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

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

20.11 **Sec. 12. [501C.0415] REFORMATION TO CORRECT MISTAKES.**

20.12 The court may reform the terms of a trust, even if unambiguous, to conform the  
20.13 terms to the settlor's intention if it is proved by clear and convincing evidence what the  
20.14 settlor's intention was and that the terms of the trust were affected by a mistake of fact or  
20.15 law, whether in expression or inducement.

20.16 **Sec. 13. [501C.0416] MODIFICATION TO ACHIEVE SETTLOR'S TAX**  
20.17 **OBJECTIVES.**

20.18 To achieve settlor's tax objectives, the court may modify the terms of a trust in a  
20.19 manner that is not contrary to the settlor's probable intention. The court may provide  
20.20 that the modification has retroactive effect.

20.21 **Sec. 14. [501C.0417] COMBINATION AND DIVISION OF TRUSTS.**

20.22 After notice to the qualified beneficiaries, a trustee may combine two or more trusts  
20.23 into a single trust or divide a trust into two or more separate trusts, if the result does not  
20.24 impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

20.25 **ARTICLE 5**

20.26 **SPENDTHRIFT TRUSTS; CREDITOR'S CLAIMS**

20.27 **Section 1. [501C.0502] SPENDTHRIFT PROVISION.**

20.28 (a) A trust has a valid spendthrift provision if:

20.29 (1) the trust includes a provision that restricts both voluntary and involuntary  
20.30 transfers of a beneficiary's interest; or

20.31 (2) by the terms of the trust instrument, the settlor manifests an intention to impose  
20.32 restrictions on both voluntary and involuntary transfers of a beneficiary's interest.

21.1 (b) A term of a trust providing that the interest of a beneficiary is held subject to a  
21.2 "spendthrift trust," or words of similar import, is sufficient to restrict both voluntary and  
21.3 involuntary transfers of the beneficiary's interest.

21.4 (c) For the purposes of this section, neither a valid disclaimer nor the exercise of a  
21.5 limited power of appointment is a voluntary transfer.

21.6 (d) A beneficiary may not transfer an interest in a trust in violation of a valid  
21.7 spendthrift provision and a creditor or assignee of the beneficiary may not reach the  
21.8 interest or a distribution by the trustee before its receipt by the beneficiary.

21.9 **Sec. 2. [501C.0504] RIGHT TO COMPEL DISTRIBUTION.**

21.10 (a) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary  
21.11 may not compel a distribution that is subject to the trustee's discretion, even if:

21.12 (1) the discretion is expressed in the form of a standard of distribution; or

21.13 (2) the trustee has abused the discretion.

21.14 (b) This section does not limit the right of a beneficiary to maintain a judicial  
21.15 proceeding against a trustee for an abuse of discretion or failure to comply with a standard  
21.16 for distribution.

21.17 (c) If the trustee's or cotrustee's discretion to make distributions for the trustee's or  
21.18 cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or  
21.19 compel distribution of the beneficial interest except to the extent the interest would be  
21.20 subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

21.21 **Sec. 3. [501C.0505] CREDITOR'S CLAIM AGAINST SETTLOR.**

21.22 Whether or not the terms of a trust contain a spendthrift provision, the following  
21.23 rules apply:

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

21.26 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may  
21.27 reach the maximum amount that can be distributed to or for the settlor's benefit. If a  
21.28 trust has more than one settlor, the amount the creditor or assignee of a particular settlor  
21.29 may reach may not exceed the settlor's interest in the portion of the trust attributable to  
21.30 that settlor's contribution.

21.31 (3) After the death of a settlor, and subject to the settlor's right to direct the source  
21.32 from which liabilities will be paid, the property of a trust that was revocable at the  
21.33 settlor's death is subject to claims of the settlor's creditors, costs of administration of the  
21.34 settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory

22.1 allowances to a surviving spouse and children to the extent the settlor's probate estate is  
22.2 inadequate to satisfy those claims, costs, expenses, and allowances.

22.3 **Sec. 4. [501C.0506] OVERDUE DISTRIBUTION.**

22.4 (a) In this section, "mandatory distribution" means a distribution of income or  
22.5 principal which the trustee is required to make to a beneficiary under the terms of the  
22.6 trust, including a distribution upon termination of the trust. The term does not include a  
22.7 distribution subject to the exercise of the trustee's discretion even if (1) the discretion is  
22.8 expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing  
22.9 a distribution couple language of discretion with language of direction.

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

22.14 **Sec. 5. [501C.0507] PERSONAL OBLIGATIONS OF TRUSTEE.**

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

22.17 **ARTICLE 6**

22.18 **REVOCABLE TRUSTS**

22.19 **Section 1. [501C.0601] CAPACITY OF SETTLOR OF REVOCABLE TRUST.**

22.20 The capacity required to create, amend, or revoke a revocable trust, or to direct the  
22.21 actions of the trustee of a revocable trust, is the same as that required to make a will.

22.22 **Sec. 2. [501C.0602] REVOCATION OR AMENDMENT OF REVOCABLE**  
22.23 **TRUST.**

22.24 (a) Unless the terms of a trust expressly provide that the trust is revocable, the  
22.25 settlor may not revoke or amend the trust.

22.26 (b) If a revocable trust is created or funded by more than one settlor:

22.27 (1) to the extent the trust consists of community property, the trust may be revoked  
22.28 by either spouse acting alone but may be amended only by joint action of both spouses;

22.29 (2) to the extent the trust consists of property other than community property, each  
22.30 settlor may revoke or amend the trust with regard to the portion of the trust property  
22.31 attributable to that settlor's contribution; and

23.1 (3) upon the revocation or amendment of the trust by fewer than all of the settlors,  
 23.2 the trustee shall promptly notify the other settlors of the revocation or amendment.

23.3 (c) The settlor may revoke or amend a revocable trust:

23.4 (1) by substantial compliance with a method provided in the terms of the trust; or

23.5 (2) if the terms of the trust do not provide a method or the method provided in the  
 23.6 terms is not expressly made exclusive, by:

23.7 (i) if the trust is created pursuant to a writing, by another writing manifesting clear  
 23.8 and convincing evidence of the settlor's intent to revoke or amend the trust; or

23.9 (ii) if the trust is an oral trust, by any other method manifesting clear and convincing  
 23.10 evidence of the settlor's intent.

23.11 (d) Upon revocation of a revocable trust, the trustee shall deliver the trust property  
 23.12 as the settlor directs.

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

23.16 (f) A conservator of the settlor may exercise a settlor's powers with respect to  
 23.17 revocation, amendment, or distribution of trust property only with the approval of the  
 23.18 court supervising the conservatorship.

23.19 (g) A trustee who does not know that a trust has been revoked or amended is not  
 23.20 liable to the settlor or settlor's successors in interest for distributions made and other  
 23.21 actions taken on the assumption that the trust had not been amended or revoked.

23.22 **Sec. 3. [501C.0603] WRITTEN STATEMENT REGARDING TANGIBLE**  
 23.23 **PERSONAL PROPERTY.**

23.24 A revocable trust may be amended by a written statement disposing of items of  
 23.25 tangible personal property not otherwise specifically disposed of by the settlor's will or  
 23.26 the trust instrument, other than money, coin collections, and property used in a trade or  
 23.27 business. To be effective as an amendment, the writing must be referred to in the trust  
 23.28 instrument, must either be in the handwriting of the settlor or signed by the settlor, and  
 23.29 must describe the items and the beneficiaries with reasonable certainty. The writing may  
 23.30 be referred to as one to be in existence at the time of the settlor's death; it may be prepared  
 23.31 before or after the execution of the trust instrument; it may be altered by the settlor after its  
 23.32 preparation; and it may be a writing which has no significance apart from its effect upon  
 23.33 the dispositions made by the trust instrument. A writing may include multiple writings  
 23.34 and if an item of tangible personal property is disposed of to different persons by different  
 23.35 writings, the most recent writing controls the disposition of the item.

24.1 Sec. 4. **[501C.0604] SETTLOR'S POWERS.**

24.2 While a trust is revocable, rights of the beneficiaries are subject to the control of, and  
 24.3 the duties of the trustee are owed exclusively to, the settlor.

24.4 Sec. 5. **[501C.0605] LIMITATION ON ACTION CONTESTING VALIDITY OF**  
 24.5 **REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.**

24.6 (a) A person may commence a judicial proceeding to contest the validity of a trust  
 24.7 that was revocable immediately prior to the settlor's death within the earlier of:

24.8 (1) three years after the settlor's death; or

24.9 (2) 120 days after the trustee sent the person a copy of the trust instrument and a  
 24.10 notice informing the person of the trust's existence, of the trustee's name and address, and  
 24.11 of the time allowed for commencing a proceeding.

24.12 (b) Upon the death of the settlor of a trust that was revocable at the settlor's death,  
 24.13 the trustee may proceed to distribute the trust property in accordance with the terms of the  
 24.14 trust. The trustee is not subject to liability for doing so unless:

24.15 (1) the trustee knows of a pending judicial proceeding contesting the validity of  
 24.16 the trust; or

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

24.20 (c) A beneficiary of a trust that is determined to have been invalid, in whole or  
 24.21 in part, is liable to return any distribution received, to the extent the invalidity applies  
 24.22 to the distribution.

24.23 **ARTICLE 7**

24.24 **OFFICE OF TRUSTEE**

24.25 Section 1. **[501C.0701] ACCEPTING OR DECLINING TRUSTEESHIP.**

24.26 (a) Except as otherwise provided in paragraph (c), a person designated as trustee  
 24.27 accepts the trusteeship:

24.28 (1) by substantially complying with a method of acceptance provided in the terms  
 24.29 of the trust; or

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



25.1 (b) A person designated as trustee who has not yet accepted the trusteeship may  
25.2 reject the trusteeship. A designated trustee who does not accept the trusteeship within a  
25.3 reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

25.4 (c) A person designated as trustee, without accepting the trusteeship, may:

25.5 (1) act to preserve the trust property if, within a reasonable time after acting, the  
25.6 person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks  
25.7 capacity, to a qualified beneficiary; and

25.8 (2) inspect or investigate trust property to determine potential liability or for any  
25.9 other purpose.

25.10 **Sec. 2. [501C.0702] TRUSTEE'S BOND.**

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

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

25.16 (c) A regulated financial-service institution qualified to do trust business in this state  
25.17 need not give bond, even if required by the terms of the trust.

25.18 **Sec. 3. [501C.0703] COTRUSTEES.**

25.19 (a) Cotrustees who are unable to reach a unanimous decision may act by majority  
25.20 decision.

25.21 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for  
25.22 the trust.

25.23 (c) A cotrustee must participate in the performance of a trustee's duties and powers  
25.24 unless the cotrustee is unavailable to perform the duties or exercise the powers because  
25.25 of absence, illness, disqualification under other law, or other temporary incapacity or the  
25.26 cotrustee has properly delegated the performance of the function to another trustee.

25.27 (d) If a cotrustee is unavailable to perform duties or exercise the powers because  
25.28 of absence, illness, disqualification under other law, or other temporary incapacity, and  
25.29 prompt action is necessary to achieve the purposes of the trust or to avoid injury to the  
25.30 trust property, the remaining cotrustee or a majority of the remaining cotrustees may  
25.31 act for the trust.

25.32 (e) A trustee may delegate to a cotrustee the performance of any duties or powers  
25.33 as prudent under the circumstances. Unless a delegation was irrevocable, a trustee may  
25.34 revoke a delegation previously made.

26.1 (f) Except as otherwise provided in paragraph (g), a trustee who does not join in an  
26.2 action of another trustee is not liable for the action.

26.3 (g) Each trustee shall exercise reasonable care to:

26.4 (1) prevent a cotrustee from committing a serious breach of trust; and

26.5 (2) compel a cotrustee to redress a serious breach of trust.

26.6 (h) A dissenting trustee who joins in an action at the direction of the majority of the  
26.7 trustees and who notified any cotrustee of the dissent at or before the time of the action is  
26.8 not liable for the action unless the action is a serious breach of trust.

26.9 **Sec. 4. [501C.0704] VACANCY IN TRUSTEESHIP; APPOINTMENT OF**  
26.10 **SUCCESSOR.**

26.11 (a) A vacancy in the trusteeship occurs if:

26.12 (1) a person designated as trustee rejects the trusteeship;

26.13 (2) a person designated as trustee cannot be identified or does not exist;

26.14 (3) a trustee resigns;

26.15 (4) a trustee is disqualified or removed;

26.16 (5) a trustee dies; or

26.17 (6) a guardian or conservator is appointed for an individual serving as trustee.

26.18 (b) If one or more cotrustees remain in office, a vacancy in trusteeship need not be  
26.19 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

26.20 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled  
26.21 must be filled in the following order of priority:

26.22 (1) by a person designated in the terms of the trust to act as successor trustee;

26.23 (2) by a person appointed by unanimous agreement of the qualified beneficiaries;

26.24 (3) by a person appointed pursuant to a nonjudicial settlement agreement as defined  
26.25 in section 501C.0111; or

26.26 (4) by a person appointed by the court.

26.27 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled must  
26.28 be filled in the following order of priority:

26.29 (1) by a person designated in the terms of the trust to act as successor trustee;

26.30 (2) by a person selected by the charitable organizations expressly designated to  
26.31 receive distributions under the terms of the trust if the attorney general concurs in the  
26.32 selection; or

26.33 (3) by a person appointed by the court.

27.1 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the  
27.2 court may appoint an additional trustee or special fiduciary whenever the court considers  
27.3 the appointment necessary for the administration of the trust.

27.4 **Sec. 5. [501C.0705] RESIGNATION OF TRUSTEE.**

27.5 (a) A trustee may resign:

27.6 (1) upon notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

27.7 (2) with the approval of the court.

27.8 (b) In approving a resignation, the court may issue orders and impose conditions

27.9 reasonably necessary for the protection of the trust property.

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

27.12 **Sec. 6. [501C.0706] REMOVAL OF TRUSTEE.**

27.13 (a) The settlor, a cotrustee, or a beneficiary may petition the court to remove a  
27.14 trustee, or a trustee may be removed by the court on its own initiative.

27.15 (b) The court may remove a trustee if:

27.16 (1) the trustee has committed a serious breach of trust;

27.17 (2) lack of cooperation among cotrustees substantially impairs the administration of  
27.18 the trust;

27.19 (3) the court determines that removal of the trustee best serves the interests of the  
27.20 beneficiaries because of unfitness, unwillingness, or persistent failure of the trustee to  
27.21 administer the trust effectively; or

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

27.26 (c) Pending a final decision on a petition to remove a trustee, or in lieu of or in  
27.27 addition to removing a trustee, the court may order such appropriate relief under section  
27.28 501C.1001, paragraph (b), as may be necessary to protect the trust property or the interests  
27.29 of the beneficiaries.

27.30 **Sec. 7. [501C.0707] DELIVERY OF PROPERTY BY FORMER TRUSTEE.**

27.31 (a) Unless a cotrustee remains in office or the court otherwise orders, and until the  
27.32 trust property is delivered to a successor trustee or other person entitled to it, a trustee

28.1 who has resigned or been removed has the duties of a trustee and the powers necessary to  
28.2 protect the trust property.

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

28.6 (c) Title to all trust property shall be owned by and vested in any successor trustee  
28.7 without any conveyance, transfer, or assignment by the prior trustee.

28.8 **Sec. 8. [501C.0708] COMPENSATION OF TRUSTEE.**

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

28.11 (b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to  
28.12 be compensated as specified, but the court may allow more or less compensation if:

28.13 (1) the duties of the trustee are substantially different from those contemplated when  
28.14 the trust was created; or

28.15 (2) the compensation specified by the terms of the trust would be unreasonably  
28.16 low or high.

28.17 **Sec. 9. [501C.0709] REIMBURSEMENT OF EXPENSES.**

28.18 (a) A trustee is entitled to be reimbursed out of the trust property, with interest  
28.19 as appropriate, for:

28.20 (1) expenses that were properly incurred in the administration of the trust; and

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

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

28.25 **ARTICLE 8**

28.26 **DUTIES AND POWERS OF TRUSTEE**

28.27 **Section 1. [501C.0801] DUTY TO ADMINISTER TRUST.**

28.28 Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith,  
28.29 in accordance with its terms and purposes and the interests of the beneficiaries, and in  
28.30 accordance with this chapter and all other applicable law.

28.31 **Sec. 2. [501C.0802] DUTY OF LOYALTY.**

29.1 (a) A trustee owes a duty of loyalty to the beneficiaries. A trustee shall not place  
29.2 the trustee's own interests above those of the beneficiaries.

29.3 (b) Subject to the rights of persons dealing with or assisting the trustee as provided  
29.4 in section 501C.1012, a sale, encumbrance, or other transaction involving the investment  
29.5 or management of trust property entered into by the trustee for the trustee's own personal  
29.6 account or which is otherwise affected by a conflict between the trustee's fiduciary and  
29.7 personal interests is voidable by a beneficiary affected by the transaction unless:

29.8 (1) the transaction was authorized by the terms of the trust;

29.9 (2) the transaction was approved by the court;

29.10 (3) the beneficiary did not commence a judicial proceeding within the time allowed  
29.11 by section 501C.1005;

29.12 (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or  
29.13 released the trustee in compliance with section 501C.1009; or

29.14 (5) the transaction involves a contract entered into or claim acquired by the trustee  
29.15 before the person became a trustee.

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

29.19 (1) the trustee's spouse;

29.20 (2) the trustee's descendants, siblings, parents, or their spouses;

29.21 (3) an agent or an attorney of the trustee; or

29.22 (4) a corporation or other person or enterprise in which the trustee, or a person who  
29.23 owns a significant interest in the trustee, has an interest that might affect the trustee's  
29.24 best judgment.

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

29.27 (1) an agreement between a trustee and a beneficiary relating to the appointment  
29.28 or compensation of the trustee;

29.29 (2) payment of reasonable compensation to the trustee;

29.30 (3) a transaction between a trust and another trust, decedent's estate, or  
29.31 conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

29.32 (4) a deposit of trust money in a regulated financial service institution operated by  
29.33 the trustee; or

29.34 (5) an advance by the trustee of money for the protection of the trust.

29.35 (e) The court may appoint a special fiduciary to make a decision with respect to any  
29.36 proposed transaction that might violate this section if entered into by the trustee.

30.1 Sec. 3. **[501C.0803] IMPARTIALITY.**

30.2 If a trust has two or more beneficiaries, the trustee shall administer the trust  
30.3 impartially, giving due regard to the beneficiaries' respective interests.

30.4 Sec. 4. **[501C.0804] PRUDENT ADMINISTRATION.**

30.5 A trustee shall administer the trust as a prudent person would, by considering the  
30.6 purposes, terms, and distribution requirements of the trust and all relevant circumstances.  
30.7 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

30.8 Sec. 5. **[501C.0807] DELEGATION BY TRUSTEE.**

30.9 (a) A trustee may delegate to any person, even if the person is associated with the  
30.10 trustee, duties and powers that a prudent trustee of comparable skills could properly  
30.11 delegate under the circumstances. The trustee shall exercise reasonable care, skill, and  
30.12 caution in:

30.13 (1) selecting an agent;

30.14 (2) establishing the scope and terms of the delegation, consistent with the purposes  
30.15 and terms of the trust; and

30.16 (3) periodically reviewing the agent's actions in order to monitor the agent's  
30.17 performance and that the agent is acting in compliance with the terms of the delegation.

30.18 (b) In performing a delegated function, an agent owes a duty to the trustee to  
30.19 exercise reasonable care to comply with the terms of the delegation. This duty shall be  
30.20 enforced by the trustee.

30.21 (c) A trustee who complies with paragraphs (a) and (b) is not liable to the  
30.22 beneficiaries or to the trust for an action of the agent to whom the function was delegated.

30.23 (d) By accepting a delegation of powers or duties from the trustee of a trust that is  
30.24 subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

30.25 Sec. 6. **[501C.0808] DIRECTED TRUSTS.**

30.26 Subdivision 1. Definitions. (a) The definitions in this section apply to this section.

30.27 (b) "Directing party" means any investment trust advisor, distribution trust advisor,  
30.28 or trust protector as provided in this section.

30.29 (c) "Distribution trust advisor" means one or more persons given authority by the  
30.30 governing instrument to direct, consent to, veto, or otherwise exercise all or any portion of  
30.31 the distribution powers and discretions of the trust, including but not limited to authority  
30.32 to make discretionary distributions of income or principal.

31.1 (d) "Excluded fiduciary" means any fiduciary that by the governing instrument is  
31.2 directed to act in accordance with the exercise of specified powers by a directing party,  
31.3 in which case such specified powers shall be deemed granted not to the fiduciary but to  
31.4 the directing party and such fiduciary shall be deemed excluded from exercising such  
31.5 specified powers. If a governing instrument provides that a fiduciary as to one or more  
31.6 specified matters is to act, omit action, or make decisions only with the consent of a  
31.7 directing party, then such fiduciary is an excluded fiduciary with respect to such matters.  
31.8 A person may be an excluded fiduciary even if such person participated in the exercise of  
31.9 (1) a power described in section 501C.0111 relating to nonjudicial settlement agreements,  
31.10 (2) a power described in section 502.851 relating to decanting, (3) a permitted trustee  
31.11 amendment, or (4) a similar power that invokes the provisions of this section with respect  
31.12 to any new or existing trust.

31.13 (e) "Fiduciary" means any person expressly given one or more fiduciary duties by  
31.14 the governing instrument, including but not limited to a trustee.

31.15 (f) "Governing instrument" means the instrument stating the terms of a trust,  
31.16 including but not limited to any court order, or nonjudicial settlement agreement  
31.17 establishing, construing, or modifying the terms of the trust in accordance with section  
31.18 501C.0111 or 502.851, or other applicable law.

31.19 (g) "Investment trust advisor" means any one or more persons given authority by the  
31.20 governing instrument to direct, consent to, or veto the exercise of all or any portion of the  
31.21 investment powers of the trust.

31.22 (h) "Power" means authority to take or withhold an action or decision, including  
31.23 but not limited to an expressly specified power, the implied power necessary to exercise a  
31.24 specified power, and authority inherent in a general grant of discretion.

31.25 (i) "Trust protector" means one or more persons given one or more of the powers  
31.26 specified in subdivision 4, whether or not designated with the title of trust protector by  
31.27 the governing instrument.

31.28 Subd. 2. **Powers of investment trust advisor.** An investment trust advisor may  
31.29 be designated in the governing instrument of a trust. The powers of an investment trust  
31.30 advisor may be exercised or not exercised in the sole and absolute discretion of the  
31.31 investment trust advisor, and are binding on all other persons, including but not limited to  
31.32 each beneficiary, fiduciary, excluded fiduciary, and any other party having an interest in  
31.33 the trust. The governing instrument may use the title "investment trust advisor" or any  
31.34 similar name or description demonstrating the intent to provide for the office and function  
31.35 of an investment trust advisor. Unless the terms of the governing instrument provide  
31.36 otherwise, the investment trust advisor has the authority to:

32.1 (1) direct the trustee with respect to the retention, purchase, transfer, assignment,  
32.2 sale, or encumbrance of trust property and the investment and reinvestment of principal  
32.3 and income of the trust;

32.4 (2) direct the trustee with respect to all management, control, and voting powers  
32.5 related directly or indirectly to trust assets, including but not limited to voting proxies  
32.6 for securities held in trust;

32.7 (3) select and determine reasonable compensation of one or more advisors,  
32.8 managers, consultants, or counselors, including the trustee, and to delegate to them any of  
32.9 the powers of the investment trust advisor in accordance with section 501C.0807; and

32.10 (4) determine the frequency and methodology for valuing any asset for which there  
32.11 is no readily available market value.

32.12 Subd. 3. **Powers of distribution trust advisor.** A distribution trust advisor may  
32.13 be designated in the governing instrument of a trust. The powers of a distribution trust  
32.14 advisor may be exercised or not exercised in the sole and absolute discretion of the  
32.15 distribution trust advisor, and are binding on all other persons, including but not limited to  
32.16 each beneficiary, fiduciary, excluded fiduciary, and any other party having an interest in  
32.17 the trust. The governing instrument may use the title "distribution trust advisor" or any  
32.18 similar name or description demonstrating the intent to provide for the office and function  
32.19 of a distribution trust advisor. Unless the terms of the governing instrument provide  
32.20 otherwise, the distribution trust advisor has authority to direct the trustee with regard to  
32.21 all decisions relating directly or indirectly to discretionary distributions to or for one or  
32.22 more beneficiaries.

32.23 Subd. 4. **Powers of trust protector.** A trust protector may be designated in the  
32.24 governing instrument of a trust. The powers of a trust protector may be exercised or not  
32.25 exercised in the sole and absolute discretion of the trust protector, and are binding on all  
32.26 other persons, including but not limited to each beneficiary, investment trust advisor,  
32.27 distribution trust advisor, fiduciary, excluded fiduciary, and any other party having an  
32.28 interest in the trust. The governing instrument may use the title "trust protector" or any  
32.29 similar name or description demonstrating the intent to provide for the office and function  
32.30 of a trust protector. The powers granted to a trust protector by the governing instrument  
32.31 may include but are not limited to authority to do any one or more of the following:

32.32 (1) modify or amend the governing instrument to achieve favorable tax status or  
32.33 respond to changes in the Internal Revenue Code, federal laws, state law, or the rulings  
32.34 and regulations under such laws;

32.35 (2) increase, decrease, or modify the interests of any beneficiary or beneficiaries of  
32.36 the trust;



33.1 (3) modify the terms of any power of appointment granted by the trust; provided,  
 33.2 however, such modification or amendment may not grant a beneficial interest to any  
 33.3 individual, class of individuals, or other parties not specifically provided for under the  
 33.4 trust instrument;

33.5 (4) remove, appoint, or remove and appoint, a trustee, investment trust advisor,  
 33.6 distribution trust advisor, another directing party, investment committee member, or  
 33.7 distribution committee member, including designation of a plan of succession for future  
 33.8 holders of any such office;

33.9 (5) terminate the trust, including determination of how the trustee shall distribute the  
 33.10 trust property to be consistent with the purposes of the trust;

33.11 (6) change the situs of the trust, the governing law of the trust, or both;

33.12 (7) appoint one or more successor trust protectors, including designation of a plan  
 33.13 of succession for future trust protectors;

33.14 (8) interpret terms of the trust instrument at the request of the trustee;

33.15 (9) advise the trustee on matters concerning a beneficiary;

33.16 (10) amend or modify the governing instrument to take advantage of laws governing  
 33.17 restraints on alienation, distribution of trust property, or to improve the administration of  
 33.18 the trust;

33.19 (11) veto or direct trust distributions; or

33.20 (12) provide direction regarding notification of qualified beneficiaries.

33.21 If a charity is a current beneficiary or a presumptive remainder beneficiary of the trust, a  
 33.22 trust protector must give notice to the attorney general's charitable trust division at least 60  
 33.23 days before taking any of the actions authorized under clause (2), (3), (4), (5), or (6). The  
 33.24 attorney general's charitable trust division may, however, waive this notice requirement.

33.25 Subd. 5. **Duty and liability of directing party.** A directing party is a fiduciary  
 33.26 of the trust subject to the same duties and standards applicable to a trustee of a trust as  
 33.27 provided by applicable law unless the governing instrument provides otherwise, but the  
 33.28 governing instrument may not, however, relieve or exonerate a directing party from the  
 33.29 duty to act or withhold acting as the directing party in good faith reasonably believes is  
 33.30 in the best interests of the trust.

33.31 Subd. 6. **Duty and liability of excluded fiduciary.** (a) The excluded fiduciary shall  
 33.32 act in accordance with the governing instrument and comply with the directing party's  
 33.33 exercise of the powers granted to the directing party by the governing instrument. Unless  
 33.34 otherwise provided in the governing instrument, an excluded fiduciary has no duty to  
 33.35 monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a  
 33.36 directing party's exercise of or failure to exercise any power granted to the directing

34.1 party by the governing instrument, including but not limited to, any power related to the  
34.2 acquisition, disposition, retention, management, or valuation of any asset or investment.

34.3 Except as otherwise provided in this section or the governing instrument, an excluded  
34.4 fiduciary is not liable, either individually or as a fiduciary, for any action, inaction, consent,  
34.5 or failure to consent by a directing party, including but not limited to, any of the following:

34.6 (1) if a governing instrument provides that an excluded fiduciary is to follow the  
34.7 direction of a directing party, and the excluded fiduciary acts in accordance with the  
34.8 direction, then except in cases of willful misconduct on the part of the excluded fiduciary  
34.9 in complying with the direction of the directing party, the excluded fiduciary is not liable  
34.10 for any loss resulting directly or indirectly from following the direction, including but not  
34.11 limited to, compliance regarding the valuation of assets for which there is no readily  
34.12 available market value;

34.13 (2) if a governing instrument provides that an excluded fiduciary is to act or omit to  
34.14 act only with the consent of a directing party, then except in cases of willful misconduct on  
34.15 the part of the excluded fiduciary, the excluded fiduciary is not liable for any loss resulting  
34.16 directly or indirectly from any act taken or omitted as a result of the directing party's failure  
34.17 to provide consent after having been requested to do so by the excluded fiduciary; or

34.18 (3) if a governing instrument provides that, or if for any other reason, an excluded  
34.19 fiduciary is required to assume the role or responsibilities of a directing party, or if the  
34.20 excluded fiduciary appoints a directing party or successor to a directing party, then except  
34.21 in cases of willful misconduct on the part of the excluded fiduciary, the excluded fiduciary  
34.22 is not liable for any loss resulting directly or indirectly from its actions in carrying out the  
34.23 roles and responsibilities of the directing party.

34.24 (b) Any excluded fiduciary is also relieved from any obligation to review or evaluate  
34.25 any direction from a distribution trust advisor or to perform investment or suitability  
34.26 reviews, inquiries, or investigations or to make recommendations or evaluations with  
34.27 respect to investments to the extent the directing party, custodial account owner, or  
34.28 authorized designee of a custodial account owner had authority to direct the acquisition,  
34.29 disposition, or retention of any such investment. If the excluded fiduciary offers such  
34.30 communication to the directing party or any investment person selected by the investment  
34.31 trust advisor, the action may not be deemed to constitute an undertaking by the excluded  
34.32 fiduciary to monitor or otherwise participate in actions within the scope of the advisor's  
34.33 authority or to constitute any duty to do so.

34.34 (c) An excluded fiduciary is also relieved of any duty to communicate with, warn, or  
34.35 apprise any beneficiary or third party concerning instances in which the excluded fiduciary

35.1 would or may have exercised the excluded fiduciary's own discretion in a manner different  
35.2 from the manner directed by the directing party.

35.3 (d) Absent a contrary provision in the governing instrument, the actions of the  
35.4 excluded fiduciary, including any communications with the directing party or others,  
35.5 or carrying out, recording, or reporting actions taken at the directing party's direction  
35.6 pertaining to matters within the scope of authority of the directing party, shall be deemed  
35.7 to be administrative actions taken by the excluded fiduciary solely to allow the excluded  
35.8 fiduciary to perform those duties assigned to the excluded fiduciary under the governing  
35.9 instrument. An administrative action described under this paragraph may not be deemed  
35.10 to constitute an undertaking by the excluded fiduciary to monitor, participate, or otherwise  
35.11 take any fiduciary responsibility for actions within the scope of authority of the directing  
35.12 party.

35.13 Subd. 7. **Submission to court jurisdiction; effect on directing party.** The  
35.14 directing party may be made a party to any action or proceeding if issues relate to a  
35.15 decision or action of the directing party, even if investment advisory agreements or other  
35.16 related agreements provide otherwise.

35.17 Subd. 8. **Duty to inform excluded fiduciary.** Each directing party shall keep  
35.18 the excluded fiduciary and any other directing party reasonably informed regarding the  
35.19 administration of the trust with respect to any specific duty or function being performed by  
35.20 the directing party to the extent that the duty or function would normally be performed by  
35.21 the excluded fiduciary or to the extent that providing such information to the excluded  
35.22 fiduciary or other directing party is reasonably necessary for the excluded fiduciary  
35.23 or other directing party to perform its duties. The directing party shall provide such  
35.24 information as reasonably requested by the excluded fiduciary or other directing party.  
35.25 Neither the performance nor the failure to perform of a directing party's duty to inform as  
35.26 provided in this subdivision affects the limitation on the liability of the excluded fiduciary  
35.27 as provided in this section.

35.28 Subd. 9. **Reliance on counsel.** An excluded fiduciary may, but is not required to,  
35.29 obtain and rely upon an opinion of counsel on any matter relevant to this section.

35.30 Subd. 10. **Applicability.** This section applies to:

35.31 (1) all existing and future trusts that appoint or provide for a directing party,  
35.32 including but not limited to a party granted power or authority effectively comparable in  
35.33 substance to that of a directing party as provided in this section; or

35.34 (2) any existing or future trusts that:

35.35 (i) are modified in accordance with applicable law or the terms of the governing  
35.36 instrument to appoint or provide for a directing party; or

36.1 (ii) are modified to appoint or provide for a directing party, including but not limited  
36.2 to, a party granted power or authority effectively comparable in substance to that of a  
36.3 directing party, in accordance with (A) a court order, or (B) a nonjudicial settlement  
36.4 agreement made in accordance with section 501C.0111, whether or not such order or  
36.5 agreement specifies that this section governs the responsibilities, actions, and liabilities of  
36.6 persons designated as a directing party or excluded fiduciary.

36.7 **Sec. 7. [501C.0809] CONTROL, PROTECTION, AND DELIVERY OF TRUST**  
36.8 **PROPERTY.**

36.9 (a) A trustee shall take reasonable steps to compel a former trustee or other person  
36.10 to deliver the trust's tangible personal property and evidence of ownership of other trust  
36.11 property to the trustee.

36.12 (b) A trustee shall take reasonable steps to take control of and protect the trust  
36.13 property, except that this duty does not apply to, and the trustee is not responsible for,  
36.14 items of tangible personal property that are property of a trust revocable by the settlor and  
36.15 that are not in the possession or control of the trustee.

36.16 **Sec. 8. [501C.0810] RECORD KEEPING AND IDENTIFICATION OF TRUST**  
36.17 **PROPERTY.**

36.18 (a) A trustee shall keep adequate records of the administration of the trust.

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

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

36.22 **Sec. 9. [501C.0811] ENFORCEMENT AND DEFENSE OF CLAIMS.**

36.23 (a) A trustee shall take reasonable steps to redress a breach of trust known to the  
36.24 trustee to have been committed by a former trustee.

36.25 (b) A trustee shall take reasonable steps to enforce claims of the trust known to the  
36.26 trustee and to defend claims against the trust.

36.27 **Sec. 10. [501C.0813] DUTY TO INFORM AND REPORT.**

36.28 (a) A trustee shall keep the qualified beneficiaries of an irrevocable trust reasonably  
36.29 informed about the administration of the trust and of the material facts necessary to  
36.30 protect their interests. Unless unreasonable under the circumstances, a trustee shall  
36.31 promptly respond to a beneficiary's request for information related to the administration of  
36.32 an irrevocable trust.

37.1 (b) A settlor may provide, by an express provision in the trust instrument, that  
37.2 paragraph (a) shall not apply to the administration of a trust during any period when the  
37.3 trustee is required by the terms of the trust to keep the settlor or another person, including  
37.4 one or more beneficiaries of the trust or a representative of a beneficiary, reasonably  
37.5 informed about the administration of the trust and of the material facts necessary to protect  
37.6 the beneficiaries' interests. A trustee shall promptly respond to such person's requests  
37.7 for information related to the administration of the trust. Unless the terms of the trust  
37.8 provide otherwise, any person to whom trust administration information is furnished shall  
37.9 have standing to enforce the trust but acts in a nonfiduciary capacity and has no duty or  
37.10 responsibility to enforce the trust or to take any other action with respect to the information  
37.11 furnished. If a settlor has, by an express provision in the trust instrument, prohibited  
37.12 a trustee from sharing information with beneficiaries, including but not limited to,  
37.13 accountings, a trustee shall have the right to seek judicial approval by filing a petition with  
37.14 the court. Such petition shall comply with the notice provisions of section 501C.0203.

37.15 (c) A beneficiary may waive the right to information otherwise required to be  
37.16 furnished under paragraph (a). A beneficiary may withdraw any such waiver previously  
37.17 given. Any waiver or withdrawal of a waiver must be made by notice delivered to the  
37.18 trustee.

37.19 **Sec. 11. [501C.0814] DISCRETIONARY POWERS; TAX SAVINGS.**

37.20 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of  
37.21 the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the  
37.22 trustee must exercise a discretionary power in good faith, in accordance with the terms  
37.23 and purposes of the trust and, in the best interests of the beneficiaries.

37.24 (b) Subject to paragraph (d), and unless the terms of the trust expressly indicate  
37.25 that this paragraph does not apply:

37.26 (1) a person other than a settlor who is a beneficiary and trustee of a trust that confers  
37.27 on the trustee a power to make discretionary distributions to or for the trustee's personal  
37.28 benefit may exercise the power only in accordance with an ascertainable standard; and

37.29 (2) a trustee may not exercise a power to make discretionary distributions to satisfy a  
37.30 legal obligation of support that the trustee personally owes another person.

37.31 (c) A power that is limited or prohibited by paragraph (b) may be exercised by  
37.32 a majority of the remaining trustees whose exercise of the power is not so limited or  
37.33 prohibited. If the power of all trustees is so limited or prohibited, the court may appoint  
37.34 a special fiduciary with authority to exercise the power, or all of the trustees, acting by  
37.35 unanimous agreement, may appoint a special fiduciary with authority to exercise the power.

38.1 A special fiduciary appointed by the other trustees may not be related to or subordinate to  
38.2 any trustee within the meaning of section 672(c) of the Internal Revenue Code.

38.3 (d) Paragraph (b) does not apply to:

38.4 (1) a power held by the settlor's spouse who is the trustee of a trust for which a  
38.5 marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue  
38.6 Code of 1986, as in effect on the effective date of this act, or as later amended, was  
38.7 previously allowed;

38.8 (2) any trust during any period that the trust may be revoked or amended by its settlor;

38.9 (3) a trust if contributions to the trust qualify for the annual exclusion under section  
38.10 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this  
38.11 act, or as later amended;

38.12 (4) a trust created on or before May 14, 1993, if the entire principal of the trust  
38.13 would be included in the gross estate of the trustee for federal estate tax purposes if the  
38.14 trustee had died on May 14, 1993, without regard to any power described in paragraph (a);

38.15 (5) a trust created on or before May 14, 1993, if no part of the principal of the trust  
38.16 would be included in the gross estate of the trustee for federal estate tax purposes if the  
38.17 trustee had died on May 14, 1993, without exercising the power; or

38.18 (6) a trust created on or before May 14, 1993, if (i) the trust is not exempt from the  
38.19 generation-skipping transfer tax under chapter 13 of the Internal Revenue Code of 1986,  
38.20 as amended through December 31, 1992, because of Public Law 99-514, section 1433(b)  
38.21 to (d); (ii) there would be a taxable termination with respect to the assets held in the trust if  
38.22 the trustee and all beneficiaries of the trust who are assigned to the trustee's generation or a  
38.23 higher generation had died on May 14, 1993; and (iii) the trust would have an inclusion  
38.24 ratio, as defined in section 2642(c) of the Internal Revenue Code of 1986, as amended  
38.25 through December 31, 1992, of one with respect to the taxable termination.

38.26 (e) This section does not apply to a power exercisable in a capacity other than as  
38.27 a trustee.

38.28 (f) If a distribution to a beneficiary is subject to the exercise of the trustee's  
38.29 discretion, whether or not the terms of a trust include a standard to guide the trustee in  
38.30 making distributions, then the interest is neither a property interest nor an enforceable  
38.31 right, but a mere expectancy.

38.32 **Sec. 12. [501C.0815] GENERAL POWERS OF TRUSTEE.**

38.33 (a) A trustee, without authorization by the court, may exercise:

38.34 (1) powers conferred by the terms of the trust; and

38.35 (2) except as limited by the terms of the trust:

39.1 (i) all powers over the trust property which an unmarried competent owner has  
 39.2 over individually owned property;

39.3 (ii) any other powers appropriate to achieve the proper investment, management,  
 39.4 and distribution of the trust property; and

39.5 (iii) any other powers conferred by this chapter.

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

39.7 **Sec. 13. [501C.0816] SPECIFIC POWERS OF TRUSTEE.**

39.8 Without limiting the authority conferred by section 501C.0815, a trustee may:

39.9 (1) collect trust property and accept or reject additions to the trust property from a  
 39.10 settlor or another person;

39.11 (2) acquire or sell property, for cash or on credit, at public or private sale;

39.12 (3) exchange, partition, or otherwise change the character of trust property;

39.13 (4) deposit trust money in an account in a regulated financial service institution;

39.14 (5) borrow money, with or without security, and mortgage or pledge trust property  
 39.15 for a period within or extending beyond the duration of the trust;

39.16 (6) with respect to an interest in a preexisting or newly created joint venture,  
 39.17 proprietorship, partnership, limited liability company, business trust, corporation, or other  
 39.18 form of business or enterprise, continue the business or other enterprise, or create a new  
 39.19 business or other enterprise, even though such business or enterprise may exist for a period  
 39.20 extending beyond the duration of the trust, and take any action that may be taken by  
 39.21 shareholders, members, or property owners, including merging, dissolving, or otherwise  
 39.22 changing the form of business organization or contributing additional capital;

39.23 (7) with respect to stocks or other securities, exercise the rights of an absolute  
 39.24 owner, including the right to:

39.25 (i) vote, or give proxies to vote, with or without power of substitution, or enter  
 39.26 into or continue a voting trust agreement;

39.27 (ii) hold a security in the name of a nominee or in other form without disclosure of  
 39.28 the trust so that title may pass by delivery;

39.29 (iii) pay calls, assessments, and other sums chargeable or accruing against the  
 39.30 securities, and sell or exercise stock subscription or conversion rights; and

39.31 (iv) deposit the securities with a depository or other regulated financial service  
 39.32 institution;

39.33 (8) with respect to an interest in real property, construct or make ordinary or  
 39.34 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,  
 39.35 demolish improvements, raze existing or erect new party walls or buildings, subdivide

40.1 or develop land, dedicate land to public use or grant public or private easements, and  
40.2 make or vacate plats and adjust boundaries;

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

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

40.9 (11) insure the property of the trust against damage or loss, and insure the trustee  
40.10 and the trustee's agents and beneficiaries against liability arising from the administration  
40.11 of the trust;

40.12 (12) abandon or decline to administer property of no value or of insufficient value to  
40.13 justify its collection or continued administration;

40.14 (13) with respect to possible liability for violation of environmental law:

40.15 (i) inspect or investigate property the trustee holds or has been asked to hold, or  
40.16 property owned or operated by an organization in which the trustee holds or has been  
40.17 asked to hold an interest, for the purpose of determining the application of environmental  
40.18 law with respect to the property;

40.19 (ii) take action to prevent, abate, or otherwise remedy any actual or potential  
40.20 violation of any environmental law affecting property held directly or indirectly by  
40.21 the trustee, whether taken before or after the assertion of a claim or the initiation of  
40.22 governmental enforcement;

40.23 (iii) decline to accept property into trust or disclaim any power with respect to  
40.24 property that is or may be burdened with liability for violation of environmental law;

40.25 (iv) compromise claims against the trust which may be asserted for an alleged  
40.26 violation of environmental law; and

40.27 (v) pay the expense of any inspection, review, abatement, or remedial action to  
40.28 comply with environmental law;

40.29 (14) pay or contest any claim, settle a claim by or against the trust, and release, in  
40.30 whole or in part, a claim belonging to the trust;

40.31 (15) pay taxes, assessments, compensation of the trustee and of employees and  
40.32 agents of the trust, and other expenses incurred in the administration of the trust;

40.33 (16) exercise elections or choose not to exercise elections with respect to federal,  
40.34 state, and local taxes;

40.35 (17) select a mode of payment under any employee benefit or retirement plan,  
40.36 annuity, or life insurance payable to the trustee, exercise rights thereunder, including



41.1 exercise of the right to indemnification for expenses and against liabilities, and take  
41.2 appropriate action to collect the proceeds;

41.3 (18) make loans out of trust property, including loans to a beneficiary on terms and  
41.4 conditions the trustee considers to be fair and reasonable under the circumstances, and the  
41.5 trustee has a lien on future distributions for repayment of those loans;

41.6 (19) appoint a trustee to act in another jurisdiction with respect to trust property  
41.7 located in the other jurisdiction, confer upon the appointed trustee all of the powers and  
41.8 duties of the appointing trustee, require that the appointed trustee furnish security, and  
41.9 remove any trustee so appointed;

41.10 (20) pay an amount distributable to a beneficiary who is under a legal disability or  
41.11 who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary  
41.12 or applying it for the beneficiary's benefit, or by:

41.13 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have  
41.14 a conservator, the beneficiary's guardian;

41.15 (ii) paying it to the beneficiary's custodian under chapter 527, the Uniform Transfers  
41.16 to Minors Act, or to the custodial trustee under chapter 529, the Uniform Custodial Trust  
41.17 Act, and, for that purpose, creating a custodianship or custodial trust;

41.18 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial  
41.19 trustee, paying it to an attorney-in-fact, an adult relative, or another person having legal or  
41.20 physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

41.21 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the  
41.22 beneficiary's continuing right to withdraw the distribution;

41.23 (21) on distribution of trust property or the division or termination of a trust, make  
41.24 distributions in divided or undivided interests, allocate particular assets in proportionate  
41.25 or disproportionate shares, value the trust property for those purposes, and adjust for  
41.26 resulting differences in valuation;

41.27 (22) resolve a dispute concerning the interpretation of the trust or its administration  
41.28 by mediation, arbitration, or other procedure for alternative dispute resolution;

41.29 (23) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction  
41.30 to protect trust property and the trustee in the performance of the trustee's duties;

41.31 (24) may enter into contracts and other instruments that are useful to achieve or  
41.32 facilitate the exercise of the trustee's powers;

41.33 (25) on termination of the trust, exercise the powers appropriate to wind up the  
41.34 administration of the trust and distribute the trust property to the persons entitled to it;

41.35 (26) acquire an undivided interest in a trust asset in which the trustee, in a trust  
41.36 capacity, holds an undivided interest;

42.1 (27) create reserves out of income for depreciation, obsolescence, or amortization,  
 42.2 or for depletion in mineral or timber properties;

42.3 (28) hold two or more trusts or parts of trusts created by the same instrument, as an  
 42.4 undivided whole, without separation between the trusts or parts of trusts, if the separate  
 42.5 trusts or parts of trusts have undivided interests and if no holding defers the vesting of an  
 42.6 estate in possession or otherwise;

42.7 (29) create or join in the creation of a joint venture, partnership, limited liability  
 42.8 company, business trust, corporation, or other form of business or enterprise, continue  
 42.9 the business or other enterprise and take any action that may be taken by shareholders,  
 42.10 members, or property owners, including merging, dissolving, or otherwise changing the  
 42.11 form of business organization or contributing additional capital; and

42.12 (30) with respect to all trust property, hold the property in the name of a nominee  
 42.13 without disclosure of the trust.

42.14 Sec. 14. **[501C.0817] DISTRIBUTION UPON TERMINATION.**

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

42.20 (b) Upon the occurrence of an event terminating or partially terminating a trust, the  
 42.21 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to  
 42.22 it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts,  
 42.23 expenses, and taxes and to secure a right of reimbursement if the reserve is inadequate.

42.24 (c) A release by a beneficiary of a trustee from liability for breach of trust is invalid  
 42.25 to the extent it was induced by improper conduct of the trustee.

## 42.26 ARTICLE 9

### 42.27 PRUDENT INVESTOR ACT RECODIFICATION

42.28 Section 1. **[501C.0901] INVESTMENT AND MANAGEMENT OF TRUST**  
 42.29 **ASSETS.**

42.30 Subdivision 1. **Prudent investor rule.** (a) Except as otherwise provided in  
 42.31 paragraph (b), a trustee who invests and manages trust assets shall comply with the  
 42.32 prudent investor rule set forth in this section.

43.1 (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated,  
43.2 or otherwise altered by the trust instrument. A trustee is not liable to a beneficiary to the  
43.3 extent that the trustee acted in reasonable reliance on the trust instrument.

43.4 Subd. 2. **Standard of care; portfolio strategy; risk and return objectives.** (a) A  
43.5 trustee shall invest and manage trust assets as a prudent investor would, by considering  
43.6 the purposes, terms, distribution requirements, and other circumstances of the trust. In  
43.7 satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

43.8 (b) A trustee's investment and management decisions respecting individual assets  
43.9 must be evaluated not in isolation but in the context of the trust portfolio as a whole and  
43.10 as a part of an overall investment strategy having risk and return objectives reasonably  
43.11 suited to the trust.

43.12 (c) The circumstances that a trustee may consider in making investment decisions  
43.13 include, without limitation, the following:

43.14 (1) general economic conditions;

43.15 (2) the possible effect of inflation;

43.16 (3) the expected tax consequences of investment decisions or strategies;

43.17 (4) the role that each investment or course of action plays within the overall trust  
43.18 portfolio;

43.19 (5) the expected total return from income and the appreciation of capital;

43.20 (6) other resources of the beneficiaries known to the trustee, including earning  
43.21 capacity;

43.22 (7) needs for liquidity, regularity of income, and preservation or appreciation of  
43.23 capital; and

43.24 (8) an asset's special relationship or special value, if any, to the purposes of the trust  
43.25 or to one or more of the beneficiaries if consistent with the trustee's duty of impartiality.

43.26 (d) A trustee may invest in any kind of property or type of investment consistent  
43.27 with the standards of this section.

43.28 (e) A trustee who has special skills or expertise, or is named trustee in reliance upon  
43.29 the trustee's representation that the trustee has special skills or expertise, has a duty to use  
43.30 those special skills or expertise.

43.31 Subd. 3. **Diversification.** A trustee shall diversify the investments of the trust unless  
43.32 the trustee reasonably determines that, because of special circumstances, the purposes of  
43.33 the trust are better served without diversifying.

43.34 Subd. 4. **Duties at inception of trusteeship.** Within a reasonable time after accepting  
43.35 a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and  
43.36 implement decisions concerning the retention and disposition of assets, in order to bring

44.1 the trust portfolio into compliance with the purposes, terms, distribution requirements, and  
44.2 other circumstances of the trust, and with the requirements of this section.

44.3 Subd. 5. **Investment costs.** In investing and managing trust assets, a trustee may  
44.4 only incur costs that are appropriate and reasonable in relation to the assets, the purposes  
44.5 of the trust, and the skills of the trustee.

44.6 Subd. 6. **Reviewing compliance.** Compliance with the prudent investor rule is  
44.7 determined in light of the facts and circumstances existing at the time of a trustee's  
44.8 decision or action and not by hindsight. The prudent investor rule is a test of conduct  
44.9 and not of resulting performance.

44.10 Subd. 7. **Language invoking standard.** The following terms or comparable  
44.11 language in the trust instrument, unless otherwise limited or modified, authorizes any  
44.12 investment or strategy permitted under this section: "investments permissible by law for  
44.13 investment of trust funds," "legal investments," "authorized investments," "using the  
44.14 judgment and care under the circumstances then prevailing that persons of prudence,  
44.15 discretion, and intelligence exercise in the management of their own affairs, not in regard  
44.16 to speculation but in regard to the permanent disposition of their funds, considering the  
44.17 probable income as well as the probable safety of their capital," "prudent man rule,"  
44.18 "prudent trustee rule," "prudent person rule," and "prudent investor rule."

44.19 Subd. 8. **Disposal of property.** Unless the trust instrument or a court order  
44.20 specifically directs otherwise, a trustee need not dispose of any property, real, personal,  
44.21 or mixed, or any kind of investment, in the trust, however acquired, until the trustee  
44.22 determines in the exercise of a sound discretion that it is advisable to dispose of the  
44.23 property. Nothing in this subdivision excuses the trustee from the duty to exercise  
44.24 discretion at reasonable intervals and to determine at those intervals the advisability of  
44.25 retaining or disposing of property.

44.26 Subd. 9. **No limitation on powers of court.** This section does not restrict the  
44.27 power of a court of proper jurisdiction to permit a trustee to deviate from the terms of a  
44.28 will, agreement, court order, or other instrument relating to the acquisition, investment,  
44.29 reinvestment, exchange, retention, sale, or management of trust property.

44.30 Subd. 10. **Investment companies.** (a) In the absence of an express prohibition in  
44.31 the trust instrument, the trustee may acquire and retain securities of any open-end or  
44.32 closed-end management type investment company or investment trust registered under  
44.33 the Federal Investment Company Act of 1940. The fact that a trustee that is a banking  
44.34 institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee that is a  
44.35 banking institution, is providing services to the investment company or trust as investment  
44.36 advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and

45.1 receiving compensation for the services shall not preclude the trustee from investing in the  
 45.2 securities of that investment company or trust. A trustee that is a banking institution shall  
 45.3 disclose to all current income beneficiaries of the trust the rate, formula, and method of  
 45.4 the compensation.

45.5 (b) This subdivision does not alter the degree of care and judgment required of  
 45.6 trustees under this section.

45.7 Subd. 11. **Application to existing trusts.** This section applies to trusts existing on  
 45.8 and created after January 1, 1997. As applied to trusts existing on January 1, 1997, this  
 45.9 section governs only decisions or actions occurring after that date.

45.10 Subd. 12. **Short title.** This section may be cited as the "Minnesota Prudent Investor  
 45.11 Act."

## 45.12 **ARTICLE 10**

### 45.13 **LIABILITY OF TRUSTEES AND RIGHTS OF PERSON** 45.14 **DEALING WITH TRUSTEE**

#### 45.15 **Section 1. [501C.1001] REMEDIES FOR BREACH OF TRUST.**

45.16 (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of  
 45.17 trust.

45.18 (b) To remedy a breach of trust that has occurred or may occur, the court may:

45.19 (1) compel the trustee to perform the trustee's duties;

45.20 (2) enjoin the trustee from committing a breach of trust;

45.21 (3) compel the trustee to redress a breach of trust by paying money, restoring  
 45.22 property, or other means;

45.23 (4) order a trustee to account;

45.24 (5) appoint a special fiduciary to take possession of the trust property and administer  
 45.25 the trust;

45.26 (6) suspend the trustee;

45.27 (7) remove the trustee as provided in section 501C.0706;

45.28 (8) reduce or deny compensation to the trustee;

45.29 (9) subject to section 501C.1012, void an act of the trustee, impose a lien or a  
 45.30 constructive trust on trust property, or trace trust property wrongfully disposed of and  
 45.31 recover the property or its proceeds; or

45.32 (10) order any other appropriate relief.

#### 45.33 **Sec. 2. [501C.1002] DAMAGES FOR BREACH OF TRUST.**

45.34 (a) A trustee who commits a breach of trust is liable for the greater of:

46.1 (1) the amount required to restore the value of the trust property and trust  
46.2 distributions to what they would have been had the breach not occurred; or

46.3 (2) the profit the trustee made by reason of the breach.

46.4 (b) If more than one trustee is liable for a breach of trust, a trustee is entitled to  
46.5 contribution or indemnity from the other trustee or trustees as the court may determine.

46.6 **Sec. 3. [501C.1003] REMEDIES IN ABSENCE OF BREACH.**

46.7 (a) A trustee is chargeable for any profit made by the trustee arising from the  
46.8 administration of the trust, even absent a breach of trust.

46.9 (b) Absent a breach of trust, a trustee is not liable for a loss or depreciation in the  
46.10 value of trust property or for not having made a profit.

46.11 (c) This section does not limit a trustee's right to payments that are permitted under  
46.12 section 501C.0802.

46.13 **Sec. 4. [501C.1004] ATTORNEY FEES AND COSTS.**

46.14 In a judicial proceeding involving the administration of a trust, the court, as justice  
46.15 and equity may require, may award costs and expenses, including reasonable attorney  
46.16 fees, to any party from the trust that is the subject of the judicial proceeding.

46.17 **Sec. 5. [501C.1005] LIMITATION OF ACTION AGAINST TRUSTEE.**

46.18 (a) A beneficiary may not commence a judicial proceeding against a trustee more  
46.19 than three years after the date the beneficiary or a representative of the beneficiary was  
46.20 sent a report that adequately disclosed the existence of a potential claim. If a report is sent  
46.21 after the effective date of this section, the report may cover a period before the effective  
46.22 date of this section.

46.23 (b) A report adequately discloses the existence of a potential claim if it provides  
46.24 sufficient information so that the beneficiary or representative knows of the potential claim  
46.25 or should have inquired into its existence.

46.26 (c) If paragraph (a) does not apply, a judicial proceeding by a beneficiary against a  
46.27 trustee must be commenced within six years after the first to occur of:

46.28 (1) the removal, resignation, or death of the trustee;

46.29 (2) the termination of the beneficiary's interest in the trust; or

46.30 (3) the termination of the trust.

46.31 **Sec. 6. [501C.1006] RELIANCE ON TRUST INSTRUMENT.**

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

47.4 Sec. 7. **[501C.1007] EVENT AFFECTING ADMINISTRATION OR**  
47.5 **DISTRIBUTION.**

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

47.10 Sec. 8. **[501C.1008] EXCULPATION OF TRUSTEE.**

47.11 (a) The terms of a trust relieving a trustee of liability for breach of trust is  
47.12 unenforceable to the extent that it:

47.13 (1) relieves the trustee of liability for breach of trust committed in bad faith or with  
47.14 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

47.15 (2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential  
47.16 relationship to the settlor.

47.17 (b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as  
47.18 an abuse of a fiduciary or confidential relationship unless:

47.19 (1) the settlor is represented by independent counsel with respect to the trust  
47.20 instrument containing the term; or

47.21 (2) the trustee proves that the exculpatory term is fair under the circumstances and  
47.22 that its existence and contents were adequately communicated to the settlor.

47.23 Sec. 9. **[501C.1009] BENEFICIARY'S CONSENT, RELEASE, OR**  
47.24 **RATIFICATION.**

47.25 A beneficiary's consent to a trustee's conduct, release of the trustee from liability for  
47.26 the trustee's conduct, or ratification of the trustee's conduct is binding unless:

47.27 (1) the consent, release, or ratification of the beneficiary was induced by improper  
47.28 conduct of the trustee; or

47.29 (2) at the time of the consent, release, or ratification, the beneficiary did not know  
47.30 of the beneficiary's rights or of the material facts relating to the trustee's conduct and the  
47.31 trustee did know of the material facts relating to the trustee's conduct.

47.32 Sec. 10. **[501C.1010] LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.**

48.1 (a) Except as otherwise provided in the contract, a trustee is not personally liable  
48.2 on a contract properly entered into in the trustee's fiduciary capacity in the course of  
48.3 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

48.4 (b) A trustee is not personally liable for torts committed in the course of administering  
48.5 a trust, or for obligations arising from ownership or control of trust property, including  
48.6 liability for violation of environmental law, unless the trustee is personally at fault.

48.7 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary  
48.8 capacity, on an obligation arising from ownership or control of trust property, or on  
48.9 a tort committed in the course of administering a trust, may be asserted in a judicial  
48.10 proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee  
48.11 is personally liable for the claim.

48.12 **Sec. 11. [501C.1011] INTEREST AS GENERAL PARTNER.**

48.13 (a) Unless personal liability is imposed in the contract, a trustee who holds an  
48.14 interest as a general partner in a general or limited partnership is not personally liable on a  
48.15 contract entered into by the partnership after the trust's acquisition of the interest if the  
48.16 trustee's fiduciary capacity was disclosed in the contract or, at the time of contracting, the  
48.17 other party to the contract had knowledge of the trustee's fiduciary capacity.

48.18 (b) A trustee who holds an interest as a general partner in a general or limited  
48.19 partnership is not personally liable for any obligation of the partnership arising or resulting  
48.20 from a tort or other wrongful act or for any obligation arising from ownership or control of  
48.21 the interest unless the trustee is personally at fault.

48.22 (c) Nothing in this section shall limit the protection otherwise existing by reason  
48.23 of the partnership's status as a limited liability partnership or a limited liability limited  
48.24 partnership.

48.25 **Sec. 12. [501C.1012] PROTECTION OF PERSON DEALING WITH TRUSTEE.**

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

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

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



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

49.5 (e) Nothing in this section shall limit the protection provided by other laws relating  
 49.6 to commercial trust accounts or transfers of securities by fiduciaries.

49.7 **Sec. 13. [501C.1013] CERTIFICATE OF TRUST.**

49.8 Subdivision 1. **Contents of certificate.** The settlor or a trustee of a trust, at any time  
 49.9 after execution or creation of a trust, may execute a certificate of trust that sets forth fewer  
 49.10 than all of the provisions of a trust instrument and any amendments to the instrument. The  
 49.11 certificate of trust must include:

49.12 (1) the name of the trust, if one is given;

49.13 (2) the date of the trust instrument;

49.14 (3) the name and address of each trustee empowered to act under the trust instrument  
 49.15 at the time of execution of the certificate;

49.16 (4) either (i) the following statement: "The trustees are authorized by the trust  
 49.17 instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in  
 49.18 real or personal property, except as limited by the following: (if none, so indicate)" or  
 49.19 (ii) information as to the powers of the trustee relating to the purposes for which the  
 49.20 certificate is being offered;

49.21 (5) the number of trustees required to act; and

49.22 (6) a statement as to whether the trust has terminated or the trust instrument has  
 49.23 been revoked.

49.24 The certificate of trust must be upon the representation of the settlor or trustee that  
 49.25 the statements contained in the certificate of trust are true and correct and that there are no  
 49.26 other provisions in the trust instrument or amendments to it that limit (i) the powers of  
 49.27 the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or  
 49.28 personal property or (ii) the authority of the trustees to exercise any other power identified  
 49.29 in the certificate of trust. The signature of the settlor or trustee must be under oath before a  
 49.30 notary public or other official authorized to administer oaths.

49.31 Subd. 2. **Real property transactions.** The certificate of trust may be used for  
 49.32 purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any  
 49.33 interest in real property. If so used, the certificate of trust shall identify the name of each  
 49.34 settlor and the name of each original trustee and shall contain the following statement:  
 49.35 "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease,

50.1 or transfer title to any interest in real property, except as limited by the following: (if  
50.2 none, so indicate)."

50.3 Subd. 3. **Recording.** A certificate of trust executed under subdivision 2 may  
50.4 be recorded in the office of the county recorder for any county or in the office of the  
50.5 registrar of titles with respect to registered land described in the certificate of trust or  
50.6 any attachment to it.

50.7 Subd. 4. **Effect.** When a certificate of trust is recorded in a county where real  
50.8 property is situated, or in the case of personal property, when it is presented to a third party,  
50.9 the certificate of trust serves to document the existence of the trust, the identity of the  
50.10 trustees, the powers of the trustees and any limitations on those powers, and other matters  
50.11 the certificate of trust sets out, as though the full trust instrument had been recorded or  
50.12 presented. Until amended or revoked under subdivision 5, or until the full trust instrument  
50.13 is recorded or presented, a certificate of trust is prima facie proof as to matters contained  
50.14 in it and any party may rely upon the continued effectiveness of the certificate.

50.15 Subd. 5. **Amendment or revocation.** Amendment or revocation of a certificate of  
50.16 trust may be made only by a written instrument executed by the settlor or a trustee of a  
50.17 trust. Amendment or revocation of a certificate of trust is not effective as to a party unless  
50.18 that party has actual notice of the amendment or revocation.

50.19 For purposes of this subdivision, "actual notice" means that a written instrument of  
50.20 amendment or revocation has been received by the party or, in the case of real property,  
50.21 that either a written instrument of amendment or revocation has been received by the party  
50.22 or that a written instrument of amendment or revocation containing the legal description  
50.23 of the real property has been recorded in the office of the county recorder or in the office  
50.24 of the registrar of titles where the real property is situated.

50.25 Subd. 6. **Reliance.** A third party may rely upon a certificate of trust signed by  
50.26 any settlor or trustee.

50.27 Sec. 14. **[501C.1014] AFFIDAVIT OF TRUSTEE IN REAL PROPERTY**  
50.28 **TRANSACTIONS.**

50.29 Subdivision 1. **Form of affidavit for inter vivos trust.** An affidavit of a trustee  
50.30 or of trustees of an inter vivos trust in support of a real property transaction may be  
50.31 substantially in the following form:

50.32 STATE OF MINNESOTA ) AFFIDAVIT OF TRUSTEE  
50.33 ) ss.  
50.34 COUNTY OF )

50.35 ....., being first duly sworn on oath says that:

51.1 1. Affiant is the trustee (one of the trustees) named in that certain Certificate of  
51.2 Trust (or Trust Instrument)

51.3 recorded ....., ....., as Document No. .... (or in Book .... of ....., Page .....) in the  
51.4 Office of the (County Recorder/Registrar of Titles) of ..... County, Minnesota,

51.5 OR

51.6 to which this Affidavit is attached,

51.7 executed by Affiant or another trustee or the settlor of the trust described in the Certificate  
51.8 of Trust (or set forth in the Trust Instrument), and which relates to real property in .....  
51.9 County, Minnesota legally described as follows:

51.10 .....

51.11 .....

51.12 .....

51.13 .....

51.14 (If more space is needed, continue on back or on attachment.)

51.15 2. The name(s) and address(es) of the trustee(s) empowered by the Trust Instrument  
51.16 to act at the time of the execution of this Affidavit are as follows:

51.17 .....

51.18 .....

51.19 .....

51.20 3. The trustee(s) who have executed that certain instrument relating to the real  
51.21 property described above between ....., as trustee(s) and .....,  
51.22 dated ....., ..:

51.23 (a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease,  
51.24 or transfer title to any interest in real property held in trust; and

51.25 (b) are the requisite number of trustees required by the trust instrument to execute  
51.26 and deliver such an instrument.

51.27 4. The trust has not terminated and the trust instrument has not been revoked.

51.28 - OR -

51.29 4. The trust has terminated (or the trust instrument has been revoked). The execution  
51.30 and delivery of the instrument described in paragraph 3 has been made pursuant to the  
51.31 provisions of the trust.

51.32 5. There has been no amendment to the trust which limits the power of trustee(s) to  
51.33 execute and deliver the instrument described in paragraph 3.

51.34 6. The trust is not supervised by any court.

51.35 - OR -

52.1 6. The trust is supervised by the ..... Court of ..... County, ..... All  
 52.2 necessary approval has been obtained from the court for the trustee(s) to execute and  
 52.3 deliver the instrument described in paragraph 3.

52.4 7. Affiant does not have actual knowledge of any facts indicating that the trust  
 52.5 is invalid.

52.6 .....  
 52.7 , Affiant

52.8 Subscribed and sworn to before me this  
 52.9 ..... day of ....., .....

52.10 .....  
 52.11 Signature of Notary Public or Other Official

52.12 Notary Stamp or Seal

52.13 This instrument was drafted by:

52.14 .....  
 52.15 .....

52.16 Subd. 2. Form of affidavit for testamentary trust. An affidavit of a trustee  
 52.17 or of trustees of a testamentary trust in support of a real property transaction may be  
 52.18 substantially in the following form:

52.19 STATE OF MINNESOTA ) AFFIDAVIT OF TRUSTEE  
 52.20 ) ss.  
 52.21 COUNTY OF )

52.22 ....., being first duly sworn on oath says that:

52.23 1. The ..... Trust was created by the Last Will and Testament of .....,  
 52.24 Decedent, dated ....., .... Decedent died on ....., .... Affiant, as trustee of the Trust,  
 52.25 acquired by instrument or decree dated ....., ....., recorded in the office of the County  
 52.26 Recorder/Registrar of Titles, ..... County, Minnesota, as Document No. ....., an  
 52.27 interest in real property in ..... County, Minnesota, legally described as follows:

52.28 .....  
 52.29 .....  
 52.30 .....  
 52.31 .....

52.32 (If more space is needed, continue on back or on an attachment.)

52.33 2. The name(s) and address(es) of the trustee(s) empowered by the terms of  
 52.34 decendent's will to act at the time of the execution of this Affidavit are as follows:

52.35 .....  
 52.36 .....

53.1 .....

53.2 3. The trustee(s) who have executed that certain instrument relating to the real  
53.3 property described above between ....., as trustee(s) and ....., dated ....., ..:

53.4 (a) are empowered by the provisions of the trust under decedent's will to sell, convey,  
53.5 pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and

53.6 (b) are the requisite number of trustees required by the provisions of the will to  
53.7 execute and deliver such an instrument.

53.8 4. The Trust has not terminated and the trust instrument has not been revoked.

53.9 - OR -

53.10 4. The Trust has terminated (or the trust instrument has been revoked). The  
53.11 execution and delivery of the instrument described in paragraph 3 has been made pursuant  
53.12 to the provisions of the Trust.

53.13 5. There has been no amendment to the Trust which limits the powers of the  
53.14 trustee(s) to execute and deliver the instrument described in paragraph 3.

53.15 6. The Trust is not supervised by any court.

53.16 - OR -

53.17 6. The Trust is supervised by the ..... Court of ..... County, ..... All  
53.18 necessary approval has been obtained from the court for the trustee(s) to execute and  
53.19 deliver the instrument described in paragraph 3.

53.20 7. Affiant does not have actual knowledge of any facts indicating that the Trust  
53.21 is invalid.

53.22 .....

53.23 , Affiant

53.24 Subscribed and sworn to before me this  
53.25 ..... day of ....., .....

53.26 .....

53.27 Signature of Notary Public or Other Official

53.28 Notary Stamp or Seal

53.29 This instrument was drafted by:

53.30 .....

53.31 .....

53.32 Subd. 3. **Effect.** An affidavit by the trustee or trustees under subdivision 1 or 2  
53.33 is proof that:

53.34 (1) the trust described in the affidavit is a valid trust;

53.35 (2) either the trust has not terminated or the trust instrument has not been revoked  
53.36 or, if the trust has terminated or the trust instrument has been revoked, the conveyance  
53.37 described in the affidavit is made pursuant to the provisions of the trust;

54.1 (3) the powers granted the trustee or trustees extend to the real property described in  
 54.2 the affidavit or attachment to the affidavit;

54.3 (4) no amendment to the trust has been made limiting the power of the trustee or  
 54.4 trustees to sell, convey, pledge, mortgage, lease, or transfer title to the real property  
 54.5 described in the affidavit or attachment to the affidavit, if any;

54.6 (5) the requisite number of trustees have executed and delivered the instrument of  
 54.7 conveyance described in the affidavit; and

54.8 (6) any necessary court approval of the transaction has been obtained.

54.9 The proof is conclusive as to any party relying on the affidavit, except a party dealing  
 54.10 directly with the trustee or trustees who has actual knowledge of facts to the contrary.

54.11 Subd. 4. **Recording.** An Affidavit of Trustee or Trustees under subdivisions 1 and 2  
 54.12 may be recorded in the office of the county recorder for any county or in the office of the  
 54.13 registrar of titles for any county with respect to registered land described in the affidavit,  
 54.14 or in the Certificate of Trust or Trust Instrument referred to in the affidavit, and may be  
 54.15 recorded as a separate document or combined with or attached to an original or certified  
 54.16 copy of a Certificate of Trust or Trust Instrument, and recorded as one document.

## 54.17 **ARTICLE 11**

### 54.18 **UNIFORM PRINCIPAL AND INCOME ACT RECODIFICATION**

54.19 Section 1. **[501C.1101] DEFINITIONS.**

54.20 Subdivision 1. **Scope.** The definitions in this section apply to sections 501C.1101  
 54.21 to 501C.1118.

54.22 Subd. 1a. **Accounting period.** "Accounting period" means a calendar year unless  
 54.23 another 12-month period is selected by the trustee. Accounting period includes a portion  
 54.24 of a calendar year or other 12-month period that begins when an income interest begins or  
 54.25 ends when an income interest ends.

54.26 Subd. 2. **Income beneficiary.** "Income beneficiary" means the person to whom  
 54.27 income is presently payable or for whom it is accumulated for distribution as income.

54.28 Subd. 3. **Inventory value.** "Inventory value" means the cost of property purchased  
 54.29 by the trustee and the market value of other property at the time it became subject to  
 54.30 the trust, but in the case of a testamentary trust the trustee may use any value finally  
 54.31 determined for the purposes of an estate or inheritance tax.

54.32 Subd. 4. **Remainderperson.** "Remainderperson" means the person entitled to  
 54.33 principal, including income accumulated and added to principal.

55.1       Sec. 2. **[501C.1102] DUTY OF TRUSTEE AS TO RECEIPTS AND**  
55.2 **EXPENDITURE.**

55.3       Subdivision 1. **General rules of administration.** A trust must be administered with  
55.4 due regard to the respective interests of income beneficiaries and remainderpersons. A  
55.5 trust is so administered with respect to the allocation of receipts and expenditures if a  
55.6 receipt is credited or an expenditure is charged to income or principal or partly to each:

55.7       (1) in accordance with the terms of the trust instrument, notwithstanding contrary  
55.8 provisions of sections 501C.1101 to 501C.1118;

55.9       (2) in the absence of contrary terms of the trust instrument, in accordance with  
55.10 sections 501C.1101 to 501C.1118;

55.11       (3) if neither of the preceding rules of administration is applicable, in accordance with  
55.12 what is reasonable and equitable in view of the interests of those entitled to income as well  
55.13 as of those entitled to principal, and in view of the manner in which persons of ordinary  
55.14 prudence, discretion, and judgment would act in the management of their own affairs.

55.15       Subd. 2. **Trustee's discretion.** If a trust instrument gives the trustee discretion in  
55.16 crediting a receipt or charging an expenditure to income or principal or partly to each,  
55.17 no inference of imprudence or partiality arises from the fact that the trustee has made an  
55.18 allocation contrary to sections 501C.1101 to 501C.1118.

55.19       Subd. 3. **Standards for exercise.** In exercising a power to adjust under section  
55.20 501C.1112 or a discretionary power of administration regarding a matter within the scope of  
55.21 sections 501C.1101 to 501C.1118, a fiduciary shall administer the trust or estate impartially,  
55.22 based on what is fair and reasonable to all of the beneficiaries, except to the extent that  
55.23 the terms of the trust or the will clearly manifest an intention that the fiduciary shall or  
55.24 may favor one or more of the beneficiaries. A determination in accordance with sections  
55.25 501C.1101 to 501C.1118 is presumed to be fair and reasonable to all of the beneficiaries.

55.26       Sec. 3. **[501C.1103] INCOME; PRINCIPAL; CHARGES.**

55.27       Subdivision 1. **Income defined.** "Income" means the return in money or property  
55.28 derived from the use of principal, including return received as:

55.29       (1) rent of real or personal property, including sums received for cancellation or  
55.30 renewal of a lease;

55.31       (2) interest on money lent, including sums received as consideration for the privilege  
55.32 of prepayment of principal, except as provided in section 501C.1107 on bond premium  
55.33 and bond discount;

55.34       (3) income earned during administration of a decedent's estate as provided in section  
55.35 501C.1105;

- 56.1 (4) corporate distributions as provided in section 501C.1106;  
56.2 (5) accrued increment on bonds or other obligations issued at discount as provided  
56.3 in section 501C.1107;  
56.4 (6) receipts from business and farming operations as provided in section 501C.1108;  
56.5 (7) receipts from disposition of natural resources as provided in sections 501C.1109  
56.6 and 501C.1110; and  
56.7 (8) receipts from other principal subject to depletion as provided in section  
56.8 501C.1111.

56.9 Subd. 2. **Principal defined.** "Principal" means the property set aside by the owner  
56.10 or the person legally empowered so that it is held in trust eventually to be delivered to  
56.11 a remainderperson while the return or use of the principal is in the meantime taken or  
56.12 received by or held for accumulation for an income beneficiary. Principal includes:

- 56.13 (1) consideration received by the trustee on the sale or other transfer of principal, on  
56.14 repayment of a loan, or as a refund, replacement, or change in the form of principal;  
56.15 (2) proceeds of property taken on eminent domain proceedings;  
56.16 (3) proceeds of insurance on property forming part of the principal, except proceeds  
56.17 of insurance on a separate interest of an income beneficiary;  
56.18 (4) stock dividends, receipts on liquidation of a corporation, and other corporate  
56.19 distributions as provided in section 501C.1106;  
56.20 (5) receipts from the disposition of corporate securities as provided in section  
56.21 501C.1107;  
56.22 (6) royalties and other receipts from disposition of natural resources as provided in  
56.23 sections 501C.1109 and 501C.1110;  
56.24 (7) receipts from other principal subject to depletion as provided in section  
56.25 501C.1111;  
56.26 (8) profit resulting from a change in the form of principal;  
56.27 (9) allowances for depreciation established under sections 501C.1108 and  
56.28 501C.1113, subdivision 1, clause (2); and  
56.29 (10) gain or loss, including the purchase premium, if any, from the grant of an  
56.30 option to buy or sell property of the trust, whether or not the trust owns the property  
56.31 when the option is granted.

56.32 Subd. 3. **Charges.** After determining income and principal in accordance with the  
56.33 terms of the trust instrument or of sections 501C.1101 to 501C.1118, the trustee shall  
56.34 charge to income or principal expenses and other charges as provided in section 501C.1113.



57.1       Sec. 4. **[501C.1104] WHEN RIGHT TO INCOME ARISES; APPORTIONMENT**  
 57.2 **OF INCOME.**

57.3       Subdivision 1. **General rule.** An income beneficiary is entitled to income from the  
 57.4 date specified in the trust instrument or, if none is specified, from the date an asset becomes  
 57.5 subject to the trust. In the case of an asset that becomes subject to a trust because of the  
 57.6 death of any person, it becomes subject to the trust as of the date of the death of the person  
 57.7 or, if later, the date the estate or trust becomes entitled to the asset if acquired after the death  
 57.8 of the person, even though there is an intervening period of administration of an estate or  
 57.9 trust during which the beneficiary may have no right to a distribution of the income.

57.10       Subd. 2. **Receipts due but not paid; periodic payments.** In the administration of a  
 57.11 decedent's estate or an asset that becomes subject to a trust by reason of a will:

57.12       (1) receipts due but not paid at the date of death of the testator are principal;

57.13       (2) receipts in the form of periodic payments, other than corporate distributions to  
 57.14 stockholders, including rent, interest, or annuities, not due at the date of the death of the  
 57.15 testator must be treated as accruing from day to day. That portion of the receipt that  
 57.16 accrues before the date of death is principal, and the balance is income.

57.17       Subd. 3. **Other receipts.** In all other cases, any receipt from an income-producing  
 57.18 asset is income even though the receipt was earned or accrued in whole or in part before  
 57.19 the date when the asset became subject to the trust.

57.20       Subd. 4. **Termination of income interest.** On termination of an income interest,  
 57.21 the income beneficiary whose interest is terminated, or the income beneficiary's estate,  
 57.22 is entitled to:

57.23       (1) income undistributed on the date of termination;

57.24       (2) income due but not paid to the trustee on the date of termination; and

57.25       (3) income in the form of periodic payments, other than corporate distributions to  
 57.26 stockholders, including rent, interest, or annuities, not due on the date of termination,  
 57.27 accrued from day to day.

57.28       Subd. 5. **Corporate distributions to stockholders.** Corporate distributions to  
 57.29 stockholders must be treated as due on the day fixed by the corporation for determination  
 57.30 of stockholders of record entitled to distribution or, if no date is fixed, on the date of  
 57.31 declaration of the distribution by the corporation.

57.32       Sec. 5. **[501C.1105] INCOME EARNED DURING ADMINISTRATION OF A**  
 57.33 **DECEDENT'S ESTATE.**

57.34       Subdivision 1. **Expenses.** Unless a will provides otherwise and subject to  
 57.35 subdivision 2, all expenses incurred in connection with the settlement of a decedent's

58.1 estate, including debts, funeral expenses, estate taxes, interest and penalties concerning  
58.2 taxes, family allowances, fees of attorneys and personal representatives, and court costs  
58.3 must be charged against the principal of the estate.

58.4 Subd. 2. **Income.** Unless the will or trust instrument provides otherwise, income  
58.5 from the assets of a decedent's estate after the death of the testator and before distribution  
58.6 and income from the assets of a trust after an income interest in a trust terminates,  
58.7 including income from property used to discharge liabilities, must be determined in  
58.8 accordance with the rules applicable to a trustee and distributed as follows:

58.9 (1) to specific devisees or to any beneficiary who is to receive specific property  
58.10 from a trust, the income from the property devised or distributed to them respectively,  
58.11 less property taxes, ordinary repairs, interest, and other expenses of management and  
58.12 operation of the property, and less an appropriate portion of taxes imposed on income,  
58.13 excluding taxes on capital gains, that accrue during the period of administration or after  
58.14 an income interest in a trust terminates;

58.15 (2) to a devisee or to any beneficiary who receives a pecuniary amount outright,  
58.16 the interest or any other amount provided by the will, the terms of the trust instrument  
58.17 or applicable law from income determined in accordance with the rules applicable to a  
58.18 trustee or, to the extent income is insufficient, from principal. If a beneficiary is to receive  
58.19 a pecuniary amount outright from a trust after an income interest ends and no interest or  
58.20 other amount is provided for by the terms of the trust instrument or applicable law, the  
58.21 trustee shall distribute the interest or other amount to which the beneficiary would be  
58.22 entitled under applicable law if the pecuniary amount were required to be paid under a will;

58.23 (3) to all other devisees or beneficiaries, the balance of the income determined  
58.24 in accordance with the rules applicable to a trustee, less the balance of property taxes,  
58.25 ordinary repairs, interest, and other expenses of management and operation of all property  
58.26 from which the estate or trust is entitled to income, and taxes imposed on income,  
58.27 excluding taxes on capital gains, that accrue during the period of administration or after an  
58.28 income interest terminates, in proportion to their respective interests in the undistributed  
58.29 assets of the estate or trust computed at times of distribution on the basis of inventory value.

58.30 For purposes of this subdivision, an income interest in a trust terminates upon the  
58.31 occurrence of any event which causes the right of a person to receive mandatory or  
58.32 discretionary distributions of income from the trust to end.

58.33 Subd. 3. **Income received by trustee.** Income received by a trustee under  
58.34 subdivision 2 must be treated as income of the trust.

58.35 Sec. 6. **[501C.1106] ENTITY DISTRIBUTIONS.**

59.1 Subdivision 1. **Distribution of ownership interests; shares; stock splits; stock**  
59.2 **dividends; subscription rights.** Distributions of shares of a distributing corporation or  
59.3 similar equity ownership interests in noncorporate entities, including distributions in the  
59.4 form of or equivalent to a stock split or stock dividend, are principal. An entity owner's  
59.5 right to subscribe to shares, ownership interests, or other securities of the distributing  
59.6 entity and the proceeds of any sale of that right are principal.

59.7 Subd. 2. **Redemption; merger; reorganization; liquidation.** Subject to  
59.8 subdivisions 3 and 4, and except to the extent that the entity indicates that some part  
59.9 of an entity distribution is a settlement of preferred or guaranteed corporate dividends  
59.10 or distribution preferences based upon a return on invested capital accrued under the  
59.11 governing instrument since the trustee acquired the related ownership interest or is in lieu  
59.12 of an ordinary cash dividend or similar distribution from current earnings of the entity, an  
59.13 entity distribution is principal if the distribution is pursuant to:

59.14 (1) redemption of the ownership interest or a call of shares;

59.15 (2) a merger, consolidation, reorganization, or other plan by which assets of the  
59.16 entity are acquired by another entity; or

59.17 (3) a total or partial liquidation of the entity, including a distribution the entity  
59.18 indicates is a distribution in total or partial liquidation or distribution of assets, other than  
59.19 cash, pursuant to a court decree or final administrative order by a government agency  
59.20 ordering distribution of the particular assets.

59.21 Subd. 3. **Regulated investment company; real estate investment trust.**  
59.22 Distributions made from ordinary income by a regulated investment company or by a trust  
59.23 qualifying and electing to be taxed under federal law as a real estate investment trust are  
59.24 income. All other distributions made by the company or trust, including distributions from  
59.25 short-term or long-term capital gains, depreciation, or depletion, whether in the form of  
59.26 cash or an option to take new stock or cash or an option to purchase additional shares,  
59.27 are principal.

59.28 Subd. 4. **Distributions from pass-through entities.** Distributions from  
59.29 pass-through entities must be allocated between income and principal as reasonably and  
59.30 equitably determined by the trustee. This subdivision applies for any accounting period  
59.31 during which an entity is a pass-through entity for any portion of the accounting period. In  
59.32 making its determination, the trustee may consider the following:

59.33 (1) characterization of income, distributions, and transactions in financial or other  
59.34 information received from the entity, including financial statements and tax information;

60.1 (2) whether the entity completed a significant capital transaction outside of the  
60.2 ordinary course of business that the trustee believes has resulted in a distribution to the  
60.3 owners of the entity in the nature of a partial liquidating distribution;

60.4 (3) the extent to which the burden for income tax with respect to the income of the  
60.5 entity is to be paid by the trustee out of trust assets or by the beneficiaries of the trust;

60.6 (4) the net amount of distributions from the entity available to the trustee after  
60.7 estimating or accounting for tax payments by the trustee or distributions to beneficiaries  
60.8 for the purpose of paying taxes on income earned by the entity;

60.9 (5) whether distributions appear to be made out of or contributed to by income earned  
60.10 by the entity and subjected to income taxes in a prior accounting period which may include  
60.11 accounting periods prior to the date the trustee acquired the related ownership interest;

60.12 (6) whether the entity is consistently a pass-through entity during multiple  
60.13 accounting periods or a change to or from being a pass-through entity has or will occur in  
60.14 accounting periods preceding or subsequent to the current accounting period;

60.15 (7) if the trust owns a controlling interest or total interest in an entity, the trustee may  
60.16 reasonably allocate distributions between income and principal and not necessarily as if  
60.17 that business interest were owned by the trust as a proprietorship; and

60.18 (8) other facts and circumstances as the trustee reasonably considers relevant to its  
60.19 determination.

60.20 Subd. 5. **Other distributions.** Except as provided in subdivisions 1, 2, 3, and 4,  
60.21 all distributions from entities are income. "Entity distributions" includes cash dividends,  
60.22 distributions of or rights to subscribe to shares or securities or obligations of entities other  
60.23 than the distributing entity, and the proceeds of the rights or property distributions. Except  
60.24 as provided in subdivisions 1, 2, 3, and 4, if the distributing entity gives the owner of an  
60.25 ownership interest an option to receive a distribution either in cash or in an ownership  
60.26 interest in the entity, the distribution chosen is income.

60.27 Subd. 6. **Reliance on statements.** The trustee may rely on a statement of the  
60.28 distributing entity as to a fact relevant under a provision of sections 501C.1101 to  
60.29 501C.1118 concerning the source or character of dividends or distributions of corporate  
60.30 assets.

60.31 Subd. 7. **Definitions.** The definitions in this subdivision apply to this section.

60.32 (a) **Entity.** "Entity" means a corporation, partnership, limited liability company,  
60.33 regulated investment company, real estate investment trust, common or collective trust  
60.34 fund, or any other organization in which a trustee has an interest other than a trust or estate  
60.35 governed by any other provision of sections 501C.1101 to 501C.1118.

61.1 (b) **Pass-through entity.** "Pass-through entity" means any entity that passes through  
 61.2 income, loss, deductions, credits, and other tax attributes to the owners of an interest in  
 61.3 the entity under the Internal Revenue Code in such manner that the owner is directly  
 61.4 subject to income taxation on all or any part of the income of the entity (whether or not the  
 61.5 pass-through of the tax attributes is related to distributions from the entity), including,  
 61.6 but not limited to, S corporations, partnerships, limited liability companies, or limited  
 61.7 liability partnerships.

61.8 **Sec. 7. [501C.1107] BOND PREMIUM AND DISCOUNT.**

61.9 Subdivision 1. **Principal.** Bonds or other obligations for the payment of money  
 61.10 are principal at their inventory value, except as provided in subdivision 2 for discount  
 61.11 bonds. No provision may be made for amortization of bond premiums or for accumulation  
 61.12 for discount. The proceeds of sale, redemption, or other disposition of the bonds or  
 61.13 obligations are principal.

61.14 Subd. 2. **Income.** The increment in value realized upon sale, redemption, or other  
 61.15 disposition of a bond or other obligation for the payment of money bearing no stated  
 61.16 interest but payable or redeemable at maturity or at a future time at an amount in excess of  
 61.17 the amount in consideration of which it was issued or in accordance with a fixed schedule  
 61.18 of appreciation, is distributable as income. The increment in value is distributable to  
 61.19 the beneficiary who was the income beneficiary at the time of increment from the first  
 61.20 principal cash available or, if none is available, when realized by sale, redemption, or other  
 61.21 disposition. Whenever unrealized increment is distributed as income but out of principal,  
 61.22 the principal must be reimbursed for the increment when realized.

61.23 **Sec. 8. [501C.1108] SOLE PROPRIETORSHIPS.**

61.24 Subdivision 1. **Separate account.** A trustee who conducts a business or other  
 61.25 activity as a sole proprietor may establish and maintain a separate account for the  
 61.26 transactions of the business or other activity, whether or not its assets are segregated  
 61.27 from other trust assets, if the trustee determines that it is in the best interest of all the  
 61.28 beneficiaries to establish a separate account instead of accounting for the business or other  
 61.29 activity as part of the trust's general accounting records.

61.30 (a) A trustee who establishes a separate account for a business or other activity  
 61.31 shall determine the extent to which its net cash receipts will be retained in the separate  
 61.32 account for working capital, the acquisition or replacement of fixed assets, and other  
 61.33 reasonably foreseeable needs of the business or activity or will be transferred out of the  
 61.34 separate account and accounted for as principal or income in the trust's general accounting

62.1 records as the trustee reasonably and equitably determines. If a trustee sells assets of the  
 62.2 business or other activity, other than in the ordinary course of the business or activity, and  
 62.3 determines that any portion of the amount received is no longer required in the conduct of  
 62.4 the business the trustee shall transfer that portion out of the separate account and shall  
 62.5 account for that portion as principal in the trust's general accounting records.

62.6 (b) A trustee may not account separately for a traditional securities portfolio to avoid  
 62.7 the provisions of sections 501C.1101 to 501C.1118 that otherwise apply to securities.

62.8 Subd. 2. **Other income or losses.** If a trustee does not maintain a separate account  
 62.9 for a business or other activity conducted as a sole proprietorship, the net profits of the  
 62.10 sole proprietorship in any fiscal or calendar year, as reasonably and equitably determined  
 62.11 by the trustee, must be allocated to income while any net loss in that year must be charged  
 62.12 to principal and must not be carried into any other fiscal or calendar year for purposes of  
 62.13 calculating net income.

62.14 Sec. 9. **[501C.1109] DISPOSITION OF NATURAL RESOURCES.**

62.15 Subdivision 1. **Allocation of receipts.** If a part of the principal consists of a right to  
 62.16 receive royalties, overriding or limited royalties, working interests, production payments,  
 62.17 net profit interests, or other interests in minerals or other natural resources in, on, or  
 62.18 under land, the receipts from taking the natural resources from the land must be allocated  
 62.19 under paragraphs (a) to (c).

62.20 (a) If received as rent on a lease or extension payments on a lease, the receipts  
 62.21 are income.

62.22 (b) If received from a production payment carved out of a mineral property, the  
 62.23 receipts are income to the extent of a factor for interest or its equivalent provided in the  
 62.24 governing instrument or a greater amount determined by the trustee to be reasonable and  
 62.25 equitable in view of the interests of those entitled to income as well as those entitled to  
 62.26 principal. The receipts not allocated to income are principal.

62.27 (c) If received as a royalty, overriding or limited royalty, or bonus or from a working,  
 62.28 net profit, or other interest in minerals or other natural resources, receipts not provided  
 62.29 for in paragraph (a) or (b) must be apportioned on a yearly basis in accordance with  
 62.30 this paragraph whether or not any natural resource was being taken from the land at the  
 62.31 time the trust was established. The receipts from these properties must be allocated in  
 62.32 accordance with what is reasonable and equitable in view of the interests of those entitled  
 62.33 to income as well as of those entitled to principal. The amount allocated to principal must  
 62.34 be presumed to be reasonable and equitable if it is neither substantially more nor less than  
 62.35 the amount allowable as a deduction for depletion, amortization, depreciation, or similar

63.1 costs under the Internal Revenue Code of 1986. Any allocated amount must be added to  
 63.2 principal as an allowance for depletion of the asset. The balance of the gross receipts, after  
 63.3 payment from the receipts of all direct and indirect expenses, is income.

63.4 Subd. 2. **Timber excepted.** This section does not apply to timber.

63.5 Sec. 10. **[501C.1110] TIMBER.**

63.6 Subdivision 1. **Net receipts.** If a part of the principal consists of land from which  
 63.7 merchantable timber may be removed, the net receipts from taking the timber from the  
 63.8 land must be allocated as follows:

63.9 (1) to income to the extent that the amount of timber removed from the land during  
 63.10 the accounting period does not exceed the rate of growth of the timber;

63.11 (2) to principal to the extent that the amount of timber removed from the land during  
 63.12 the accounting period exceeds the rate of growth of the timber or the net receipts are  
 63.13 from the sale of standing timber;

63.14 (3) to or between income and principal if the net receipts are from the lease of  
 63.15 timberland or from a contract to cut timber from land owned by a trust, by determining  
 63.16 the amount of timber removed from the land under the lease or contract and applying  
 63.17 the rules in clause (1) or (2); or

63.18 (4) to principal to the extent that advance payments, bonuses, and other payments  
 63.19 are not allocated pursuant to clause (1), (2), or (3).

63.20 Subd. 2. **Depletion.** In determining net receipts to be allocated pursuant to  
 63.21 subdivision 1, a trustee shall deduct and transfer to principal a reasonable amount for  
 63.22 depletion.

63.23 Subd. 3. **Scope.** This section applies whether or not timber was harvested from the  
 63.24 property before it became subject to the trust.

63.25 Sec. 11. **[501C.1111] ANNUITIES, QUALIFIED AND NONQUALIFIED**  
 63.26 **EMPLOYEE COMPENSATION, RETIREMENT PLANS AND OTHER**  
 63.27 **PROPERTY SUBJECT TO DEPLETION.**

63.28 Except as provided in sections 501C.1109 and 501C.1110, if part of the principal  
 63.29 consists of property subject to depletion, including leaseholds, patents, copyrights, royalty  
 63.30 rights, rights to receive payments on a contract for deferred compensation, qualified and  
 63.31 nonqualified employer retirement plans, individual retirement accounts, and annuities, the  
 63.32 receipts from the property must be allocated in accordance with what is reasonable and  
 63.33 equitable in view of the interests of those entitled to income as well as of those entitled  
 63.34 to principal. The trustee may determine the allocation based on a fixed percentage of

64.1 each payment, an amortization of the inventory value of the series of payments, or, if the  
 64.2 individual retirement account, pension, profit-sharing, stock-bonus, or stock-ownership  
 64.3 plan consists of segregated and identifiable assets, the trustee may apply the provisions  
 64.4 of sections 501C.1101 to 501C.1118 to the receipts in the account or plan in order to  
 64.5 characterize the payments received during a trust accounting period. To the extent that a  
 64.6 payment is characterized by the payer as interest or a dividend or a payment made in lieu  
 64.7 of interest or a dividend, a trustee shall allocate it to income. The amount allocated to  
 64.8 principal is presumed to be reasonable and equitable if it is neither substantially more nor  
 64.9 less than the amount allowable as a deduction for depletion, amortization, depreciation, or  
 64.10 similar costs under the Internal Revenue Code of 1986.

64.11 Sec. 12. **[501C.1112] TRUSTEE'S POWER TO ADJUST.**

64.12 Subdivision 1. **Power to adjust.** A trustee may adjust between principal and  
 64.13 income to the extent the trustee considers necessary to comply with section 501C.1102,  
 64.14 subdivision 3, after applying section 501C.1102, subdivisions 1 and 2, if the trustee invests  
 64.15 and manages the trust assets as a prudent investor and the terms of the trust describe the  
 64.16 amount that may or must be distributed to a beneficiary by referring to the trust's income.

64.17 Subd. 2. **Factors to consider.** In deciding whether and to what extent to exercise  
 64.18 the power conferred by subdivision 1, a trustee shall consider all factors relevant to the  
 64.19 trust and its beneficiaries, including, but not limited to, the following factors:

64.20 (1) the nature, purpose, and expected duration of the trust;

64.21 (2) the intent of the settlor;

64.22 (3) the identity and circumstances of the beneficiaries;

64.23 (4) the needs for liquidity, regularity of income, and preservation and appreciation  
 64.24 of capital;

64.25 (5) the assets held in the trust; the extent to which they consist of financial assets,  
 64.26 interests in closely held enterprises, tangible and intangible personal property, or real  
 64.27 property; the extent to which an asset is used by a beneficiary; and whether an asset was  
 64.28 purchased by the trustee or received from the settlor;

64.29 (6) the net amount allocated to income under the other provisions of sections  
 64.30 501C.1101 to 501C.1118 and the increase or decrease in the value of the principal assets,  
 64.31 which the trustee may estimate as to assets for which market values are not readily available;

64.32 (7) whether and to what extent the terms of the trust give the trustee the power to  
 64.33 invade principal or accumulate income or prohibit the trustee from invading principal or  
 64.34 accumulating income, and the extent to which the trustee has exercised a power from time  
 64.35 to time to invade principal or accumulate income;



65.1 (8) the actual and anticipated effect of economic conditions on principal and income  
65.2 and effects of inflation and deflation;

65.3 (9) the anticipated tax consequences of an adjustment; and

65.4 (10) the investment return under current economic conditions from other portfolios  
65.5 meeting fiduciary requirements.

65.6 Subd. 3. **Limitation on trustee's power.** A trustee may not make an adjustment:

65.7 (1) that reduces the actuarial value of the income interest in a trust to which a person  
65.8 transfers property with the intent to qualify for a gift tax exclusion;

65.9 (2) that changes the amount payable to a beneficiary as fixed annuity or a fixed  
65.10 fraction of the value of the trust assets;

65.11 (3) from any amount that is permanently set aside for charitable purposes under a  
65.12 will or the terms of a trust unless both income and principal are so set aside; provided,  
65.13 however, that this limitation does not apply to any trust created prior to August 1, 2001, to  
65.14 the extent the trustee receives amounts during the accounting period which would, under  
65.15 the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August  
65.16 1, 2001, have been allocated to income;

65.17 (4) if possessing or exercising the power to make an adjustment causes an individual  
65.18 to be treated as owner of all or part of the trust for income tax purposes and the individual  
65.19 would not be treated as the owner if the trustee did not possess the power to make  
65.20 adjustment;

65.21 (5) if possessing or exercising the power to make an adjustment causes all or part of  
65.22 the trust assets to be included for estate tax purposes in the estate of an individual who has  
65.23 the power to remove or appoint the trustee, or both, and the assets would not be included in  
65.24 the estate of the individual if the trustee did not possess the power to make an adjustment;

65.25 (6) if the trustee is a beneficiary of the trust; or

65.26 (7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee  
65.27 directly or indirectly.

65.28 Subd. 4. **Cotrustee may exercise power.** If the provisions of subdivision 3, clause  
65.29 (4), (5), (6), or (7), apply to a trustee and there is more than one trustee, a cotrustee to  
65.30 whom the provision does not apply may make the adjustment unless the exercise of the  
65.31 power by the remaining trustee or trustees is not permitted by the terms of the trust.

65.32 Subd. 5. **Release of power.** A trustee may release the entire power conferred by  
65.33 subdivision 1 or may release only the power to adjust from income to principal or to adjust  
65.34 from principal to income if the trustee is uncertain about whether possessing or exercising  
65.35 the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5),  
65.36 or (7), or if the trustee determines that possessing or exercising the power will or may

66.1 deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3.  
66.2 The release may be permanent or for a specified period, including a period measured by  
66.3 the life of an individual.

66.4 Subd. 6. **Power may be negated by specific reference.** Terms of a trust that limit  
66.5 the power of a trustee to make an adjustment between principal and income do not affect  
66.6 the application of this section unless it is clear from the terms of the trust that the terms are  
66.7 intended to deny the trustee the power of adjustment conferred by subdivision 1.

66.8 Subd. 7. **No duty to adjust; remedy.** Nothing in this section is intended to create or  
66.9 imply a duty to make an adjustment, and a trustee is not liable for not considering whether  
66.10 to make an adjustment or for choosing not to make an adjustment. In a proceeding with  
66.11 respect to the trustee's nonexercise of the power to make an adjustment from principal to  
66.12 income (or with respect to the trustee's failure to make a greater adjustment from principal  
66.13 to income), the sole remedy is to direct or deny an adjustment (or greater adjustment)  
66.14 from principal to income.

66.15 Subd. 8. **Notice of determination.** A trustee may give notice of a proposed action  
66.16 regarding a matter governed by this section as provided in this subdivision. For purposes  
66.17 of this subdivision, a proposed action includes a course of action and a determination  
66.18 not to take action.

66.19 (a) The trustee shall mail notice of the proposed action to all adult beneficiaries who  
66.20 are receiving, or are entitled to receive, income under the trust or to receive a distribution  
66.21 of principal if the trust were terminated at the time the notice is given. Notice may  
66.22 be given to any other beneficiary.

66.23 (b) The notice of proposed action must state that it is given pursuant to this  
66.24 subdivision and must state the following:

66.25 (1) the name and mailing address of the trustee;

66.26 (2) the name and telephone number of a person who may be contacted for additional  
66.27 information;

66.28 (3) a description of the action proposed to be taken and an explanation of the reasons  
66.29 for the action;

66.30 (4) the time within which objections to the proposed action can be made, which must  
66.31 be at least 30 days from the mailing of the notice of proposed action; and

66.32 (5) the date on or after which the proposed action may be taken or is effective.

66.33 (c) A beneficiary may object to the proposed action by mailing a written objection to  
66.34 the trustee at the address stated in the notice of proposed action within the time period  
66.35 specified in the notice of proposed action.

67.1 (d) If a trustee does not receive a written objection to the proposed action from the  
 67.2 beneficiary within the applicable period, the trustee is not liable for an action regarding a  
 67.3 matter governed by this chapter to a beneficiary if:

67.4 (1) the beneficiary is an adult (or is a minor with a duly appointed conservator of  
 67.5 the estate) and the notice is mailed to the adult beneficiary or conservator at the address  
 67.6 determined by the trustee after reasonable diligence;

67.7 (2) the beneficiary is an adult (or is a minor with a duly appointed conservator of the  
 67.8 estate) and the adult beneficiary or conservator receives actual notice;

67.9 (3) the beneficiary is not an adult and has no duly appointed conservator of the estate  
 67.10 and an adult having a substantially identical interest and having no conflicting interest  
 67.11 receives actual notice;

67.12 (4) the beneficiary (or the conservator of the estate of a minor beneficiary) consents  
 67.13 in writing to the proposed action either before or after the action is taken; or

67.14 (5) the beneficiary is not an adult and has no duly appointed conservator of the estate  
 67.15 and an adult having a substantially identical interest and having no conflicting interest  
 67.16 consents in writing to the proposed action either before or after the action is taken.

67.17 (e) If the trustee receives a written objection within the applicable time period, either  
 67.18 the trustee or a beneficiary may petition the court to have the proposed action performed  
 67.19 as proposed, performed with modifications, or denied. In the proceeding, a beneficiary  
 67.20 objecting to the proposed action has the burden of proof as to whether the trustee's  
 67.21 proposed action should not be performed. A beneficiary who has not objected is not  
 67.22 estopped from opposing the proposed action in the proceeding. If the trustee decides not  
 67.23 to implement the proposed action, the trustee shall notify the beneficiaries of the decision  
 67.24 not to take the action and the reasons for the decision, and the trustee's decision not to  
 67.25 implement the proposed action does not itself give rise to liability to any current or future  
 67.26 beneficiary. A beneficiary may petition the court to have the action performed and has  
 67.27 the burden of proof as to whether it should be performed.

67.28 (f) Nothing in this subdivision limits the right of a trustee or beneficiary to petition  
 67.29 the court pursuant to section 501C.0201 for instructions as to any action, failure to act,  
 67.30 or determination not to act regarding a matter governed by this section in the absence of  
 67.31 notice as provided in this subdivision. In any such proceeding, any beneficiary filing such  
 67.32 a petition or objecting to a petition of the trustee has the burden of proof as to any action  
 67.33 taken, any failure to act, or determination not to act, by the trustee.

67.34 **Sec. 13. [501C.1113] CHARGES AGAINST INCOME AND PRINCIPAL.**

67.35 **Subdivision 1. Income.** The following charges must be made against income:

68.1 (1) ordinary expenses incurred in connection with the administration, management,  
68.2 or preservation of the trust property, including regularly recurring taxes assessed against  
68.3 a portion of the principal, water rates, premiums on insurance taken upon the interests  
68.4 of the income beneficiary, remainderperson, or trustee, interest paid by the trustee, and  
68.5 ordinary repairs;

68.6 (2) a reasonable allowance for depreciation on property subject to depreciation  
68.7 under generally accepted accounting principles, but no allowance may be made for  
68.8 depreciation of that portion of real property used by a beneficiary as a residence or for  
68.9 depreciation of property held by the trustee on January 1, 1970, for which the trustee is not  
68.10 then making an allowance for depreciation;

68.11 (3) one-half of the court costs, attorneys' fees, and other fees on periodic accountings  
68.12 or judicial proceedings, unless the court directs otherwise;

68.13 (4) court costs, attorneys' fees, and other fees on other accountings or judicial  
68.14 proceedings if the matter primarily concerns the income interest, unless the court directs  
68.15 otherwise;

68.16 (5) one-half of the trustee's regular compensation for services performed for the  
68.17 income beneficiary or in the production of income whether based on a percentage of  
68.18 principal or income, and all expenses reasonably incurred for current management of  
68.19 principal and application of income; and

68.20 (6) any tax levied on receipts defined as income under sections 501C.1101 to  
68.21 501C.1118 or the trust instrument and payable by the trustee.

68.22 Subd. 2. **Unusual charges.** If charges against income are of an unusual amount, the  
68.23 trustee may charge them over a reasonable period of time or, by means of reserves or other  
68.24 reasonable means, withhold from distribution sufficient sums to regularize distributions.

68.25 Subd. 3. **Principal.** The following charges must be made against principal:

68.26 (1) trustee's compensation not chargeable to income under subdivision 1, clause  
68.27 (5), special compensation of the trustee, expenses reasonably incurred in connection  
68.28 with principal, court costs and attorneys' fees primarily concerning matters of principal,  
68.29 and trustee's compensation computed on principal as an acceptance, distribution, or  
68.30 termination fee;

68.31 (2) charges not provided for in subdivision 1, including the cost of investing and  
68.32 reinvesting principal, the payments on principal of an indebtedness, including a mortgage  
68.33 amortized by periodic payments of principal, expenses for preparation of property for  
68.34 rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining  
68.35 or defending any action to construe the trust or protect it or the property or assure the  
68.36 title of any trust property;

69.1 (3) extraordinary repairs or expenses incurred in making a capital improvement to  
 69.2 principal, including special assessments, but a trustee may establish an allowance for  
 69.3 depreciation out of income to the extent permitted by subdivision 1, clause (2), and by  
 69.4 section 501C.1105;

69.5 (4) any tax levied on profit, gain, or other receipts allocated to principal, even if the  
 69.6 taxing authority calls the tax an income tax;

69.7 (5) any amount apportioned to a trust, including interest and penalties, if an estate or  
 69.8 inheritance tax is levied in respect of a trust in which both an income beneficiary and a  
 69.9 remainderperson have an interest.

69.10 Subd. 4. **Regular charges payable from income.** Regularly recurring charges  
 69.11 payable from income must be apportioned to the same extent and in the same manner that  
 69.12 income is apportioned under section 501C.1104.

69.13 Subd. 5. **Exceptions.** Paragraphs (a) to (c) are exceptions to the requirements of  
 69.14 subdivisions 1 to 4.

69.15 (a) With respect to a revocable living trust, during the lifetime of the grantor, all of  
 69.16 the trustee's regular compensation for services performed must be charged against income,  
 69.17 unless directed otherwise by the grantor.

69.18 (b) If charging a part or all of the trustee's regular compensation to principal, in the  
 69.19 judgment of the trustee, is impracticable, because of the lack of sufficient cash and readily  
 69.20 marketable assets, or inadvisable, because of the nature of the principal assets, the trustee  
 69.21 may determine to pay part or all of the compensation out of income. The decision of the  
 69.22 trustee to pay a larger portion or all of the trustee's regular compensation out of income is  
 69.23 conclusive, and the income of the trust is not entitled to reimbursement from principal  
 69.24 at any subsequent time or times.

69.25 (c) If charging a part or all of the trustee's regular compensation to income, in the  
 69.26 judgment of the trustee, is impracticable, because of the lack of sufficient income, or  
 69.27 inadvisable, because of a desire to provide maximum income to the beneficiary, the trustee  
 69.28 may determine to pay part or all of such compensation out of principal. The decision of  
 69.29 the trustee to pay a larger portion or all of the trustee's regular compensation out of the  
 69.30 principal is conclusive.

69.31 **Sec. 14. [501C.1114] NONTRUST ESTATES.**

69.32 Subdivision 1. **Limitations.** Sections 501C.1101 to 501C.1118 apply to nontrust  
 69.33 estates, subject to:

69.34 (1) agreement of the parties;

69.35 (2) specific direction in the instrument creating the nontrust estates;

- 70.1 (3) subdivision 2; and  
 70.2 (4) other applicable statutes.

70.3 References in sections 501C.1101 to 501C.1118 to trusts and trustees must be read as  
 70.4 applying to nontrust estates and to tenants and remainderpersons as the context requires.

70.5 Subd. 2. **Application.** In applying sections 501C.1101 to 501C.1118 to nontrust  
 70.6 estates, the rules in paragraphs (a) to (d) must be followed.

70.7 (a) A legal life tenant or a remainderperson who has incurred a charge for the  
 70.8 tenant's or remainderperson's benefit without the consent or agreement of the other, shall  
 70.9 pay the charge in full.

70.10 (b) Costs of an improvement, including special taxes or assessments representing  
 70.11 an addition to value of property forming part of the principal that cannot reasonably be  
 70.12 expected to outlast the legal life estate, must be paid by the legal life tenant.

70.13 (c) If the improvement can reasonably be expected to outlast the legal life estate,  
 70.14 only a portion of the costs must be paid by the legal life tenant and the balance by the  
 70.15 remainderperson.

70.16 (1) The portion payable by the legal life tenant is that fraction of the total found by  
 70.17 dividing the present value of the legal life estate by the present value of an estate of the  
 70.18 same form as that of the legal life estate but limited to a period corresponding to the  
 70.19 reasonably expected duration of the improvement.

70.20 (2) The present value of the legal life estate must be computed by applying the federal  
 70.21 estate tax regulations for the calculation of the value of life estates under section 2031 of the  
 70.22 Internal Revenue Code of 1986. The federal estate tax regulations applied must be those in  
 70.23 force on the date when the costs of the improvement are initially determined by assessment,  
 70.24 agreement, or otherwise. No other evidence of duration or expectancy may be considered.

70.25 (d) No allowance may be made for depreciation of property held by a legal life  
 70.26 tenant on January 1, 1990, if the life tenant was not making the allowance with respect  
 70.27 to the property prior to January 1, 1990.

70.28 **Sec. 15. [501C.1115] APPLICATION.**

70.29 Except as specifically provided in the governing instrument, Minnesota Statutes  
 70.30 1988, sections 501.48 to 501.63, apply to a receipt or expense received or incurred after  
 70.31 January 1, 1970, and before January 1, 1990, by any trust or decedent's estate whether  
 70.32 established before or after January 1, 1970, and whether the asset involved was acquired  
 70.33 by the trustee before or after January 1, 1970.

70.34 Except as specifically provided in the governing instrument, sections 501C.1101 to  
 70.35 501C.1118 apply to a receipt or expense received or incurred after December 31, 1989,

71.1 by a trust or decedent's estate whether established before, on, or after January 1, 1990,  
 71.2 and whether the asset involved or legal estate was acquired by the trustee, personal  
 71.3 representative, legal life tenant, or remainderperson before, on, or after January 1, 1990.

71.4 Sec. 16. **[501C.1116] ASCERTAINMENT OF INCOME OR PRINCIPAL.**

71.5 Sections 501C.1101 to 501C.1118 do not govern the ascertainment of what  
 71.6 constitutes the receipt of income or principal by the estate or trust for income tax purposes.

71.7 Sec. 17. **[501C.1117] UNIFORMITY OF INTERPRETATION.**

71.8 Sections 501C.1101 to 501C.1118 must be so construed as to effectuate their general  
 71.9 purpose to make uniform the law of those states that enact them.

71.10 Sec. 18. **[501C.1118] SHORT TITLE.**

71.11 Sections 501C.1101 to 501C.1117 may be cited as the Uniform Principal and  
 71.12 Income Act.

## 71.13 **ARTICLE 12**

### 71.14 **MISCELLANEOUS PROVISIONS RECODIFICATION**

71.15 Section 1. **[501C.1201] MEMORIAL FUND.**

71.16 Subdivision 1. **Establishment.** A trust may be created for the purpose of  
 71.17 establishing a fund for the benefit of one or more individuals with a single transfer under  
 71.18 the Minnesota Uniform Custodial Trust Act in the manner and form provided by section  
 71.19 529.17. A trust authorized under this section must be created and administered and is  
 71.20 subject to the Minnesota Uniform Custodial Trust Act.

71.21 Subd. 2. **Additional funds.** Notwithstanding subdivision 1, after a fund has been  
 71.22 created, additional funds may be transferred to the fund without the formalities required  
 71.23 by chapter 529 if the transferor manifests a reasonable expression of intent to make the  
 71.24 transfer, together with a reasonable form of delivery of the property including, but not  
 71.25 limited to, the following:

71.26 (1) a check payable to the name of the fund and delivered to the trustee or the  
 71.27 trustee's custodial agent;

71.28 (2) delivery of cash or tangible personal property to the trustee or to the trustee's  
 71.29 custodial agent;

71.30 (3) delivery and recording of title of stock or other registered security in the name of  
 71.31 the fund;

72.1 (4) delivery of a deed and acceptance of the deed by the trustee of the fund, or the  
 72.2 recording of a deed in the name of the trustee of the fund with the applicable county  
 72.3 recorder or registrar of titles for real property; and

72.4 (5) any other means of transfer and delivery so that a reasonable person would  
 72.5 conclude that the transferor intended the property be titled in the name of, and used for the  
 72.6 benefit of the beneficiaries of, the fund.

72.7 **Sec. 2. [501C.1202] SUSPENSION OF THE POWER OF ALIENATION.**

72.8 Subdivision 1. **Suspension; exceptions.** The power of alienation is suspended if  
 72.9 there are no persons in being who, alone or in conjunction with others, can convey an  
 72.10 absolute fee in possession or absolute ownership of real property or absolute ownership of  
 72.11 personal property.

72.12 (a) There is no suspension of the power of alienation by the terms of a trust or by  
 72.13 interests in property held in trust if there is an unlimited power in one or more persons  
 72.14 then in being to terminate the trust, by revocation or otherwise, and to acquire an absolute  
 72.15 fee in possession or absolute ownership of the trust property.

72.16 (b) There is no suspension of the power of alienation by the terms of a trust or  
 72.17 by interests in property held in trust if the trustee has power to sell an absolute fee in  
 72.18 possession or absolute ownership of the trust property.

72.19 Subd. 2. **Suspension for 21 years.** The power of alienation of property held in trust  
 72.20 may be suspended, by the terms of the trust, for a period of not more than 21 years. During  
 72.21 any period of suspension of the power of alienation of real property, sections 501C.0201  
 72.22 to 501C.0208 apply. Notwithstanding any contrary term of a trust, suspension of the  
 72.23 power of alienation by the terms of a trust ceases after a period of 21 years, after which the  
 72.24 trustee has the power to convey an absolute fee in possession or absolute ownership of the  
 72.25 trust property, and to mortgage, pledge, and lease the same. A provision in the terms of a  
 72.26 trust for forfeiture of the interest of a trustee or beneficiary if the trustee or beneficiary  
 72.27 participates in or seeks to convey, mortgage, pledge, or lease trust property after the  
 72.28 expiration of a 21-year period of suspension is void.

72.29 Subd. 3. **Inapplicable to certain trusts.** Subdivision 2 does not apply to a trust if the  
 72.30 beneficial interests in the trust are evidenced by or constitute securities within the meaning  
 72.31 of section 2(1) of the Securities Act of 1933, title 15, United States Code, section 77(b)(1).

72.32 Subd. 4. **Void future interests.** Every future interest in real or personal property  
 72.33 not held in trust is void in its creation if it might suspend the power of alienation for a  
 72.34 period longer than a life or lives in being plus 21 years.



73.1       Sec. 3. **[501C.1203] TRUSTS FORMING PART OF RETIREMENT PLANS**  
73.2 **FOR PARTICIPATING MEMBERS.**

73.3       If a trust forms part of a retirement plan created by and for the benefit of self-employed  
73.4 persons for the purpose of receiving their contributions and investing, accumulating, and  
73.5 distributing to the persons or their beneficiaries the corpus, profits, and earnings of the  
73.6 trust in accordance with the plan, the power of a person beneficially interested in the trust  
73.7 to sell, assign, or transfer that beneficial interest, to anticipate payments under the plan, or  
73.8 to terminate the trust, may be limited or withheld in accordance with the provisions of the  
73.9 plan, whether or not the person furnished consideration for the creation of the trust.

73.10      Sec. 4. **[501C.1204] TRUSTS NOT AFFECTED.**

73.11      Notwithstanding other law to the contrary, a trust created before June 1, 1973,  
73.12 relating to one's "minority" or "majority" or other related terms is governed by the  
73.13 definitions of those terms existing at the time of the creation of the trust.

73.14      Sec. 5. **[501C.1205] TRUST PROVISIONS LINKED TO PUBLIC ASSISTANCE**  
73.15 **ELIGIBILITY; SUPPLEMENTAL NEEDS TRUSTS.**

73.16      Subdivision 1. **Trusts containing limitations linked to eligibility for public**  
73.17 **assistance.** (a) Except as allowed by subdivision 2 or 3, a provision in a trust that provides  
73.18 for the suspension, termination, limitation, or diversion of the principal, income, or  
73.19 beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible  
73.20 for, or receives public assistance or benefits under a public health care program is  
73.21 unenforceable as against the public policy of this state, without regard to the irrevocability  
73.22 of the trust or the purpose for which the trust was created.

73.23      (b) This subdivision applies to trust provisions created after July 1, 1992. For  
73.24 purposes of this section, a trust provision is created on the date of execution of the first  
73.25 instrument that contains the provision, even though the trust provision is later amended or  
73.26 reformed or the trust is not funded until a later date.

73.27      Subd. 2. **Supplemental trusts for persons with disabilities.** (a) It is the public  
73.28 policy of this state to enforce supplemental needs trusts as provided in this subdivision.

73.29      (b) For purposes of this subdivision, a "supplemental needs trust" is a trust created  
73.30 for the benefit of a person with a disability and funded by someone other than the trust  
73.31 beneficiary, the beneficiary's spouse, or anyone obligated to pay any sum for damages  
73.32 or any other purpose to or for the benefit of the trust beneficiary under the terms of a  
73.33 settlement agreement or judgment.

74.1 (c) For purposes of this subdivision, a "person with a disability" means a person  
74.2 who, prior to creation of a trust which otherwise qualifies as a supplemental needs trust  
74.3 for the person's benefit:

74.4 (1) is considered to be a person with a disability under the disability criteria specified  
74.5 in Title II or Title XVI of the Social Security Act; or

74.6 (2) has a physical or mental illness or condition which, in the expected natural  
74.7 course of the illness or condition, either prior to or following creation of the trust, to a  
74.8 reasonable degree of medical certainty, is expected to:

74.9 (i) last for a continuous period of 12 months or more; and

74.10 (ii) substantially impair the person's ability to provide for the person's care or custody.

74.11 Disability may be established conclusively for purposes of this subdivision by the  
74.12 written opinion of a licensed professional who is qualified to diagnose the illness or  
74.13 condition, confirmed by the written opinion of a second licensed professional who is  
74.14 qualified to diagnose the illness or condition.

74.15 (d) The general purpose of a supplemental needs trust must be to provide for the  
74.16 reasonable living expenses and other basic needs of a person with a disability when  
74.17 benefits from publicly funded benefit programs are not sufficient to provide adequately for  
74.18 those needs. Subject to the restrictions contained in this paragraph, a supplemental needs  
74.19 trust may authorize distributions to provide for all or any portion of the reasonable living  
74.20 expenses of the beneficiary. A supplemental needs trust may allow or require distributions  
74.21 only in ways and for purposes that supplement or complement the benefits available  
74.22 under medical assistance, Minnesota supplemental aid, and other publicly funded benefit  
74.23 programs for disabled persons. A supplemental needs trust must contain provisions that  
74.24 prohibit disbursements that would have the effect of replacing, reducing, or substituting  
74.25 for publicly funded benefits otherwise available to the beneficiary or rendering the  
74.26 beneficiary ineligible for publicly funded benefits.

74.27 (e) A supplemental needs trust is not enforceable if the trust beneficiary becomes  
74.28 a patient or resident after age 64 in a state institution or nursing facility for six months  
74.29 or more and, due to the beneficiary's medical need for care in an institutional setting,  
74.30 there is no reasonable expectation that the beneficiary will ever be discharged from the  
74.31 institution or facility. For purposes of this paragraph "reasonable expectation" means that  
74.32 the beneficiary's attending physician has certified that the expectation is reasonable. For  
74.33 purposes of this paragraph, a beneficiary participating in a group residential program is  
74.34 not deemed to be a patient or resident in a state institution or nursing facility.

74.35 (f) The trust income and assets of a supplemental needs trust are considered available  
74.36 to the beneficiary for medical assistance purposes to the extent they are considered

75.1 available to the beneficiary under medical assistance, supplemental security income, or  
75.2 Minnesota family investment program methodology, whichever is used to determine  
75.3 the beneficiary's eligibility for medical assistance. For other public assistance programs  
75.4 established or administered under state law, assets and income will be considered available  
75.5 to the beneficiary in accordance with the methodology applicable to the program.

75.6 (g) Nothing in this subdivision requires submission of a supplemental needs trust to  
75.7 a court for interpretation or enforcement.

75.8 (h) Paragraphs (a) to (g) apply to supplemental needs trusts whenever created, but  
75.9 the limitations and restrictions in paragraphs (c) to (g) apply only to trusts created after  
75.10 June 30, 1993.

75.11 Subd. 3. **Supplemental needs trusts under federal law.** A trust created on or  
75.12 after August 11, 1993, which qualifies as a supplemental needs trust for a person with a  
75.13 disability under United States Code, title 42, section 1396p(c)(2)(B)(iv) or 1396p(d), as  
75.14 amended by section 13611(b) of the Omnibus Budget Reconciliation Act of 1993, Public  
75.15 Law 103-66, commonly known as OBRA 1993, is enforceable, and the courts of this state  
75.16 may authorize creation and funding of a trust which so qualifies.

75.17 Subd. 4. **Annual filing requirement for supplemental needs trusts.** (a) A trustee  
75.18 of a trust under subdivision 3 and United States Code, title 42, section 1396p(d)(4)(A) or  
75.19 (C), shall submit to the commissioner of human services, at the time of a beneficiary's  
75.20 request for medical assistance, the following information about the trust:

75.21 (1) a copy of the trust instrument; and

75.22 (2) an inventory of the beneficiary's trust account assets and the value of those assets.

75.23 (b) A trustee of a trust under subdivision 3 and United States Code, title 42, section  
75.24 1396p(d)(4)(A) or (C), shall submit an accounting of the beneficiary's trust account to the  
75.25 commissioner of human services at least annually until the trust, or the beneficiary's  
75.26 interest in the trust, terminates. Accountings are due on the anniversary of the execution  
75.27 date of the trust unless another annual date is established by the terms of the trust. The  
75.28 accounting must include the following information for the accounting period:

75.29 (1) an inventory of trust assets and the value of those assets at the beginning of the  
75.30 accounting period;

75.31 (2) additions to the trust during the accounting period and the source of those  
75.32 additions;

75.33 (3) itemized distributions from the trust during the accounting period, including the  
75.34 purpose of the distributions and to whom the distributions were made;

75.35 (4) an inventory of trust assets and the value of those assets at the end of the  
75.36 accounting period; and

76.1 (5) changes to the trust instrument during the accounting period.

76.2 (c) For the purpose of paragraph (b), an accounting period is 12 months unless an  
76.3 accounting period of a different length is permitted by the commissioner.

76.4 **Sec. 6. [501C.1206] PUBLIC HEALTH CARE PROGRAMS AND CERTAIN**  
76.5 **TRUSTS.**

76.6 (a) It is the public policy of this state that individuals use all available resources to  
76.7 pay for the cost of long-term care services, as defined in section 256B.0595, before turning  
76.8 to Minnesota health care program funds, and that trust instruments should not be permitted  
76.9 to shield available resources of an individual or an individual's spouse from such use.

76.10 (b) When a state or local agency makes a determination on an application by the  
76.11 individual or the individual's spouse for payment of long-term care services through  
76.12 a Minnesota public health care program pursuant to chapter 256B, any irrevocable  
76.13 inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable  
76.14 inter-vivos trust created on or after July 1, 2005, containing assets or income of an  
76.15 individual or an individual's spouse, including those created by a person, court, or  
76.16 administrative body with legal authority to act in place of, at the direction of, upon the  
76.17 request of, or on behalf of the individual or individual's spouse, becomes revocable for the  
76.18 sole purpose of that determination. For purposes of this section, any inter-vivos trust and  
76.19 any legal instrument, device, or arrangement similar to an inter-vivos trust:

76.20 (1) shall be deemed to be located in and subject to the laws of this state; and

76.21 (2) is created as of the date it is fully executed by or on behalf of all of the settlors  
76.22 or others.

76.23 (c) For purposes of this section, a legal instrument, device, or arrangement similar  
76.24 to an irrevocable inter-vivos trust means any instrument, device, or arrangement which  
76.25 involves a settlor who transfers or whose property is transferred by another including, but  
76.26 not limited to, any court, administrative body, or anyone else with authority to act on their  
76.27 behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal  
76.28 obligations to the settlor or others to be held, managed, or administered by the individual  
76.29 or entity for the benefit of the settlor or others. These legal instruments, devices, or other  
76.30 arrangements are irrevocable inter-vivos trusts for purposes of this section.

76.31 (d) In the event of a conflict between this section and the provisions of an irrevocable  
76.32 trust created on or after July 1, 2005, this section shall control.

76.33 (e) This section does not apply to trusts that qualify as supplemental needs trusts  
76.34 under section 501C.1205 or to trusts meeting the criteria of United States Code, title 42,  
76.35 section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

77.1 (f) This section applies to all trusts first created on or after July 1, 2005, as permitted  
77.2 under United States Code, title 42, section 1396p, and to all interests in real or personal  
77.3 property regardless of the date on which the interest was created, reserved, or acquired.

77.4 **Sec. 7. [501C.1207] EFFECT OF DISSOLUTION OF MARRIAGE.**

77.5 Subdivision 1. **Revocation of certain trust provisions.** If after execution of a trust  
77.6 instrument in which a sole settlor reserves a power to alter, amend, revoke, or terminate  
77.7 the provisions of the trust, the settlor's marriage is dissolved or annulled, the dissolution or  
77.8 annulment revokes any disposition, provision for beneficial enjoyment or appointment of  
77.9 property made by the trust instrument to a settlor's former spouse, any provisions conferring  
77.10 a general or special power of appointment on the former spouse and any appointment of  
77.11 the former spouse as trustee, unless the trust instrument expressly provides otherwise.

77.12 Subd. 2. **Passing of property.** Property prevented from passing to a former spouse  
77.13 because of revocation by dissolution or annulment of marriage passes as if the former  
77.14 spouse died on the date of the entry of the judgment and decree dissolving or annulling  
77.15 the settlor's marriage and other provisions conferring some power or office on the former  
77.16 spouse are interpreted as if the former spouse died on the date of the entry of the judgment  
77.17 and decree dissolving or annulling the settlor's marriage.

77.18 Subd. 3. **Revival of revoked provisions.** If provisions are revoked solely by this  
77.19 section, they are revived by the settlor's remarriage to the former spouse. For purposes  
77.20 of this chapter, dissolution of marriage includes divorce. A decree of separation which  
77.21 does not terminate the status of husband and wife is not a dissolution of marriage for  
77.22 purposes of this section. No change of circumstances other than as described in this  
77.23 section revokes a trust instrument.

77.24 **Sec. 8. [501C.1208] SETTLOR AND AGENTS OF SETTLOR.**

77.25 If a trust instrument reserves to the settlor, in a nonfiduciary capacity, the control  
77.26 over any or all investment decisions, the trustee is not responsible for the investment  
77.27 decisions made by the settlor or an agent of the settlor.

77.28 **Sec. 9. [507.48] BONA FIDE PURCHASERS PROTECTED.**

77.29 An express trust not declared in the disposition to the trustee or a constructive or  
77.30 resulting trust does not defeat the title of a purchaser from the trustee for value and without  
77.31 notice of the trust, or the rights of a creditor who extended credit to the trustee in reliance  
77.32 upon the trustee's apparent ownership of the trust property.

78.1       Sec. 10. **[507.49] CERTIFICATE OF CUSTODIANSHIP.**

78.2             Subdivision 1. **Contents of certificate.** (a) A custodian or the owner of property  
78.3 held in a custodianship, at any time after execution or creation of a custodianship  
78.4 instrument, may execute a certificate of custodianship that sets forth less than all of  
78.5 the provisions of the custodial instrument and any amendments to the instrument. The  
78.6 certificate of custodianship may be used for purposes of selling, conveying, pledging,  
78.7 mortgaging, leasing, or transferring title to any interest in real or personal property. The  
78.8 certificate of custodianship must include:

78.9             (1) the name of the custodianship, if one is given;

78.10            (2) the date of the custodianship instrument;

78.11            (3) the name of each owner of property held in the custodianship;

78.12            (4) the name of each original custodian;

78.13            (5) the name and address of each custodian empowered to act under the custodianship  
78.14 instrument at the time of execution of the certificate;

78.15            (6) the following statement: "The custodians are authorized by the instrument to  
78.16 sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal  
78.17 property, except as limited by the following: (if none, so indicate)";

78.18            (7) any other custodianship provisions the custodians or owners of property held  
78.19 in the custodianship include; and

78.20            (8) a statement as to whether the custodianship instrument has terminated or been  
78.21 revoked.

78.22            (b) The certificate of custodianship must be upon the representation of the custodians  
78.23 or the owners of property held in the custodianship that the statements contained in the  
78.24 certificate of custodianship are true and correct and that there are no other provisions in the  
78.25 custodianship instrument or amendments to it that limit the powers of the custodianship  
78.26 to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal  
78.27 property. The signature of the custodians or the owners of property held in the custodianship  
78.28 must be under oath before a notary public or other official authorized to administer oaths.

78.29            Subd. 2. **Effect.** A certificate of custodianship executed under subdivision 1 may be  
78.30 recorded in the office of the county recorder for any county or in the office of the registrar  
78.31 of titles with respect to registered land described in the certificate of custodianship or  
78.32 any attachment to it. When it is recorded in a county where real property is situated,  
78.33 or in the case of personal property, when it is presented to a third party, the certificate  
78.34 of custodianship serves to document the existence of the custodianship, the identity of  
78.35 the custodians, the powers of the custodians and any limitations on those powers, and  
78.36 other matters the certificate of custodianship sets out, as though the full custodianship

79.1 instrument had been recorded, filed, or presented. Until amended or revoked under  
 79.2 subdivision 3, or until the full custodianship instrument is recorded or presented, a  
 79.3 certificate of custodianship is prima facie proof as to the matters contained in it, and any  
 79.4 party may rely upon the continued effectiveness of the certificate.

79.5 Subd. 3. **Amendment or revocation.** (a) Amendment or revocation of a certificate  
 79.6 of custodianship may be made only by a written instrument executed by a custodian or an  
 79.7 owner of property held in the custodianship. Amendment or revocation of a certificate  
 79.8 of custodianship is not effective as to a party unless that party has actual notice of the  
 79.9 amendment or revocation.

79.10 (b) For purposes of this subdivision, "actual notice" means that a written instrument  
 79.11 of amendment or revocation has been received by the party or, in the case of real property,  
 79.12 that either a written instrument of amendment or revocation has been received by the party  
 79.13 or that a written instrument of amendment or revocation containing the legal description  
 79.14 of the real property has been recorded in the office of the county recorder or in the office  
 79.15 of the registrar of titles where the real property is situated.

79.16 Subd. 4. **Application.** (a) Subdivisions 1 to 3 apply to custodianship instruments  
 79.17 whenever created or executed.

79.18 (b) Subdivisions 1 to 3 apply only to custodianships established under a federal  
 79.19 law or under a statute of this or any other state. Subdivisions 1 to 3 do not apply to  
 79.20 custodianships governed by chapter 527 or by the similar laws of another state.

79.21 Sec. 11. **[507.50] AFFIDAVIT OF CUSTODIAN IN REAL PROPERTY**  
 79.22 **TRANSACTIONS.**

79.23 Subdivision 1. **Form of affidavit for custodianship.** An affidavit of a custodian  
 79.24 or of custodians of a custodianship in support of a real property transaction may be  
 79.25 substantially in the following form:

79.26 STATE OF MINNESOTA ) AFFIDAVIT OF CUSTODIAN  
 79.27 ) ss.  
 79.28 COUNTY OF )

79.29 ....., being first duly sworn on oath says that:

- 79.30 1. Affiant is the custodian (one of the custodians) named in that certain Certificate of  
 79.31 Custodianship (or Custodianship Instrument)  
 79.32 recorded ....., ....., as Document No. .... (or in Book .... of ....., Page .....) in the  
 79.33 Office of the (County Recorder/Registrar of Titles) of ..... County, Minnesota,  
 79.34 OR  
 79.35 to which this Affidavit is attached,

80.1 executed by Affiant or another custodian or by the owner of the property that is held  
 80.2 in the custodianship described in the Certificate of Custodianship (or set forth in  
 80.3 the Custodianship Instrument), and which relates to real property in ..... County,  
 80.4 Minnesota, legally described as follows:

80.5 .....  
 80.6 .....

80.7 (If more space is needed, continue on back or on attachment.)

80.8 2. The name(s) and address(es) of the custodian(s) empowered by the Custodian  
 80.9 Instrument to act at the time of the execution of this Affidavit are as follows:

80.10 .....  
 80.11 .....

80.12 3. The custodian(s) who have executed that certain instrument relating to the real  
 80.13 property described above between ....., as custodian(s) and .....,  
 80.14 dated ....., ..:

80.15 (i) are empowered by the provisions of the custodianship to sell, convey, pledge,  
 80.16 mortgage, lease, or transfer title to any interest in real property held in custodianship; and

80.17 (ii) are the requisite number of custodians required by the provisions of the  
 80.18 custodianship to execute and deliver such an instrument.

80.19 4. The custodianship has not terminated and has not been revoked.

80.20 - OR -

80.21 4. The custodianship has terminated (or has been revoked). The execution and  
 80.22 delivery of the instrument described in paragraph 3 has been made pursuant to the  
 80.23 provisions of the custodianship.

80.24 5. There has been no amendment to the custodianship which limits the power of  
 80.25 custodian(s) to execute and deliver the instrument described in paragraph 3.

80.26 6. The custodianship is not supervised by any court.

80.27 - OR -

80.28 6. The custodianship is supervised by the ..... Court of ..... County,  
 80.29 ..... All necessary approval has been obtained from the court for the custodian(s) to  
 80.30 execute and deliver the instrument described in paragraph 3.

80.31 7. Affiant does not have actual knowledge of any facts indicating that the  
 80.32 custodianship is invalid.

80.33 .....  
 80.34 Subscribed and sworn to before me this  
 80.35 ... day of ....., .. , Affiant

80.36 .....



81.1 Signature of Notary Public or Other Official  
 81.2 Notary Stamp or Seal  
 81.3 This instrument was drafted by:  
 81.4 .....  
 81.5 .....

81.6 Subd. 2. **Effect.** An affidavit by the custodian or custodians under subdivision 1  
 81.7 is proof that:

- 81.8 (1) the custodianship described in the affidavit is a valid custodianship;
- 81.9 (2) either the custodianship has not terminated or been revoked or, if the  
 81.10 custodianship has terminated or been revoked, the conveyance described in the affidavit  
 81.11 is made pursuant to the provisions of the custodianship;
- 81.12 (3) the powers granted the custodian or custodians extend to the real property  
 81.13 described in the affidavit or attachment to the affidavit;
- 81.14 (4) no amendment to the custodianship has been made limiting the power of the  
 81.15 custodian or custodians to sell, convey, pledge, mortgage, lease, or transfer title to the real  
 81.16 property described in the affidavit or attachment to the affidavit, if any;
- 81.17 (5) the requisite number of custodians have executed and delivered the instrument of  
 81.18 conveyance described in the affidavit; and
- 81.19 (6) any necessary court approval of the transaction has been obtained.

81.20 The proof is conclusive as to any party relying on the affidavit, except a party dealing  
 81.21 directly with the custodian or custodians who has actual knowledge of facts to the contrary.

81.22 Subd. 3. **Recording.** An Affidavit of Custodian or Custodians under subdivision  
 81.23 1 may be recorded in the office of the county recorder for any county or in the office  
 81.24 of the registrar of titles for any county with respect to registered land described in the  
 81.25 affidavit, or in the Certificate of Custodianship or Custodianship Instrument referred to in  
 81.26 the affidavit, and may be recorded as a separate document or combined with or attached to  
 81.27 an original or certified copy of a Certificate of Custodianship or Custodianship Instrument,  
 81.28 and recorded as one document.

81.29 Subd. 4. **Application.** (a) Subdivisions 1 to 3 apply to custodianship instruments  
 81.30 whenever created or executed.

81.31 (b) Subdivisions 1 to 3 apply only to custodianships established under a federal  
 81.32 law or under a statute of this or any other state. Subdivisions 1 to 3 do not apply to  
 81.33 custodianships governed by chapter 527 or by the similar laws of another state.

82.1 **ARTICLE 13**82.2 **APPLICATION AND CONSTRUCTION OF TRUST CODE**82.3 Section 1. **[501C.1301] UNIFORMITY OF APPLICATION AND**  
82.4 **CONSTRUCTION.**

82.5 In applying and construing sections 501C.0101 to 501C.1014, consideration must  
82.6 be given to the need to promote uniformity of the law with respect to its subject matter  
82.7 among states that enact it.

82.8 Sec. 2. **[501C.1302] ELECTRONIC RECORDS AND SIGNATURES.**

82.9 The provisions of sections 501C.0101 to 501C.1014 governing the legal effect,  
82.10 validity, or enforceability of electronic records or electronic signatures, and of contracts  
82.11 formed or performed with the use of such records or signatures, conform to the  
82.12 requirements of section 102 of the Electronic Signatures in Global and National  
82.13 Commerce Act, United States Code, title 15, section 7002, and supersede, modify, and  
82.14 limit the requirements of the Electronic Signatures in Global and National Commerce Act.

82.15 Sec. 3. **[501C.1303] SEVERABILITY.**

82.16 If any provision located in sections 501C.0101 to 501C.1014 or their application to  
82.17 any person or circumstances is held invalid, the invalidity does not affect other provisions  
82.18 or applications of any provision located in sections 501C.0101 to 501C.1014 which can be  
82.19 given effect without the invalid provision or application, and to this end the provisions of  
82.20 this chapter are severable.

82.21 Sec. 4. **[501C.1304] APPLICATION TO EXISTING RELATIONSHIPS.**

82.22 (a) Except as otherwise provided in sections 501C.0101 to 501C.1014:

82.23 (1) sections 501C.0101 to 501C.1014 apply to all trusts created before, on, or after  
82.24 its effective date;

82.25 (2) sections 501C.0101 to 501C.1014 apply to all judicial proceedings concerning  
82.26 trusts commenced on or after its effective date;

82.27 (3) sections 501C.0101 to 501C.1014 apply to judicial proceedings concerning trusts  
82.28 commenced before its effective date unless the court finds that application of a particular  
82.29 provision of this chapter would substantially interfere with the effective conduct of the  
82.30 judicial proceedings or unfairly prejudice the rights of the parties;

83.1 (4) any rule of construction or presumption provided in sections 501C.0101 to  
 83.2 501C.1014 apply to trust instruments executed before the effective date of this act unless  
 83.3 there is a clear indication of a contrary intent in the terms of the trust; and

83.4 (5) an act or omission that occurs before the effective date of sections 501C.0101 to  
 83.5 501C.1014 is not affected by sections 501C.0101 to 501C.1014.

83.6 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed  
 83.7 period that has commenced to run under any other statute before the effective date of  
 83.8 sections 501C.0101 to 501C.1014, that statute continues to apply to the right even if it  
 83.9 has been repealed or superseded.

## 83.10 **ARTICLE 14**

### 83.11 **POWERS OF APPOINTMENT**

83.12 Section 1. **[502.80] COMMON LAW OF POWERS RETAINED, EXCEPT AS**  
 83.13 **MODIFIED BY THIS CHAPTER.**

83.14 (a) The common law of powers remains in full force and effect and supplements the  
 83.15 provisions of this chapter, unless explicitly modified or displaced by this chapter.

83.16 (b) If any provision of this chapter differs or is inconsistent with any provision in  
 83.17 chapter 523 relating to powers of attorney, the provisions of chapter 523 shall prevail to  
 83.18 the extent the provisions are different or inconsistent.

83.19 Sec. 2. **[502.81] DEFINITIONS.**

83.20 Subdivision 1. **Application.** The terms defined in this section apply to this chapter.

83.21 Subd. 2. **Appointee.** "Appointee" means the person in whose favor a power of  
 83.22 appointment is exercisable.

83.23 Subd. 3. **Appointive property.** "Appointive property" means property which is the  
 83.24 subject of a power of appointment.

83.25 Subd. 4. **Donee.** "Donee" means the person to whom a power is given or in whose  
 83.26 favor a power is reserved.

83.27 Subd. 5. **Donor.** "Donor" means the person who creates or reserves a power.

83.28 Subd. 6. **Power.** "Power" means an authority to do any act in relation to property,  
 83.29 including the creation or revocation of an estate therein or a charge thereon, that the donor  
 83.30 of the power might do, except that the term, as used in this chapter, does not apply to a  
 83.31 power of attorney to convey property in the name of the owner.

83.32 Sec. 3. **[502.82] VARIETIES OF POWER.**

84.1 Subdivision 1. Powers of appointment and other powers. This chapter applies to  
84.2 powers of appointment. A power of appointment, as the term is used in this chapter, is an  
84.3 authority created or reserved by a donor having property subject to the donor's disposition,  
84.4 enabling the donee to designate, within the limits that may be prescribed by the donor, the  
84.5 appointees of the property, the shares, or the manner in which the property shall be received.

84.6 Subd. 2. Classification of powers of appointment as to kind; general and  
84.7 special; exclusive and nonexclusive. (a) A power of appointment is:

84.8 (1) general or special; and

84.9 (2) exclusive or nonexclusive.

84.10 (b) A power of appointment is general to the extent that it is exercisable wholly  
84.11 in favor of the donee, the donee's estate, the donee's creditors, or the creditors of the  
84.12 donee's estate.

84.13 (c) All other powers of appointment are special.

84.14 (d) A special power of appointment is exclusive if it may be exercised in favor of  
84.15 one or more of the appointees to the exclusion of the others.

84.16 (e) A special power of appointment is nonexclusive if it must be exercised in favor  
84.17 of all the appointees.

84.18 Subd. 3. Classification of powers of appointment as to time of exercise;  
84.19 presently exercisable, testamentary, and postponed. (a) A power of appointment, as to  
84.20 the time of its exercise, may be presently exercisable, testamentary, or postponed.

84.21 (b) A power of appointment is presently exercisable if it may be exercised by the  
84.22 donee, during the donee's lifetime or by the donee's written will, at any time after its  
84.23 creation, and does not include a postponed power as described in paragraph (d).

84.24 (c) A power of appointment is testamentary if it is exercisable only by a written  
84.25 will of the donee.

84.26 (d) A power of appointment is postponed if it is exercisable by the donee only after  
84.27 the expiration of a stated time or after the occurrence or nonoccurrence of a specified event.

84.28 Subd. 4. Classification of powers of appointment as to duty to exercise;  
84.29 imperative and discretionary. (a) A power of appointment is either imperative or  
84.30 discretionary.

84.31 (b) A power of appointment is imperative if the instrument creating the power  
84.32 imposes on the donee a duty to exercise it, and the power may be imperative even though  
84.33 it is exclusive.

84.34 (c) A power of appointment is discretionary if the donee is authorized to exercise  
84.35 or not to exercise it.

85.1 Sec. 4. **[502.83] RULES FOR CREATION OF A POWER OF APPOINTMENT.**

85.2 The donor of a power of appointment:

85.3 (1) must be a person capable of transferring the appointive property;

85.4 (2) must have created or reserved the power by a written instrument executed by  
 85.5 the donor in the manner required by law;

85.6 (3) must manifest the donor's intention to confer the power on a person capable of  
 85.7 holding the appointive property; and

85.8 (4) must not nullify or alter the rights of creditors of the donee, as defined in this  
 85.9 chapter, by any language in the instrument creating or reserving the power purporting to  
 85.10 give the interest of the donee a spendthrift character.

85.11 Sec. 5. **[502.84] EXTENT OF DONEE'S AUTHORITY TO APPOINT OR**  
 85.12 **CONTRACT TO APPOINT AN ESTATE IN APPOINTIVE PROPERTY.**

85.13 Subdivision 1. **Scope of the authority of the donee.** The scope of the donee's  
 85.14 authority as to appointees and as to the time and manner of the appointment is unlimited  
 85.15 except as the donor manifests a contrary intention.

85.16 Subd. 2. **Contract to appoint; power presently exercisable.** The donee of a power  
 85.17 of appointment which is presently exercisable, or of a postponed power which has become  
 85.18 exercisable, can contract to make an appointment to the extent that the contract or the  
 85.19 promised appointment does not confer a benefit upon a person who is not a permissible  
 85.20 appointee under the power.

85.21 Subd. 3. **Contract to appoint; power not presently exercisable.** (a) The donee  
 85.22 of a power of appointment which is not presently exercisable, or of a postponed power  
 85.23 which has not become exercisable, must not contract to make an appointment, except that  
 85.24 this prohibition shall not apply if the donor and donee are the same person. A prohibited  
 85.25 contract under this subdivision, if made, must not be the basis of an action for specific  
 85.26 performance or damages, but the promisee may obtain restitution of the value given by the  
 85.27 promisee for the promise unless the donee has exercised the power pursuant to the contract.

85.28 (b) The provisions of this section do not abridge the ability of the donee of a power  
 85.29 of appointment, which is not presently exercisable, to release the power pursuant to  
 85.30 section 502.87, subdivision 2, except that where the donor designated persons or a class to  
 85.31 take in default of the donee's exercise of the power, a release with respect to appointive  
 85.32 property must serve to benefit all those so designated as provided by the donor.

85.33 Subd. 4. **Priority.** With respect to real property subject to a power of appointment,  
 85.34 the interest of a donee and any appointee has priority as against creditors, purchasers, or  
 85.35 encumbrancers of the real property, or as against a person having an estate in the real

86.1 property, only from the time at which the instrument creating the power is duly recorded,  
86.2 but only if the creditors, purchasers, encumbrancers, and estate holders act in good faith  
86.3 or without notice. As against all other persons, this interest has priority from the time at  
86.4 which the instrument creating the power takes effect.

86.5 **Sec. 6. [502.85] EXERCISE OF A POWER OF APPOINTMENT.**

86.6 **Subdivision 1. Manifestation of intention of donee.** (a) Subject to paragraph (b),  
86.7 an effective exercise of a power of appointment does not require an express reference to  
86.8 the power. A power is effectively exercised if the donee manifests the donee's intention to  
86.9 exercise the power. A manifestation of the donee's intent exists when the donee:

86.10 (1) declares in substance that the donee is exercising all of the donee's powers;

86.11 (2) sufficiently identifying the appointive property or any part thereof, executes an  
86.12 instrument purporting to dispose of the property or part thereof; or

86.13 (3) makes a disposition which, when read with reference to the property the donee  
86.14 owned and the circumstances existing at the time of its making, manifests the donee's  
86.15 understanding that the donee was disposing of the appointive property.

86.16 (b) If the donor has expressly directed that no instrument is effective to exercise the  
86.17 power unless the instrument contains a specific reference to the power, an instrument not  
86.18 containing this reference does not validly exercise the power.

86.19 **Subd. 2. Conformity to directions of donor.** The directions of the donor as to the  
86.20 manner, time, and conditions of the exercise of a power must be observed, except that:

86.21 (1) where the donor has authorized a power of appointment to be exercised by  
86.22 an instrument legally insufficient to dispose of the appointive property, the manner of  
86.23 exercise is to be determined by the provisions of this chapter;

86.24 (2) where the donor has directed any formality to be observed in the exercise of a  
86.25 power of appointment in addition to those which would be legally sufficient to dispose of the  
86.26 appointive property, no additional formality is necessary to a valid exercise of the power;

86.27 (3) where the donor has made a power of appointment exercisable only by deed, it is  
86.28 also exercisable by a written will unless exercise by will is expressly excluded; and

86.29 (4) where the donor of a general power of appointment has not expressly imposed a  
86.30 requirement of good faith or of reasonableness with respect to the donee's exercise of the  
86.31 power, neither requirement shall be implied.

86.32 **Subd. 3. Type of instrument.** A donee may exercise a power of appointment only  
86.33 by an instrument executed with sufficient formalities to pass title to the property covered  
86.34 by the power. When a power of appointment is exercisable only by will, a donee may

87.1 not exercise it by deed. When a power of appointment is exercisable by deed, a donee  
87.2 may exercise it by will.

87.3 Subd. 4. **Required consents.** (a) When the consent of the donor or of a third person  
87.4 to the exercise of a power of appointment is required, the consent must be expressed in  
87.5 a written instrument, subscribed by the person whose consent is required. To entitle  
87.6 the instrument of exercise to be recorded, the signatures of the donee and of the person  
87.7 consenting must be acknowledged or proved in the manner required by the laws of this  
87.8 state for the recording of a deed of real property.

87.9 (b) Unless the donor expressly provides otherwise:

87.10 (1) When the consents of two or more persons are required for the exercise of a  
87.11 power of appointment, all must consent.

87.12 (2) If before the exercise of the power:

87.13 (i) one or more of the persons required to consent die, the consent of the survivor  
87.14 is sufficient; or

87.15 (ii) one or more of the persons required to consent become incompetent, the consent  
87.16 of the competent person is sufficient.

87.17 Subd. 5. **Exercise of exclusive and nonexclusive power of appointment.** Unless  
87.18 the donor expressly provides otherwise:

87.19 (1) the donee of an exclusive power may appoint all or any part of the appointive  
87.20 property to one or more of the appointees to the exclusion of the others; or

87.21 (2) the donee of a nonexclusive power must appoint in favor of all of the appointees  
87.22 equally, unless the instrument creating the power manifests an intent that some other  
87.23 division be made.

87.24 Subd. 6. **Exercise by all donees; exceptions.** Except as provided in section  
87.25 502.851, whenever a power of appointment is created in two or more donees, all must  
87.26 unite in the exercise of the power of appointment, unless the instrument creating the power  
87.27 provides otherwise. If, before its execution, one or more of the donees dies or becomes  
87.28 incompetent, the power may be exercised by the survivor or the competent donee, unless  
87.29 this exercise is explicitly barred by the terms of the instrument creating the power.

87.30 Subd. 7. **Imperative power of appointment; effectuation.** (a) The exercise of an  
87.31 imperative power of appointment devolves upon a court having jurisdiction over the  
87.32 instrument creating the power of appointment in the following cases:

87.33 (1) failure to designate the donee;

87.34 (2) death of the designated donee without exercising the power;

87.35 (3) incompetence of the sole donee; or

87.36 (4) defective exercise of the power, either wholly or in part, by the donee.

88.1 (b) Where an imperative power of appointment:  
 88.2 (1) is exclusive, and the donee dies without exercising the power, the power must  
 88.3 be exercised for the benefit of all the appointees equally;

88.4 (2) has been exercised defectively by the donee, it may be properly exercised in  
 88.5 favor of persons intended to be benefited by the donee;

88.6 (3) has been exercised defectively by the donee, a purchaser for a valuable  
 88.7 consideration claiming under the defective exercise is entitled to the same relief as a  
 88.8 similar purchaser claiming under a defective disposition from an actual owner;

88.9 (4) is nonexclusive, and the right of the appointee is assignable, creditors or  
 88.10 assignees of the appointee can compel the exercise of the power for their benefit; or

88.11 (5) is nonexclusive, an appointee's guardian or estate conservator, as the case may  
 88.12 be, can compel the exercise of the power.

88.13 Subd. 8. **Exercise of a power of appointment in further trust.** If the donee of a  
 88.14 power of appointment exercises the power in favor of the trustee of a trust under a will or  
 88.15 deed other than that under which the power was created, and, if the exercise is otherwise  
 88.16 valid, the appointive property shall be distributed to the trustee of, and administered under  
 88.17 the terms of, the trust under the will or deed, and jurisdiction over the appointive property  
 88.18 must thereafter be in the court having jurisdiction over the trust created by the will or deed.

88.19 Sec. 7. **[502.851] TRUST DECANTING.**

88.20 Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

88.21 (a) "Appointed trust" means an irrevocable trust which receives principal from an  
 88.22 invaded trust under subdivision 3 or 4, including another trust created by the settlor of the  
 88.23 invaded trust, under the terms of the invaded trust or any other trust instrument, or by the  
 88.24 trustees, in that capacity, of the invaded trust. For purposes of creating another trust, any  
 88.25 requirement that a trust instrument be signed by the settlor shall be deemed satisfied by the  
 88.26 signature of the trustee of the appointed trust.

88.27 (b) "Authorized trustee" means, as to an invaded trust, any trustee or trustees with  
 88.28 authority to pay trust principal to or for one or more current beneficiaries other than a  
 88.29 trustee who is the settlor, or a beneficiary to whom income or principal must be paid  
 88.30 currently or in the future, or who is or will become eligible to receive a distribution of  
 88.31 income or principal in the discretion of the trustee, other than by the exercise of a power  
 88.32 of appointment held in a nonfiduciary capacity.

88.33 (c) "Current beneficiary" or "beneficiaries" means the person or persons, or as to a  
 88.34 class, any person or persons who are or will become members of that class, to whom the  
 88.35 trustees may distribute principal at the time of the exercise of the power, provided that



89.1 the interest of a beneficiary to whom income, but not principal, may be distributed at the  
89.2 discretion of the trustee of the invaded trust, may be continued in the appointed trust.

89.3 (d) "Invade" means the power to pay directly to the beneficiary of a trust or make  
89.4 application for the benefit of the beneficiary.

89.5 (e) "Invaded trust" means any existing irrevocable inter vivos or testamentary trust  
89.6 whose principal is appointed under subdivision 3 or 4.

89.7 (f) "Person or persons interested in the invaded trust" means all qualified  
89.8 beneficiaries as defined in section 501C.0103, paragraph (m).

89.9 (g) "Principal" includes the income of the trust at the time of the exercise of the power  
89.10 that is not currently required to be distributed, including accrued and accumulated income.

89.11 (h) "Unlimited discretion" means the unlimited power to distribute principal. A  
89.12 power to distribute principal that includes words such as best interests, welfare, comfort,  
89.13 or happiness shall not be considered a limitation of the power to distribute principal.

89.14 Subd. 2. **Power of appointment; effect when more or less extensive than**  
89.15 **authorized.** An exercise of a power of appointment is not void if the exercise is:

89.16 (1) more extensive than was authorized but is valid to the extent authorized by the  
89.17 instrument creating its power; or

89.18 (2) less extensive than authorized by the instrument creating the power, unless the  
89.19 donor has manifested a contrary intention.

89.20 Subd. 3. **Authorized trustee with unlimited discretion.** (a) An authorized trustee  
89.21 with unlimited discretion to invade trust principal may appoint part or all of the principal  
89.22 to a trustee of an appointed trust for, and only for the benefit of, one, more than one, or  
89.23 all of the current beneficiaries of the invaded trust, to the exclusion of any one or more  
89.24 of the current beneficiaries. The successor and remainder beneficiaries of the appointed  
89.25 trust may be none, one, more than one, or all of the successor and remainder beneficiaries  
89.26 of the invaded trust.

89.27 (b) An authorized trustee exercising the power under paragraph (a) may grant a  
89.28 discretionary power of appointment in the appointed trust to one or more of the current  
89.29 beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint  
89.30 may receive principal outright under the terms of the invaded trust.

89.31 (c) If the authorized trustee grants a power of appointment, the class of permissible  
89.32 appointees in favor of whom the beneficiary may exercise the power of appointment  
89.33 granted in the appointed trust may be broader or otherwise different from the current,  
89.34 successor, and remainder beneficiaries of the invaded trust.

90.1 (d) If the beneficiary or beneficiaries of the invaded trust are described by a class,  
90.2 the beneficiary or beneficiaries of the appointed trust may include present or future  
90.3 members of the class.

90.4 Subd. 4. **Authorized trustee without unlimited discretion.** (a) An authorized  
90.5 trustee with the power to invade trust principal but without unlimited discretion may  
90.6 appoint part or all of the principal of the trust to a trustee of an appointed trust, provided  
90.7 that the current beneficiaries of the appointed trust shall be the same as the current  
90.8 beneficiaries of the invaded trust and the successor and remainder beneficiaries shall be  
90.9 the same as the successor and remainder beneficiaries of the invaded trust.

90.10 (b) If the authorized trustee exercises the power under this subdivision, the appointed  
90.11 trust shall include the same language authorizing the trustee to distribute the income or  
90.12 invade the principal of the appointed trust as in the invaded trust.

90.13 (c) If the authorized trustee exercises the power under this subdivision to extend the  
90.14 term of the appointed trust beyond the term of the invaded trust, for any period after the  
90.15 invaded trust would have otherwise terminated under the provisions of the invaded trust,  
90.16 the appointed trust, in addition to the language required to be included in the appointed trust  
90.17 pursuant to paragraph (b), may also include language providing the trustee with unlimited  
90.18 discretion to invade the principal of the appointed trust during this extended term.

90.19 (d) If the beneficiary or beneficiaries of the invaded trust are described by a class,  
90.20 the beneficiary or beneficiaries of the appointed trust shall include present or future  
90.21 members of the class.

90.22 (e) If the authorized trustee exercises the power under this subdivision and if the  
90.23 invaded trust grants a power of appointment to a beneficiary of the trust, the appointed  
90.24 trust shall grant the power of appointment in the appointed trust and the class of  
90.25 permissible appointees shall be the same as in the invaded trust.

90.26 Subd. 5. **Special power of appointment.** An exercise of the power to invade trust  
90.27 principal under subdivision 3 or 4 shall be considered the exercise of a special power of  
90.28 appointment.

90.29 Subd. 6. **Term of appointed trust.** The appointed trust to which an authorized  
90.30 trustee appoints the assets of the invaded trust may have a term that is longer than the  
90.31 term set forth in the invaded trust, including, but not limited to, a term measured by the  
90.32 lifetime of a current beneficiary.

90.33 Subd. 7. **Unlimited discretion governs.** If an authorized trustee has unlimited  
90.34 discretion to invade the principal of a trust, and the same trustee or another trustee has  
90.35 the power to invade principal under the trust instrument and that power is not subject to

91.1 unlimited discretion, the authorized trustee having unlimited discretion may exercise the  
91.2 power of appointment under subdivision 3.

91.3 Subd. 8. **Current need to invade principal.** An authorized trustee may exercise the  
91.4 power to appoint in favor of an appointed trust under subdivision 3 or 4 whether or not  
91.5 there is a current need to invade principal under the terms of the invaded trust.

91.6 Subd. 9. **Fiduciary duty.** An authorized trustee exercising the power under this  
91.7 section has a fiduciary duty to exercise the power in the best interests of one or more  
91.8 proper objects of the exercise of the power and as a prudent person would exercise the  
91.9 power under the prevailing circumstances.

91.10 Subd. 10. **Subsequently discovered assets.** Unless the authorized trustee provides  
91.11 otherwise:

91.12 (1) the appointment of all the assets comprising the principal of the invaded trust  
91.13 to an appointed trust shall include subsequently discovered assets of the invaded trust  
91.14 and undistributed principal of the invaded trust acquired after the appointment to the  
91.15 appointed trust; and

91.16 (2) the appointment of part but not all of the assets comprising the principal of  
91.17 the invaded trust to an appointed trust shall not include subsequently discovered assets  
91.18 belonging to the invaded trust and principal paid to or acquired by the invaded trust after the  
91.19 appointment to the appointed trust. These assets shall remain the assets of the invaded trust.

91.20 Subd. 11. **Requirements for exercise of power to appoint; notice.** (a) The exercise  
91.21 of the power to appoint to an appointed trust under subdivision 3 or 4 must be evidenced  
91.22 by an instrument in writing, signed, dated, and acknowledged by the authorized trustee.  
91.23 The exercise of the power shall be effective 60 days after the date of delivery of notice as  
91.24 specified in paragraph (c), unless each person entitled to notice agrees in writing to an  
91.25 earlier effective date or waives in writing the right to object to the exercise of the power.

91.26 (b) An authorized trustee may exercise the power authorized by subdivision 3 or  
91.27 4 without the consent of the settlor or the persons interested in the invaded trust and  
91.28 without court approval, provided that the authorized trustee may seek court approval for  
91.29 the exercise with notice to all persons interested in the invaded trust.

91.30 (c) A copy of the instrument exercising the power, a copy of the appointed trust, and  
91.31 a copy of the invaded trust shall be delivered to:

91.32 (1) any person having the right, pursuant to the terms of the invaded trust, to remove  
91.33 or replace the authorized trustee exercising the power under subdivision 3 or 4; and

91.34 (2) all persons interested in the invaded trust.

91.35 (d) Notice of an exercise of the power must be given in the same manner as provided  
91.36 in section 501C.0109.

92.1 (e) The instrument exercising the power shall state whether the appointment is of  
92.2 all the assets comprising the principal of the invaded trust or only a part of the assets  
92.3 comprising the principal of the invaded trust and, if a part, the approximate percentage of  
92.4 the value of the principal of the invaded trust that is subject to the appointment.

92.5 (f) A person entitled to notice may object to the authorized trustee's exercise of the  
92.6 power under this section by serving a written notice of objection upon the authorized  
92.7 trustee prior to the effective date of the exercise of the power. The failure to object shall  
92.8 not constitute a consent.

92.9 (g) If the authorized trustee does not receive a written objection to the proposed  
92.10 exercise from a person entitled to notice within the applicable period, the authorized trustee  
92.11 is not liable to any person who received the required notice for the exercise of the power.

92.12 (h) If the authorized trustee receives a written objection within the applicable period,  
92.13 either the authorized trustee or any person entitled to notice may petition the court to have  
92.14 the proposed exercise of a power performed as proposed, performed with modifications,  
92.15 or denied. In a proceeding, a person objecting to the proposed exercise has the burden of  
92.16 proof as to whether the authorized trustee's proposed exercise should not be performed. A  
92.17 person who has not objected is not estopped from opposing the proposed exercise in the  
92.18 proceeding. If the authorized trustee decides not to implement the proposed exercise, the  
92.19 trustee shall notify all persons entitled to notice of the decision not to exercise the power  
92.20 and the reasons for the decision, and the authorized trustee's decision not to implement  
92.21 the proposed exercise does not itself give rise to liability to any person interested in the  
92.22 invaded trust. A person entitled to notice may petition the court to have the exercise of a  
92.23 power performed and has the burden of proof as to whether it should be performed.

92.24 (i) A copy of the instrument exercising the power and a copy of each of the invaded  
92.25 trust and the appointed trust shall be filed with records of the appointed trust and the  
92.26 invaded trust.

92.27 Subd. 12. **Rights of trustee.** This section shall not be construed to abridge the  
92.28 right of any trustee to appoint property in further trust that arises under the terms of the  
92.29 governing instrument of a trust or under any other provision of law or under common law,  
92.30 or as directed by any court having jurisdiction over the trust.

92.31 Subd. 13. **No duty to exercise a power to invade.** Nothing in this section is  
92.32 intended to create or imply a duty to exercise a power to invade principal, and no inference  
92.33 of impropriety shall be made as a result of an authorized trustee not exercising the power  
92.34 conferred under subdivision 3 or 4.

92.35 Subd. 14. **Power clarified.** A power authorized by subdivision 3 or 4 may be  
92.36 exercised, subject to the provisions of subdivision 9, unless expressly prohibited by

93.1 the terms of the governing instrument, but a general prohibition of the amendment or  
93.2 revocation of the invaded trust or a provision that constitutes a spendthrift clause shall not  
93.3 preclude the exercise of a power under subdivision 3 or 4.

93.4 Subd. 15. **Prohibitions.** An authorized trustee may not exercise a power authorized  
93.5 by subdivision 3 or 4 to effect any of the following:

93.6 (1) to reduce, limit, or modify any beneficiary's current right to a mandatory  
93.7 distribution of income or principal, a mandatory annuity or unitrust interest, a current  
93.8 right to withdraw a percentage of the value of the trust, or a current right to withdraw a  
93.9 specified dollar amount; provided, however, and subject to the other limitations in this  
93.10 section, an authorized trustee may exercise a power authorized by subdivision 3 or 4  
93.11 to appoint to an appointed trust that is a supplemental needs trust that conforms to the  
93.12 provisions of section 501C.1205;

93.13 (2) notwithstanding section 501C.1008, paragraph (b), to decrease or indemnify  
93.14 against a trustee's liability or exonerate a trustee from liability for failure to exercise  
93.15 reasonable care, diligence, and prudence;

93.16 (3) to alter or eliminate a provision granting another person the right to remove or  
93.17 replace the authorized trustee exercising the power under subdivision 3 or 4, unless notice  
93.18 has been provided to the persons under subdivision 11, paragraph (c), or approval is  
93.19 granted by a court having jurisdiction over the trust;

93.20 (4) to make a binding and conclusive fixation of the value of any asset for purposes  
93.21 of distribution, allocation, or otherwise;

93.22 (5) to extend the term of the appointed trust beyond any permissible period of  
93.23 the rule against perpetuities of the invaded trust, and any exercise of the power which  
93.24 extends the term of the appointed trust beyond the permissible period of the rule against  
93.25 perpetuities of the invaded trust shall void the entire exercise of the power; or

93.26 (6) to jeopardize:

93.27 (i) the deduction or exclusion originally claimed with respect to any contribution  
93.28 to the invaded trust that qualified for the annual exclusion under section 2503(b) of the  
93.29 Internal Revenue Code; the marital deduction under section 2056(a) or 2523(a) of the  
93.30 Internal Revenue Code; or the charitable deduction under section 170(a), 642(c), 2055(a),  
93.31 or 2522(a) of the Internal Revenue Code;

93.32 (ii) the qualification of a transfer as a direct skip under section 2642(c) of the  
93.33 Internal Revenue Code; or

93.34 (iii) any other specific tax benefit for which a contribution originally qualified for  
93.35 income, gift, estate, or generation-skipping transfer purposes under the Internal Revenue  
93.36 Code.

94.1 Subd. 16. **Compensation; commissions.** For the purposes of this section:

94.2 (1) Unless a court otherwise directs, an authorized trustee may not exercise a power  
94.3 authorized by subdivision 3 or 4 to change the provisions regarding the determination of  
94.4 the compensation of any trustee. The commissions or other compensation payable to the  
94.5 trustees of the invaded trust may continue to be paid to the trustees of the appointed trust  
94.6 during the term of the appointed trust and shall be determined in the same manner as  
94.7 in the invaded trust.

94.8 (2) No trustee shall receive any paying commission or other compensation for  
94.9 appointing of property from the invaded trust to an appointed trust pursuant to subdivision  
94.10 3 or 4.

94.11 Subd. 17. **Application.** Unless the invaded trust expressly provides otherwise, this  
94.12 section applies to any trust governed by the laws of this state, including a trust whose  
94.13 governing law has been changed to the laws of this state.

94.14 Sec. 8. **[502.86] RIGHTS OF CREDITORS IN APPOINTIVE PROPERTY.**

94.15 Subdivision 1. **Special power.** Property that is covered by either a special power of  
94.16 appointment or a general power of appointment that is exercisable solely for the support,  
94.17 maintenance, health, and education of the donee within the meaning of sections 2041 and  
94.18 2514 of the Internal Revenue Code is not subject to the payment of the claims of creditors  
94.19 of the donee, the donee's estate, or the expenses of administering the donee's estate.

94.20 Subd. 2. **General power currently exercisable.** Property that is covered by  
94.21 a general power of appointment, other than one exercisable solely for the support,  
94.22 maintenance, health, and education of the donee within the meaning of sections 2041  
94.23 and 2514 of the Internal Revenue Code, that is presently exercisable, or of a postponed  
94.24 power that has become exercisable, is subject to the payment of the claims of creditors of  
94.25 the donee, the donee's estate, and the expenses of administering the donee's estate, but  
94.26 only to the extent that other property available for the payment of the creditor's claim is  
94.27 insufficient for this payment. It is immaterial whether the donor of the power is the donee  
94.28 or some other person, or whether the donee has or has not purported to exercise the power.

94.29 Subd. 3. **Power subject to a condition.** A general power of appointment may be  
94.30 created subject to a condition precedent or subsequent, and, until the condition is fulfilled,  
94.31 it is not subject to the provisions of subdivision 2.

94.32 Subd. 4. **General power not presently exercisable.** Property that is covered by a  
94.33 general power of appointment which, when created, is not presently exercisable, is subject  
94.34 to the payment of the claims of creditors of the donee, the donee's estate, and the expenses  
94.35 of administering the donee's estate only if:

- 95.1 (1) the power was created by the donee in favor of the donee; or  
 95.2 (2) a postponed power becomes exercisable in accordance with the terms of the  
 95.3 creating instrument, except in the case of a testamentary general power.

95.4 Sec. 9. **[502.87] REVOCATION AND RELEASE OF A POWER OF**  
 95.5 **APPOINTMENT.**

95.6 Subdivision 1. **Revocability of a power of appointment.** (a) A power of  
 95.7 appointment is irrevocable unless the donor reserves the right to revoke it.

95.8 (b) An exercise of power of appointment is irrevocable whenever:

95.9 (1) the donor of a special power manifests an intent that the exercise of the special  
 95.10 power be irrevocable; or

95.11 (2) the donee does not manifest in the instrument exercising the power an intent  
 95.12 to reserve a power of revocation.

95.13 (c) If the donee in exercising a power reserves a power to revoke the appointment,  
 95.14 but does not expressly reserve a power to reappoint, upon the exercise of the power of  
 95.15 revocation, the donee may reappoint.

95.16 (d) An instrument exercising a power of appointment is affected by fraud in the same  
 95.17 manner as a deed or will executed by an owner or by a trustee of property.

95.18 Subd. 2. **Release of a power of appointment.** (a) Any power of appointment,  
 95.19 whether exercisable only by deed, only by will, or by either deed or will, and whether  
 95.20 general or special, exclusive or nonexclusive, is releasable, either with or without  
 95.21 consideration, by written instrument signed by the donee of the power and delivered as  
 95.22 provided in paragraph (c).

95.23 (b) A releasable power of appointment may be released with respect to all or any  
 95.24 part of the appointive property and may also be released in a manner as to reduce or limit  
 95.25 the appointees, or classes of appointees, in whose favor the power is exercisable.

95.26 (c) A release may be delivered to any of the following persons in the order provided:

95.27 (1) any person specified for this purpose in the instrument creating the power;

95.28 (2) if no person is specified as provided in clause (1), any trustee of the property  
 95.29 subject to the power; or

95.30 (3) if no person is specified as provided in clause (1) or serving as trustee as provided  
 95.31 in clause (2), any person, other than the donee, who might be adversely affected by an  
 95.32 exercise of the power.

95.33 (d) In addition to the provisions of paragraph (c), a release may be delivered to the  
 95.34 county clerk of the county in which the donee resides or has a place of business or in  
 95.35 which the instrument creating the power is filed, to be duly filed by the clerk upon the

96.1 payment of the fees due for the filing or, if the power was created by will, to the clerk of  
96.2 the probate court having jurisdiction over the estate of the donor.

96.3 (e) This section applies to releases delivered on or after the effective date of this act.

96.4 **Sec. 10. [502.88] RULE AGAINST PERPETUITIES AND ACCUMULATIONS**  
96.5 **AS AFFECTED BY POWERS OF APPOINTMENT.**

96.6 Subdivision 1. **Scope.** Notwithstanding any provision of this section to the contrary,  
96.7 nothing in this section shall be construed, applied, or interpreted to be inconsistent with  
96.8 chapter 501A.

96.9 Subd. 2. **Time at which permissible period begins.** (a) If an estate is created  
96.10 by an instrument exercising a power of appointment, the permissible period of the rule  
96.11 against perpetuities begins:

96.12 (1) In the case of an instrument exercising either:

96.13 (i) a general power which is presently exercisable; or

96.14 (ii) any other power, whether presently exercisable, testamentary, or postponed, but  
96.15 only if the exercise of the power makes express reference to this item, section 502.88,  
96.16 subdivision 2, paragraph (a), clause (1), item (ii), in the instrument of exercise,  
96.17 the period shall begin on the effective date of the instrument of exercise.

96.18 (2) In all other cases, the period begins at the time of the creation of the power.

96.19 (b) If the creator of a trust reserves an unqualified power to revoke, the permissible  
96.20 period of the rule against perpetuities begins when the power to revoke terminates by  
96.21 reason of the death of the creator, by a release of the power, or otherwise.

96.22 Subd. 3. **Law which determines permissible period.** In all cases covered by  
96.23 subdivision 2, the permissible period of the rule against perpetuities is determined by the  
96.24 law in effect when the power is exercised or the unqualified power to revoke is terminated,  
96.25 and not by the law in effect when the power was created.

96.26 Subd. 4. **Facts to be considered.** When the permissible period of the rule against  
96.27 perpetuities must be computed from the time of the creation of the power of appointment,  
96.28 facts and circumstances existing on the effective date of the instrument exercising the  
96.29 power must be taken into account in determining the validity of interests created by the  
96.30 instrument exercising the power.

96.31 Subd. 5. **Rule against accumulations; law determining validity in exercise of a**  
96.32 **power of appointment.** When a direction for the accumulation of income is contained in  
96.33 an instrument exercising a power, whether the instrument is created before or after the  
96.34 effective date of this act, the validity of the direction is determined by the law in effect



97.1 when the power is exercised or the unqualified power to revoke is terminated, and not by  
 97.2 the law in effect when the power was created.

97.3 Sec. 11. **REPEALER.**

97.4 Minnesota Statutes 2014, sections 502.62; 502.63; 502.64; 502.65; 502.66; 502.67;  
 97.5 502.68; 502.69; 502.70; 502.71; 502.72; 502.73; 502.74; 502.75; 502.76; 502.77; 502.78;  
 97.6 and 502.79, are repealed.

## 97.7 ARTICLE 15

### 97.8 CONFORMING CHANGES

97.9 Section 1. Minnesota Statutes 2014, section 48.01, subdivision 2, is amended to read:

97.10 Subd. 2. **Banking institution.** The term "banking institution" means any bank,  
 97.11 trust company, bank and trust company, or savings bank which is now or may hereafter  
 97.12 be organized under the laws of this state. For purposes of sections 48A.07, 48A.08, and  
 97.13 ~~501B.151~~ 501C.0901, subdivision ~~11~~ 10, and to the extent permitted by federal law,  
 97.14 "banking institution" includes any national banking association or affiliate exercising  
 97.15 trust powers in this state.

97.16 Sec. 2. Minnesota Statutes 2014, section 48A.07, subdivision 6, is amended to read:

97.17 Subd. 6. **Investment authority.** (a) The bank or trust company may, in its  
 97.18 discretion, retain and continue an investment and security or securities coming into its  
 97.19 possession in a fiduciary capacity.

97.20 (b) In the absence of an express prohibition in the trust instrument, the trustee may  
 97.21 acquire and retain securities of an open-end or closed-end management company or unit  
 97.22 investment trust registered under the federal Investment Company Act of 1940. The fact  
 97.23 that the banking institution or an affiliate of the banking institution, is providing services  
 97.24 to the investment company or trust as investment advisor, sponsor, broker, distributor,  
 97.25 custodian, transfer agent, registrar, or otherwise, and receiving compensation for the  
 97.26 services does not preclude the trustee from investing in the securities of that investment  
 97.27 company or trust. The banking institution shall disclose to all current income beneficiaries  
 97.28 of the trust the rate, formula, and method of the compensation. This paragraph does not  
 97.29 alter the degree of care and judgment required of trustees by section ~~501B.151~~ 501C.0901.

97.30 (c) Except as otherwise provided in this subdivision, a bank or trust company shall  
 97.31 invest an amount not less than \$500 received by it as representative or trustee or by  
 97.32 order of the court, not required for the purposes of the trust and not to be accounted for  
 97.33 within one year, as provided in this subdivision, in authorized securities then held by it or

98.1 specially procured by it. Except as may be otherwise provided in the governing will, trust  
98.2 agreement, court order, or other instrument, any amount in any one trust account, may  
98.3 be invested in certificates of deposit or savings accounts in the same bank, or any other  
98.4 bank or banks if the certificates of deposit or savings accounts are fully insured by the  
98.5 Federal Deposit Insurance Corporation and receive the prevailing rate of interest on the  
98.6 certificates or savings accounts.

98.7 (d) Where funds are invested in authorized securities, as defined by law, the provisions  
98.8 of section 48.24 limiting the amount of liability of a person, corporation, or copartnership,  
98.9 with reference to a percentage of the capital and surplus of the bank, does not apply.

98.10 (e) A bank or trust company may invest all money received by it in trust in authorized  
98.11 securities. It is responsible to the owner or cestui que trust for the validity, regularity,  
98.12 quality, value, and genuineness of these investments and securities at the time they are  
98.13 made. It is also responsible to the owner or cestui que trust for the safekeeping of these  
98.14 securities and evidences of them. When special directions are given in an order, judgment,  
98.15 decree, will, or other written instrument as to the particular manner or the particular  
98.16 class or kind of securities or property in which an investment must be made, the bank or  
98.17 trust company must follow these directions and is not responsible for the performance of  
98.18 the trust. In all other cases it may invest funds held in any trust capacity in authorized  
98.19 securities using its best judgment in the selection of them, and is responsible for the  
98.20 validity, regularity, quality, and value of them at the time made, and for their safekeeping.

98.21 (f) As the sole trustee or one of two or more cotrustees, it may invest in fractional parts  
98.22 of, as well as in whole, securities, or may commingle funds for investment. If it invests in  
98.23 fractional parts of securities or commingles funds for investment, all of the fractional parts  
98.24 of the securities, or the whole of the funds so commingled must be owned and held by the  
98.25 bank or trust company in its several trust capacities. The bank or trust company is liable  
98.26 for the administration of these trusts in all respects as though separately invested. Not  
98.27 more than \$100,000, at the cost price of the investments, may be invested for any one trust  
98.28 at any one time in fractional parts or as commingled funds for investment by a bank or trust  
98.29 company having capital and surplus of less than \$500,000, unless the authority to invest in  
98.30 fractional parts or as commingled funds is given in the order, judgment, decree, will, or  
98.31 other written instrument governing the trust. Funds so commingled for investment must be  
98.32 designated collectively as a common trust fund. The trust company or bank shall maintain  
98.33 the common trust fund in conformity with the rules and regulations prevailing from time  
98.34 to time of the federal governmental agency that regulates the collective investment of trust  
98.35 funds by national banks. It may, in its discretion, retain and continue an investment and

99.1 security or securities coming into its possession in any fiduciary capacity. Paragraphs (a)  
99.2 to (f) apply whether a corporate trustee is acting alone or with an individual cotrustee.

99.3 (g) Notwithstanding the provisions of paragraph (f), a bank or trust company may:

99.4 (1) establish and maintain common trust funds for the collective investment of funds  
99.5 held in a fiduciary capacity by it or by another bank or trust company that is owned or  
99.6 controlled by a corporation that owns or controls the bank or trust company; and

99.7 (2) as a fiduciary or cofiduciary, invest funds that it holds for investment in common  
99.8 trust funds established and maintained according to clause (1) if the investment is not  
99.9 prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship.

99.10 This section applies to fiduciary relationships now in existence or hereafter created.

99.11 To the extent not inconsistent with this paragraph, the provisions of paragraph (f)  
99.12 relating to common trust funds apply to the establishment and maintenance of common  
99.13 trust funds under this paragraph.

99.14 (h) A bank or trust company is entitled to reasonable compensation for the faithful  
99.15 performance of its duties and discharge of its trust, including all necessary expenses and  
99.16 interest at the legal rate, or the amount that has been or may be agreed upon by the parties.  
99.17 No compensation or commission paid or agreed to be paid by it for the negotiation of a  
99.18 loan, or the execution of a trust, is considered interest within the meaning of the law, and  
99.19 no excess over the legal rate of interest is considered usury.

99.20 Sec. 3. Minnesota Statutes 2014, section 317A.161, subdivision 24, is amended to read:

99.21 Subd. 24. **May invest trust property.** Except where the trust instrument prescribes  
99.22 otherwise, a corporation may invest trust property or its proceeds in accordance with  
99.23 section ~~501B.151~~ 501C.0901.

99.24 Sec. 4. Minnesota Statutes 2014, section 353.95, subdivision 4, is amended to read:

99.25 Subd. 4. **Management and termination of account.** The city may deposit money  
99.26 in the account and may withdraw money from the account as needed for postemployment  
99.27 benefits owed on behalf of retired employees of the city or its subgroups. Such transactions  
99.28 must be at a time and in a manner required by the executive director of the Public  
99.29 Employees Retirement Association. The city of Duluth must ensure that the investment  
99.30 and management of the assets complies with the prudent investor rule in section ~~501B.151~~  
99.31 501C.0901 and that withdrawals comply with the requirements of this section. The  
99.32 account may be terminated only to the extent the city's postemployment benefit actuarial  
99.33 liability is satisfied or otherwise defeased. The city shall file with the state auditor an  
99.34 investment policy statement under section 356.219, subdivision 3, paragraph (a).

100.1 Sec. 5. Minnesota Statutes 2014, section 500.17, subdivision 2, is amended to read:

100.2 Subd. 2. **Accumulation.** Where the controlling will or other written instrument  
100.3 permits accumulation, either expressly or by necessary implication, income from personal  
100.4 property and rents and profits from real estate may be accumulated for the period during  
100.5 which the power of alienation may be suspended by future interests in real or personal  
100.6 property not held in trust under section ~~501B.09~~ 501C.1202, subdivision 3. Where any  
100.7 will or other instrument authorizes accumulation beyond the period permissible under this  
100.8 section, such authorization shall be void only as to the excess period.

100.9 Reasonable sums set aside for depreciation and depletion shall not be deemed an  
100.10 accumulation within the meaning of this section.

100.11 Sec. 6. Minnesota Statutes 2014, section 501B.31, subdivision 2, is amended to read:

100.12 Subd. 2. **Liberal interpretation; administration.** A charitable trust must be  
100.13 liberally construed by the courts so that the intentions of the donor are carried out when  
100.14 possible, and the trust must not fail solely because the donor has imperfectly outlined  
100.15 the purpose and object of the charity or the method of administration. If the district  
100.16 court of the proper county determines that the purpose and object of the donor's charity  
100.17 are imperfectly expressed, the method of administration is incomplete or imperfect, or  
100.18 circumstances have so changed since the execution of the instrument creating the trust as  
100.19 to render impracticable, inexpedient, or impossible a literal compliance with the terms  
100.20 of the instrument, the court may, upon the petition of the trustee under section ~~501B.16~~  
100.21 501C.0202, make an order directing that the trust must be administered or expended in a  
100.22 manner the court determines will, as nearly as possible, accomplish the general purposes  
100.23 of the instrument and the object and intention of the donor without regard to, and free from  
100.24 any specific restriction, limitation, or direction it contains.

100.25 Sec. 7. Minnesota Statutes 2014, section 501B.31, subdivision 4, is amended to read:

100.26 Subd. 4. **Determination of trust, gift, bequest, devise.** (a) This subdivision  
100.27 applies to a gift or trust made or created by a living person before April 15, 1927, or a  
100.28 gift, bequest, devise, or trust made or created by or under the will of a person who died  
100.29 before April 15, 1927.

100.30 (b) If a gift, trust, or devise has been made for a charitable, benevolent, educational,  
100.31 religious, or other public use or trust, or upon a condition, limitation, or restriction of any  
100.32 kind, the property given, entrusted, or devised may be used only for that use or trust and  
100.33 in accordance with the condition, limitation, or restriction. The grantee, devisee, trustee,  
100.34 or other holder of property may petition the court under section ~~501B.16~~ 501C.0202 for

101.1 determination of the legal rights and relationship of the holder, the public, the grantor, and  
 101.2 the grantor's heirs, representatives, or assigns in and to the property.

101.3 (c) If the court determines that circumstances have so changed since the execution of  
 101.4 the instrument as to render impracticable, inexpedient, or impossible a literal compliance  
 101.5 with the terms or conditions of the instrument, but the terms and purposes of the  
 101.6 instrument may be substantially performed, the court may order that the terms of the  
 101.7 instrument be performed and the property be administered or expended in a manner that  
 101.8 will, in the judgment of the court, as nearly as possible, accomplish the general purposes  
 101.9 of the instrument and the intention of the grantor without regard to, and free from any,  
 101.10 specific restriction, limitation, condition, or direction contained in the instrument.

101.11 Sec. 8. Minnesota Statutes 2014, section 501B.31, subdivision 5, is amended to read:

101.12 Subd. 5. **Attorney general.** In cases arising under this section, the attorney general  
 101.13 must be given notice of any court proceedings pursuant to section ~~501B.18~~ 501C.0203.  
 101.14 The attorney general shall represent the beneficial interests in those cases and shall  
 101.15 enforce affected trusts.

101.16 Sec. 9. Minnesota Statutes 2014, section 501B.41, subdivision 3, is amended to read:

101.17 Subd. 3. **Exemption from notice requirement.** The attorney general need not be  
 101.18 provided with notice under subdivision 2 of a charitable gift, devise, or bequest (1) for  
 101.19 which the donor or testator has named as a charitable beneficiary an organization that  
 101.20 is then in existence; or (2) that is not held and continued by a private express trust or  
 101.21 corporation, whether or not the gift, devise, or bequest creates a fiduciary relationship.

101.22 This subdivision does not affect any other notice to the attorney general required  
 101.23 by this chapter or chapter 501C.

101.24 Sec. 10. Minnesota Statutes 2014, section 501B.46, is amended to read:

101.25 **501B.46 PETITION FOR COURT ORDER TO SELL, MORTGAGE, OR**  
 101.26 **LEASE REAL PROPERTY HELD IN TRUST.**

101.27 (a) Except as provided in paragraph (c), if the assets of an express trust by will or  
 101.28 other written instrument include real property in this state that the trustee is not, under  
 101.29 the terms of the trust, then permitted to sell, mortgage, or lease, and if section ~~501B.23~~  
 101.30 501C.0205 is applicable to the trust, the trustee or a beneficiary of the trust may petition  
 101.31 the court then having jurisdiction of the trust for an order directing the trustee to sell,  
 101.32 mortgage, or lease the real property or a part of the real property.

102.1 (b) Except as provided in paragraph (c), if the assets of an express trust by will or  
 102.2 other written instrument include real property in this state that the trustee is not, under  
 102.3 the terms of the trust, then permitted to sell, mortgage, or lease, and if section ~~501B.23~~  
 102.4 501C.0205 is not applicable to the trust, the trustee or a beneficiary of the trust may petition  
 102.5 an appropriate district court under section ~~501B.16~~ 501C.0202 for an order directing the  
 102.6 trustee to sell, mortgage, or lease the real property or a part of the real property.

102.7 (c) If a trust is of the kind described in section ~~501B.09, subdivision 2a~~ 501C.1202,  
 102.8 subdivision 3, no order described in paragraph (a) or (b) may be entered upon a petition  
 102.9 filed by a person other than the trustee.

102.10 Sec. 11. Minnesota Statutes 2014, section 508.62, is amended to read:

102.11 **508.62 TRUSTEE'S CONVEYANCE.**

102.12 No instrument executed by an owner whose fee title to registered land is held in trust  
 102.13 which transfers or plats the land, shall be registered except upon the written certification  
 102.14 of the examiner of titles that the instrument is executed in accordance with a power  
 102.15 conferred in the instrument of trust, or evidenced in a certificate of trust authorized by  
 102.16 section ~~501B.56~~ 501C.1013, or is authorized by law, or upon the order of the district court  
 102.17 directing its registration. The examiner shall not certify any such instrument unless:

102.18 (1) the trust is supervised by the court; or

102.19 (2) an affidavit of trustee authorized by section ~~501B.57~~ 501C.1014 and the  
 102.20 document creating the trust, a certified copy of it, or a certificate of trust authorized by  
 102.21 section ~~501B.56~~ 501C.1013 is registered as a memorial upon the certificate of title. The  
 102.22 certified copy of the certificate setting forth the adoption of the resolution for voluntary  
 102.23 dissolution of a corporate registered owner together with the certificate of the secretary of  
 102.24 state that said certificate of dissolution has been filed for record in the secretary's office  
 102.25 shall be deemed the document creating the trust.

102.26 Sec. 12. Minnesota Statutes 2014, section 508A.62, is amended to read:

102.27 **508A.62 TRUSTEE'S CONVEYANCE.**

102.28 No instrument executed by an owner, whose fee title to land is registered under  
 102.29 sections 508A.01 to 508A.85 and is held in trust, which transfers or plats the land, shall be  
 102.30 registered except upon the written certification of the examiner of titles that the instrument  
 102.31 is executed in accordance with a power conferred in the instrument of trust, or evidenced  
 102.32 in a certificate of trust authorized by section ~~501B.56~~ 501C.1013, or is authorized by law,  
 102.33 or upon the order of the district court directing the registration of it. The examiner shall  
 102.34 not certify any instrument unless:

- 103.1 (1) the trust is supervised by the court; or
- 103.2 (2) an affidavit of trustee authorized by section ~~501B.57~~ 501C.1014 and the
- 103.3 document creating the trust, a certified copy of it, or a certificate of trust authorized by
- 103.4 section ~~501B.56~~ 501C.1013 is registered as a memorial upon the CPT. The certified copy
- 103.5 of the certificate setting forth the adoption of the resolution for voluntary dissolution of a
- 103.6 corporate registered owner together with the certificate of the secretary of state that the
- 103.7 certificate of dissolution has been filed for record in the secretary's office shall be deemed
- 103.8 the document creating the trust.

103.9 Sec. 13. Minnesota Statutes 2014, section 524.2-804, subdivision 1, is amended to read:

103.10 Subdivision 1. **Revocation upon dissolution.** Except as provided by the express

103.11 terms of a governing instrument, other than a trust instrument under section ~~501B.90~~

103.12 501C.1207, executed prior to the dissolution or annulment of an individual's marriage,

103.13 a court order, a contract relating to the division of the marital property made between

103.14 individuals before or after their marriage, dissolution, or annulment, or a plan document

103.15 governing a qualified or nonqualified retirement plan, the dissolution or annulment of a

103.16 marriage revokes any revocable:

- 103.17 (1) disposition, beneficiary designation, or appointment of property made by an
- 103.18 individual to the individual's former spouse in a governing instrument;
- 103.19 (2) provision in a governing instrument conferring a general or nongeneral power of
- 103.20 appointment on an individual's former spouse; and
- 103.21 (3) nomination in a governing instrument, nominating an individual's former spouse
- 103.22 to serve in any fiduciary or representative capacity, including a personal representative,
- 103.23 executor, trustee, conservator, agent, or guardian.

103.24 Sec. 14. Minnesota Statutes 2014, section 524.5-417, is amended to read:

103.25 **524.5-417 GENERAL POWERS AND DUTIES OF CONSERVATOR.**

- 103.26 (a) A conservator shall be subject to the control and direction of the court at all
- 103.27 times and in all things.
- 103.28 (b) The court shall grant to a conservator only those powers necessary to provide for
- 103.29 the demonstrated needs of the protected person.
- 103.30 (c) The court may appoint a conservator if it determines that all the powers and
- 103.31 duties listed in this section are needed to provide for the needs of the protected person.
- 103.32 The court may also appoint a conservator if it determines that a conservator is necessary to
- 103.33 provide for the needs of the protected person through the exercise of some, but not all,

104.1 of the powers and duties listed in this section. The duties and powers of a conservator  
104.2 include, but are not limited to:

104.3 (1) the duty to pay the reasonable charges for the support, maintenance, and education  
104.4 of the protected person in a manner suitable to the protected person's station in life and the  
104.5 value of the estate. Nothing herein contained shall release parents from obligations imposed  
104.6 by law for the support, maintenance, and education of their children. The conservator  
104.7 has no duty to pay for these requirements out of personal funds. Wherever possible and  
104.8 appropriate, the conservator should meet these requirements through governmental  
104.9 benefits or services to which the protected person is entitled, rather than from the protected  
104.10 person's estate. Failure to satisfy the needs and requirements of this section shall be  
104.11 grounds for removal, but the conservator shall have no personal or monetary liability;

104.12 (2) the duty to pay out of the protected person's estate all lawful debts of the  
104.13 protected person and the reasonable charges incurred for the support, maintenance, and  
104.14 education of the protected person's spouse and dependent children and, upon order of the  
104.15 court, pay such sum as the court may fix as reasonable for the support of any person  
104.16 unable to earn a livelihood who is legally entitled to support from the protected person;

104.17 (3) the duty to possess and manage the estate, collect all debts and claims in favor  
104.18 of the protected person, or, with the approval of the court, compromise them, institute  
104.19 suit on behalf of the protected person and represent the protected person in any court  
104.20 proceedings, and invest all funds not currently needed for the debts and charges named in  
104.21 clauses (1) and (2) and the management of the estate, in accordance with the provisions  
104.22 of sections 48A.07, subdivision 6, ~~501B.151~~ 501C.0901, and 524.5-423, or as otherwise  
104.23 ordered by the court. The standard of a fiduciary shall be applicable to all investments by  
104.24 a conservator. A conservator shall also have the power to purchase certain contracts of  
104.25 insurance as provided in section 50.14, subdivision 14, clause (b);

104.26 (4) where a protected person has inherited an undivided interest in real estate, the  
104.27 court, on a showing that it is for the best interest of the protected person, may authorize an  
104.28 exchange or sale of the protected person's interest or a purchase by the protected person of  
104.29 any interest other heirs may have in the real estate, subject to the procedures and notice  
104.30 requirements of section 524.5-418;

104.31 (5) the power to approve or withhold approval of any contract, except for necessities,  
104.32 which the protected person may make or wish to make; and

104.33 (6) the power to apply on behalf of the protected person for any assistance, services,  
104.34 or benefits available to the protected person through any unit of government.

104.35 (d) The conservator shall have the power to revoke, suspend, or terminate all or any  
104.36 part of a durable power of attorney of which the protected person is the principal with



105.1 the same power the principal would have if the principal were not incapacitated. If a  
105.2 durable power of attorney is in effect, a decision of the conservator takes precedence  
105.3 over that of an attorney-in-fact.

105.4 (e) Transaction set aside. If a protected person has made a financial transaction or  
105.5 gift or entered into a contract during the two-year period before establishment of the  
105.6 conservatorship, the conservator may petition for court review of the transaction, gift, or  
105.7 contract. If the court finds that the protected person was incapacitated or subject to duress,  
105.8 coercion, or undue influence when the transaction, gift, or contract was made, the court  
105.9 may declare the transaction, gift, or contract void except as against a bona fide transferee  
105.10 for value and order reimbursement or other appropriate relief. This paragraph does not  
105.11 affect any other right or remedy that may be available to the protected person with respect  
105.12 to the transaction, gift, or contract.

105.13 (f) After the filing of the petition, a certificate of the district court certified to that  
105.14 fact may be filed for record with the Minnesota secretary of state in the same manner as  
105.15 provided in section 336.9-501. The certificate shall state that a petition is pending and  
105.16 the name and address of the person for whom a conservator is sought. If a conservator is  
105.17 appointed on the petition, and if the conservatorship order removes or restricts the right  
105.18 of the protected person to transfer property or to contract, then all contracts except for  
105.19 necessities, and all transfers of personal property, tangible or intangible, including, but  
105.20 not limited to, cash or securities transfers at banks, brokerage houses, or other financial  
105.21 institutions, or transfers of cash or securities, made by the protected person after the filing  
105.22 and before the termination of the conservatorship shall be voidable.

105.23 Sec. 15. Minnesota Statutes 2014, section 529.06, is amended to read:

105.24 **529.06 GENERAL DUTIES OF CUSTODIAL TRUSTEE.**

105.25 (a) If appropriate, a custodial trustee shall register or record the instrument vesting  
105.26 title to custodial trust property.

105.27 (b) If the beneficiary is not incapacitated, a custodial trustee shall follow the  
105.28 directions of the beneficiary in the management, control, investment, or retention of the  
105.29 custodial trust property. In the absence of effective contrary direction by the beneficiary  
105.30 while not incapacitated, the custodial trustee shall observe the standard of care set forth  
105.31 in section ~~501B.151~~ 501C.0901. However, a custodial trustee, in the custodial trustee's  
105.32 discretion, may retain any custodial trust property received from the transferor.

105.33 (c) Subject to subsection (b), a custodial trustee shall take control of and collect,  
105.34 hold, manage, invest, and reinvest custodial trust property.

106.1 (d) A custodial trustee at all times shall keep custodial trust property of which the  
 106.2 custodial trustee has control, separate from all other property in a manner sufficient to  
 106.3 identify it clearly as custodial trust property of the beneficiary. Custodial trust property,  
 106.4 the title to which is subject to recordation, is so identified if an appropriate instrument so  
 106.5 identifying the property is recorded, and custodial trust property subject to registration is  
 106.6 so identified if it is registered, or held in an account in the name of the custodial trustee,  
 106.7 designated in substance: "as custodial trustee for ..... (name of beneficiary) under the  
 106.8 Minnesota Uniform Custodial Trust Act."

106.9 (e) A custodial trustee shall keep records of all transactions with respect to custodial  
 106.10 trust property, including information necessary for the preparation of tax returns, and  
 106.11 shall make the records and information available at reasonable times to the beneficiary  
 106.12 or legal representative of the beneficiary.

106.13 Sec. 16. Minnesota Statutes 2014, section 529.12, is amended to read:

106.14 **529.12 DECLINATION, RESIGNATION, INCAPACITY, DEATH, OR**  
 106.15 **REMOVAL OF CUSTODIAL TRUSTEE; DESIGNATION OF SUCCESSOR**  
 106.16 **CUSTODIAL TRUSTEE.**

106.17 (a) Before accepting the custodial trust property, a person designated as custodial  
 106.18 trustee may decline to serve by notifying the person who made the designation, the  
 106.19 transferor, or the transferor's legal representative. If an event giving rise to a transfer has  
 106.20 not occurred, the substitute custodial trustee designated under section 529.03 becomes the  
 106.21 custodial trustee, or, if a substitute custodial trustee has not been designated, the person  
 106.22 who made the designation may designate a substitute custodial trustee pursuant to section  
 106.23 529.03. In other cases, the transferor or the transferor's legal representative may designate  
 106.24 a substitute custodial trustee.

106.25 (b) A custodial trustee who has accepted the custodial trust property may resign  
 106.26 by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary  
 106.27 and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii)  
 106.28 transferring or registering, or recording an appropriate instrument relating to, the custodial  
 106.29 trust property, in the name of, and delivering the records to, the successor custodial trustee  
 106.30 identified under subsection (c).

106.31 (c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or  
 106.32 becomes incapacitated, the successor designated under section 529.02, subsection (g), or  
 106.33 529.03 becomes custodial trustee. If there is no effective provision for a successor, the  
 106.34 beneficiary, if not incapacitated, or the holder of the beneficiary's power of attorney,  
 106.35 may designate a successor custodial trustee.

107.1 (d) If a successor custodial trustee is not designated pursuant to subsection (c), the  
 107.2 transferor, the legal representative of the transferor or of the custodial trustee, an adult  
 107.3 member of the beneficiary's family, the conservator of the beneficiary, a person interested  
 107.4 in the custodial trust property, or a person interested in the welfare of the beneficiary,  
 107.5 may petition the court to designate a successor custodial trustee in accordance with the  
 107.6 procedures set forth in sections ~~501B.16~~ 501C.0201 to ~~501B.25~~ 501C.0208.

107.7 (e) A custodial trustee who declines to serve or resigns, or the legal representative of  
 107.8 a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial  
 107.9 trust property and records in the possession and control of the successor custodial trustee.  
 107.10 The successor custodial trustee may enforce the obligation to deliver custodial trust  
 107.11 property and records and becomes responsible for each item as received.

107.12 (f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's  
 107.13 family, a guardian of the beneficiary, a person interested in the custodial trust property,  
 107.14 or a person interested in the welfare of the beneficiary, may petition the court to remove  
 107.15 the custodial trustee for cause and designate a successor custodial trustee, to require  
 107.16 the custodial trustee to furnish a bond or other security for the faithful performance of  
 107.17 fiduciary duties, or for other appropriate relief.

107.18 Sec. 17. Minnesota Statutes 2014, section 529.14, is amended to read:

107.19 **529.14 REPORTING AND ACCOUNTING BY CUSTODIAL TRUSTEE;**  
 107.20 **DETERMINATION OF LIABILITY OF CUSTODIAL TRUSTEE.**

107.21 (a) Upon the acceptance of custodial trust property, the custodial trustee shall  
 107.22 provide a written statement describing the custodial trust property and shall thereafter  
 107.23 provide a written statement of the administration of the custodial trust property (i) once  
 107.24 each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal  
 107.25 representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon  
 107.26 termination of the custodial trust. The statements must be provided to the beneficiary or  
 107.27 to the beneficiary's legal representative, if any. Upon termination of the beneficiary's  
 107.28 interest, the custodial trustee shall furnish a current statement to the person to whom the  
 107.29 custodial trust property is to be delivered.

107.30 (b) A beneficiary, the beneficiary's legal representative, an adult member of the  
 107.31 beneficiary's family, a person interested in the custodial trust property, or a person  
 107.32 interested in the welfare of the beneficiary may petition the court for an accounting by the  
 107.33 custodial trustee or the custodial trustee's legal representative.

107.34 (c) A successor custodial trustee may petition the court for an accounting by a  
 107.35 predecessor custodial trustee.

108.1 (d) In an action or proceeding under sections 529.01 to 529.19 or in any other  
 108.2 proceeding, the court may require or permit the custodial trustee or the custodial trustee's  
 108.3 legal representative to account. The custodial trustee or the custodial trustee's legal  
 108.4 representative may petition the court for approval of final accounts.

108.5 (e) If a custodial trustee is removed, the court shall require an accounting and order  
 108.6 delivery of the custodial trust property and records to the successor custodial trustee and  
 108.7 the execution of all instruments required for transfer of the custodial trust property.

108.8 (f) On petition of the custodial trustee or any person who could petition for an  
 108.9 accounting, the court, after notice to interested persons, may issue instructions to  
 108.10 the custodial trustee or review the propriety of the acts of a custodial trustee or the  
 108.11 reasonableness of compensation determined by the custodial trustee for the services of the  
 108.12 custodial trustee or others.

108.13 (g) All proceedings described in this section shall be conducted in accordance with  
 108.14 the procedures set forth in sections ~~501B.16~~ 501C.0201 to ~~501B.25~~ 501C.0208.

## 108.15 **ARTICLE 16**

### 108.16 **REPEALER**

#### 108.17 Section 1. **REVISOR'S INSTRUCTION.**

108.18 The revisor of statutes shall correct cross-references in Minnesota Statutes to  
 108.19 sections that are repealed by this act or repealed and reenacted by this act, and if Minnesota  
 108.20 Statutes, chapter 501B, is further amended in the 2015 legislative session, shall codify the  
 108.21 amendments in a manner consistent with this act.

#### 108.22 Sec. 2. **REPEALER.**

108.23 Minnesota Statutes 2014, sections 501B.01; 501B.012; 501B.02; 501B.03; 501B.04;  
 108.24 501B.05; 501B.06; 501B.07; 501B.08; 501B.09; 501B.12; 501B.13; 501B.14; 501B.15;  
 108.25 501B.151; 501B.152; 501B.154; 501B.155; 501B.16; 501B.17; 501B.18; 501B.19;  
 108.26 501B.20; 501B.21; 501B.22; 501B.23; 501B.24; 501B.25; 501B.56; 501B.561; 501B.57;  
 108.27 501B.571; 501B.59; 501B.60; 501B.61; 501B.62; 501B.63; 501B.64; 501B.65; 501B.665;  
 108.28 501B.67; 501B.68; 501B.69; 501B.705; 501B.71; 501B.72; 501B.73; 501B.74; 501B.75;  
 108.29 501B.76; 501B.79; 501B.80; 501B.81; 501B.82; 501B.87; 501B.88; 501B.89; 501B.895;  
 108.30 and 501B.90, are repealed.

#### 108.31 Sec. 3. **EFFECTIVE DATE.**

108.32 This act is effective January 1, 2016.

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Article locations in 15-0131

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**501B.01 PURPOSES FOR WHICH EXPRESS TRUSTS MAY BE CREATED.**

An active express trust may be created for any lawful purpose.

**501B.012 MEMORIAL FUND.**

Subdivision 1. **Establishment.** A trust may be created for the purpose of establishing a fund for the benefit of one or more individuals with a single transfer under the Minnesota Uniform Custodial Trust Act in the manner and form provided by section 529.17. A trust authorized under this section must be created and administered and is subject to the Minnesota Uniform Custodial Trust Act.

Subd. 2. **Additional funds.** Notwithstanding subdivision 1, after a fund has been created, additional funds may be transferred to the fund without the formalities required by chapter 529 if the transferor manifests a reasonable expression of intent to make the transfer, together with a reasonable form of delivery of the property including, but not limited to, the following:

- (1) a check payable to the name of the fund and delivered to the trustee or the trustee's custodial agent;
- (2) delivery of cash or tangible personal property to the trustee or to the trustee's custodial agent;
- (3) delivery and recording of title of stock or other registered security in the name of the fund;
- (4) delivery of a deed and acceptance of the deed by the trustee of the fund, or the recording of a deed in the name of the trustee of the fund with the applicable county recorder or registrar of titles for real property; and
- (5) any other means of transfer and delivery so that a reasonable person would conclude that the transferor intended the property be titled in the name of, and used for the benefit of the beneficiaries of, the fund.

**501B.02 PASSIVE TRUSTS ABOLISHED.**

Passive express trusts of real or personal property are abolished. An attempt to create a passive trust vests the entire estate granted in the beneficiary.

**501B.03 TERMINATION OF TRUST PURPOSES.**

If the purposes for which an active express trust is created have been accomplished, or become impossible of accomplishment or illegal, the trust will be terminated.

**501B.04 REVERSION IN GRANTOR.**

Every legal estate and interest not embraced in an express trust and not otherwise disposed of remains in the grantor.

**501B.05 BONA FIDE PURCHASERS PROTECTED.**

An express trust not declared in the disposition to the trustee or a constructive or resulting trust does not defeat the title of a purchaser from the trustee for value and without notice of the trust, or the rights of a creditor who extended credit to the trustee in reliance upon the trustee's apparent ownership of the trust property.

**501B.06 MISAPPLICATION OF PAYMENT TO TRUSTEE.**

A person who actually and in good faith makes a payment to a trustee that the trustee, as such, is authorized to receive, is not responsible for the proper application of the payment according to the trust. No right or title derived by the person from the trustee, in consideration of the payment, may be impeached or called in question because of a misapplication of the payment by the trustee.

**501B.07 PURCHASE MONEY RESULTING TRUSTS.**

If a transfer of property is made to one person and the purchase price is paid by another, a resulting trust is presumed to arise in favor of the person by whom the purchase price is paid, except:

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(1) if the person by whom the purchase price is paid manifests a contrary intention, no resulting trust is presumed to arise;

(2) if the transferee is a spouse, child, or other natural object of bounty of the payor, a gift in favor of the transferee is presumed and no resulting trust is presumed to arise; and

(3) if the transfer is made to accomplish an illegal purpose, no resulting trust is presumed to arise unless it is needed to prevent unjust enrichment of the transferee.

#### **501B.08 APPOINTMENT OF AND ACQUISITION OF TITLE BY SUCCESSOR TRUSTEES AND CONFIRMATION OF ACTS PERFORMED DURING VACANCIES IN TRUSTEESHIP.**

If the terms of a trust provide for the appointment of a successor trustee and direct how the successor is to qualify, title to the trust assets vests in the successor trustee upon qualification, unless the terms of the trust expressly provide otherwise.

If the terms of a trust do not effectively provide for the appointment of a successor trustee and appointment of a successor is required, or if title to the trust assets does not vest in a successor trustee, the district court may appoint a successor trustee or vest title in a successor trustee.

Whenever the district court appoints a successor trustee, it is presumed that a corporate trustee must be replaced by another corporate trustee unless the court finds it would best serve the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust to not appoint a corporate trustee.

The district court may confirm an act performed by a person in execution of the trust while there was no acting trustee.

#### **501B.09 SUSPENSION OF THE POWER OF ALIENATION.**

Subdivision 1. **Suspension; exceptions.** The power of alienation is suspended if there are no persons in being who, alone or in conjunction with others, can convey an absolute fee in possession or absolute ownership of real property or absolute ownership of personal property.

(a) There is no suspension of the power of alienation by the terms of a trust or by interests in property held in trust if there is an unlimited power in one or more persons then in being to terminate the trust, by revocation or otherwise, and to acquire an absolute fee in possession or absolute ownership of the trust property.

(b) There is no suspension of the power of alienation by the terms of a trust or by interests in property held in trust if the trustee has power to sell an absolute fee in possession or absolute ownership of the trust property.

Subd. 2. **Suspension for 21 years.** The power of alienation of property held in trust may be suspended, by the terms of the trust, for a period of not more than 21 years. During any period of suspension of the power of alienation of real property, section 501B.46 applies. Notwithstanding any contrary term of a trust, suspension of the power of alienation by the terms of a trust ceases after a period of 21 years, after which the trustee has the power to convey an absolute fee in possession or absolute ownership of the trust property, and to mortgage, pledge, and lease the same. A provision in the terms of a trust for forfeiture of the interest of a trustee or beneficiary if the trustee or beneficiary participates in or seeks to convey, mortgage, pledge, or lease trust property after the expiration of a 21-year period of suspension is void.

Subd. 2a. **Inapplicable to certain trusts.** Subdivision 2 does not apply to a trust if the beneficial interests in the trust are evidenced by or constitute securities within the meaning of section 2(1) of the Securities Act of 1933, title 15, United States Code, section 77(b)(1).

Subd. 3. **Void future interests.** Every future interest in real or personal property not held in trust is void in its creation if it might suspend the power of alienation for a period longer than a life or lives in being plus 21 years.

#### **501B.12 GRANTOR AND AGENTS OF GRANTOR.**

If a trust instrument reserves to the grantor, in a nonfiduciary capacity, the control over any or all investment decisions, the trustee is not responsible for the investment decisions made by the grantor or an agent of the grantor.

#### **501B.13 NONMERGER OF TRUSTS.**

Subdivision 1. **Same trustee and beneficiary.** No trust is invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

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Subd. 2. **Applicability.** Subdivision 1 applies to all trusts whenever executed or created.

**501B.14 PROHIBITION AGAINST EXERCISE OF POWERS BY TRUSTEE.**

Subdivision 1. **Prohibition.** No trustee may exercise or participate in the exercise of any of the following powers:

(1) any power of the trustee to make discretionary distributions of either principal or income to or for the benefit of the trustee as beneficiary, unless by the terms of the will or other written instrument those discretionary distributions are limited by an ascertainable standard relating to that trustee's health, education, maintenance, or support as described in sections 2041 and 2514 of the Internal Revenue Code of 1986, as amended through December 31, 1992; or

(2) any power to make discretionary distributions of either principal or income to discharge any legal support or other obligations of the trustee to any person.

Subd. 2. **Exercise of affected powers.** Any power described in subdivision 1 that is conferred upon two or more trustees may be exercised by the trustee or trustees who are not disqualified under subdivision 1. If there is no trustee qualified to exercise the power, any trustee or other person interested in the trust may petition the district court pursuant to section 501B.16 to appoint an additional trustee. The district court may limit the powers of an additional trustee appointed under this subdivision to exercise the power to make discretionary distributions when no other trustee may exercise that power.

Subd. 3. **Application.** (a) Except as provided in paragraph (b), this section applies to any exercise of any powers of the trustee after May 14, 1993, under any trust created before, on, or after May 14, 1993, unless the terms of the trust refer specifically to this section and provide that this section does not apply.

(b) This section does not apply to a trustee:

(1) who retains or is granted an unlimited lifetime or testamentary power, exercisable in a capacity other than as trustee, to revoke the trust, or to withdraw all of the income and principal of the trust, or to appoint all of the income and principal of the trust to the trustee individually or the trustee's estate;

(2) of a trust created on or before May 14, 1993, if the entire principal of the trust would be included in the gross estate of the trustee for federal estate tax purposes if the trustee had died on May 14, 1993, without regard to any power described in subdivision 1;

(3) of a trust created on or before May 14, 1993, if no part of the principal of the trust would be included in the gross estate of the trustee for federal estate tax purposes if the trustee had died on May 14, 1993, without exercising the power; or

(4) of a trust created on or before May 14, 1993, if (i) the trust is not exempt from generation-skipping transfer tax under chapter 13 of the Internal Revenue Code of 1986, as amended through December 31, 1992, because of Public Law 99-514, section 1433(b) to (d); (ii) there would be a taxable termination with respect to the assets held in the trust if the trustee and all beneficiaries of the trust who are assigned to the trustee's generation or a higher generation had died on May 14, 1993; and (iii) the trust would have an inclusion ratio, as defined in section 2642(c) of the Internal Revenue Code of 1986, as amended through December 31, 1992, of one with respect to the taxable termination.

(c) This section has no effect on an action taken by a trustee on or before May 14, 1993.

**501B.15 DIVISION AND MERGER OF TRUSTS.**

Subdivision 1. **Division.** A trustee may, without the approval of any court, divide a trust, before or after it is funded, into two or more separate trusts if the trustee determines that dividing the trust is in the best interests of all persons interested in the trust and will not substantially impair the accomplishment of the purposes of the trust.

Subd. 2. **Merger.** A trustee may, without the approval of any court, merge two or more trusts having substantially similar terms and identical beneficiaries into a single trust if the trustee determines that merging the trusts is in the best interests of all persons interested in the trusts and will not substantially impair the accomplishment of the purposes of the trusts.

Subd. 3. **Application.** Subdivisions 1 and 2 apply to all trusts whenever executed or created.

**501B.151 INVESTMENT AND MANAGEMENT OF TRUST ASSETS.**

Subdivision 1. **Prudent investor rule.** (a) Except as otherwise provided in paragraph (b), a trustee who invests and manages trust assets shall comply with the prudent investor rule set forth in this section.



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(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Subd. 2. **Standard of care; portfolio strategy; risk and return objectives.** (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) The circumstances that a trustee may consider in making investment decisions include, without limitation, the following:

- (1) general economic conditions;
- (2) the possible effect of inflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries known to the trustee, including earning capacity;
- (7) needs for liquidity, regularity of income, and preservation or appreciation of capital;

and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries if consistent with the trustee's duty of impartiality.

(d) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(e) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Subd. 3. **Diversification.** A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Subd. 4. **Duties at inception of trusteeship.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this section.

Subd. 5. **Investment costs.** In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Subd. 6. **Reviewing compliance.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. The prudent investor rule is a test of conduct and not of resulting performance.

Subd. 7. **Language invoking standard.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this section: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Subd. 8. **Disposal of property.** Unless the trust instrument or a court order specifically directs otherwise, a trustee need not dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the property. Nothing in this subdivision excuses the trustee from the duty to exercise discretion at reasonable intervals and to determine at those intervals the advisability of retaining or disposing of property.

Subd. 9. **No limitation on powers of court.** This section does not restrict the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of a will, agreement, court order, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of trust property.

Subd. 10. **Trustees defined.** As used in this section, "trustee" means individual trustees and corporations having trust powers acting under wills, agreements, court orders, and other instruments, whether existing on January 1, 1997, or made at a later time.

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Subd. 11. **Investment companies.** (a) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that a trustee which is a banking institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee which is a banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. A trustee which is a banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation.

(b) This subdivision does not alter the degree of care and judgment required of trustees under this section.

Subd. 12. **Application to existing trusts.** This section applies to trusts existing on and created after January 1, 1997. As applied to trusts existing on January 1, 1997, this section governs only decisions or actions occurring after that date.

Subd. 13. **Short title.** This section may be cited as the "Minnesota Prudent Investor Act."

### **501B.152 AGENTS OF TRUSTEE.**

(a) Unless prohibited or otherwise restricted by the terms of the trust instrument, a trustee may delegate to any person, even if the person is associated with the trustee, any trust function that a prudent person of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated trust function, an agent owes a duty to the trust to comply with the terms of the delegation and to act in a manner consistent with the purposes and terms of the trust. This duty shall be enforced by the trustee.

(c) A trustee who complies with the requirements of paragraph (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the trust function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

### **501B.154 NONJUDICIAL SETTLEMENT AGREEMENTS.**

(a) The trustee and all beneficiaries of a trust not under court supervision may enter into a binding nonjudicial settlement agreement with respect to the matters listed in paragraph (c).

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust, subject to paragraph (c), clause (5), and includes terms and conditions that could be properly approved by the court under applicable law.

(c) Matters that may be resolved by nonjudicial settlement agreement are:

- (1) the approval of a trustee's accounting;
- (2) the resignation of a trustee;
- (3) the determination of a trustee's compensation;
- (4) the transfer of the trust's situs; and
- (5) the termination of a noncharitable trust and distribution of the trust property if the fair market value of the trust is less than \$50,000, as determined on the date of the nonjudicial settlement agreement, and it has been determined that relative to the costs of administering the trust, continuance pursuant to its existing terms will defeat or substantially impair the accomplishment of its purposes. The trust property must be distributed in a manner which conforms as nearly as possible to the intention of the grantor. The existence of a spendthrift or similar protective provision in the trust does not conclusively make this clause inapplicable.

### **501B.155 REPRESENTATION; PLEADINGS; WHEN PARTIES ARE BOUND BY OTHERS; NOTICE.**

Subdivision 1. **Applicability.** Subdivisions 2 to 4 apply in judicial proceedings involving trusts and in nonjudicial settlement agreements under section 501B.154.

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Subd. 2. **Description to give reasonable notice.** Interests to be affected must be described in the agreement or pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

Subd. 3. **Binding effect of orders and agreements.** (a) Persons are bound by orders and nonjudicial settlement agreements binding others in the cases in paragraphs (b) to (d).

(b) Orders and agreements binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind all persons to the extent that their interests, as objects, takers in default, or otherwise are subject to the power.

(c) To the extent there is no conflict of interest between them or among persons represented:

(1) orders and agreements binding a conservator of the property bind the protected person;

(2) orders and agreements binding a guardian bind the ward if no conservator of the estate has been appointed; and

(3) orders imposed upon and agreements entered into by an agent having authority to represent and act on behalf of the principal with respect to a particular question or dispute bind the principal.

(d) An unborn or unascertained person, a person whose identity or location is unknown and not reasonably ascertainable, a minor, or any other person under a legal disability who is not otherwise represented is bound by an order or nonjudicial settlement agreement to the extent that the person's interest is represented by another party having a substantially identical interest, but only to the extent there is no conflict of interest between them or among persons represented. A person's identity or location is not reasonably ascertainable if the identity or location is unable to be determined or ascertained after a diligent search is made.

Subd. 4. **Required notice.** In judicial proceedings involving trusts, notice is required as follows:

(1) notice as prescribed by section 501B.18 must be given to every interested person or to one who can bind an interested person as described in subdivision 3, paragraph (c), clause (1), (2), or (3), and may be given both to a person and to another who may bind the person;

(2) notice is given to unborn or unascertained persons, who are not represented under subdivision 3, paragraph (c), clause (1), (2), or (3), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

### **501B.16 PETITION FOR COURT ORDER.**

A trustee of an express trust by will or other written instrument or a person interested in the trust may petition the district court for an order:

(1) to confirm an action taken by a trustee;

(2) upon filing of an account, to settle and allow the account;

(3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;

(4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31;

(5) to approve payment of the trustee's fees, attorneys' fees, accountants' fees, or any other fees to be charged against the trust;

(6) to confirm the appointment of a trustee;

(7) to accept a trustee's resignation and discharge the trustee from the trust;

(8) to require a trustee to account;

(9) to remove a trustee for cause; or if the court finds that removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and one or more of the following elements is found:

(i) the trustee has committed a serious breach of trust;

(ii) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(iii) the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively;

(iv) there has been a substantial change of circumstances; or

(v) removal is requested by all of the beneficiaries not under disability who, on the date the petition is signed, either are current permissible distributees of trust income or principal, or would be permissible distributees of trust income or principal if the trust terminated on that date;

(10) to appoint a successor trustee when required by the terms of the trust instrument or when by reason of death, resignation, removal, or other cause there is no acting trustee;

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- (11) to confirm an act performed in execution of the trust by a person while there was no acting trustee;
- (12) to subject a trust to continuing court supervision under section 501B.23;
- (13) to remove a trust from continuing court supervision under section 501B.23;
- (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee notwithstanding any contrary provision of the trust instrument;
- (15) to suspend the powers and duties of a trustee in military service or war service in accordance with section 525.95 and to order further action authorized in that section;
- (16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in accordance with section 501B.41;
- (17) to determine the validity of a disclaimer delivered or filed under section 524.2-1114;
- (18) to change the situs of a trust;
- (19) to redress a breach of trust;
- (20) to terminate a trust;
- (21) to divide a trust under section 501B.15;
- (22) to merge two or more trusts under section 501B.15; or
- (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties.

#### **501B.17 VENUE.**

Subdivision 1. **Filing of petition.** A petition under section 501B.16 or 501B.22 may be filed:

- (1) in the case of a trust created by will, in the district court for (i) the county where the will was probated, (ii) the county where a trustee having custody of part or all of the trust assets resides or has a trust office, or (iii) the county in which the trust is administered;
- (2) in the case of a nontestamentary trust, in the district court for (i) the county where a trustee having custody of part or all of the trust assets resides or has a trust office or (ii) the county in which the trust is administered; or
- (3) in the case of a trust holding real property, in the district court for any county in which the real estate is situated.

Subd. 2. **Prior court proceedings.** In the case of a trust with respect to which there have been prior court proceedings in this state, a petition under section 501B.16 or 501B.22 must be filed in the court in which the prior proceedings were held.

#### **501B.18 ORDER FOR HEARING.**

Upon the filing of a petition under section 501B.16, the court shall, by order, fix a time and place for a hearing, unless notice and hearing have been waived in writing by the beneficiaries of the trust then in being. Unless waived, notice of the hearing must be given as follows: (1) by publishing, at least 20 days before the date of the hearing, a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed; and (2) by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing to those beneficiaries of the trust who are known to or reasonably ascertainable by the petitioner. In the case of a beneficiary who is a minor or an incapacitated person as defined in section 524.5-102 and for whom a conservator, guardian, or guardian ad litem known to the petitioner has been appointed, notice must be mailed to that fiduciary. Notice may be given in any other manner the court orders.

#### **501B.19 REPRESENTATION OF PERSONS WHO ARE UNBORN, UNASCERTAINED, UNKNOWN, OR MINORS OR INCAPACITATED PERSONS.**

If an interested person is a minor or an incapacitated person as defined in section 524.5-102 and has no guardian or conservator within the state, or if an interested person is unborn, unascertained, or a person whose identity or address is unknown to the petitioner, the court shall represent that person, unless the court, upon the application of the trustee or any other interested person, appoints a guardian ad litem to represent the person.

#### **501B.20 HOLDER OF A GENERAL POWER.**

For purposes of giving notice, waiving notice, initiating a proceeding, granting consent or approval, or objecting with regard to any proceedings under this chapter, the sole holder or all coholders of a presently exercisable or testamentary general power of appointment, power of

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revocation, or unlimited power of withdrawal are deemed to represent and act for beneficiaries to the extent that their interests as objects, takers in default, or otherwise are subject to the power.

#### **501B.21 ORDER AND APPEAL.**

Upon hearing a petition filed under section 501B.16, the court shall make an order it considers appropriate. The order is final as to all matters determined by it and binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, even though unascertained or not in being. An appeal from the order may be taken by any party after service by any party of written notice of its filing under the Rules of Appellate Procedure or, if no notice is served, within six months after the filing of the order.

#### **501B.22 CONFIRMATION OF APPOINTMENT OF TRUSTEE.**

A person appointed as trustee of an express trust by a will or other written instrument or any interested person may file in the district court an ex parte petition to confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Upon consideration of the petition, the court shall make an order it considers appropriate. A trustee whose appointment is confirmed under this section is subject to section 501B.23.

#### **501B.23 INVENTORY; ANNUAL ACCOUNT; CONTINUING COURT SUPERVISION.**

A trustee whose appointment has been confirmed by court order under section 501B.22 or a trustee otherwise subject to continuing court supervision by court order shall file with the court administrator of the district court an inventory containing a list of all property then belonging to the trust. The trustee shall then render to the court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts. This section does not apply to trusts established in connection with bonds issued under chapter 474.

#### **501B.24 JURISDICTION.**

Once a district court has assumed jurisdiction of a trust, the district court has jurisdiction as a proceeding in rem, until jurisdiction is transferred to another court or terminated by court order. This chapter does not limit or abridge the power or jurisdiction of the district court over trusts and trustees.

#### **501B.25 APPLICATION.**

Sections 501B.16 to 501B.23 do not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. Sections 501B.16 to 501B.23 apply, however, unless otherwise provided in the trust instrument, to trusts established in connection with bonds issued under chapter 469, and, at the sole election of the issuer of bonds issued under chapter 469, without a trust indenture, to the pledges and other bond covenants made by the issuer in one or more resolutions with respect to the bonds. If the issuer so elects to apply sections 501B.16 to 501B.23, for such purposes only, the pledges and other bond covenants shall be deemed the "trust," the resolution or resolutions shall be deemed the "trust instrument," and the issuer shall be deemed the "trustee" notwithstanding the absence of any fiduciary responsibility owed by the "issuer" toward the bondholders. Nothing in this section shall preclude the issuer from seeking approval under sections 501B.16 to 501B.23 of the creation of any express trust under a trust indenture and the appointment of a trustee thereunder to act as a fiduciary for the benefit of the bondholders. As used in sections 501B.16 to 501B.23, "person" includes an artificial as well as a natural person, and "beneficiary" includes a bondholder.

#### **501B.56 CERTIFICATE OF TRUST.**

Subdivision 1. **Contents of certificate.** The grantor or a trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of trust must include:

- (1) the name of the trust, if one is given;
- (2) the date of the trust instrument;

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- (3) the name of each grantor;
- (4) the name of each original trustee;
- (5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;
- (6) the following statement: "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) any other trust provisions the grantors or trustees include; and
- (8) a statement as to whether the trust instrument has terminated or been revoked.

The certificate of trust must be upon the representation of the grantors or trustees that the statements contained in the certificate of trust are true and correct and that there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths.

Subd. 2. **Effect.** A certificate of trust executed under subdivision 1 may be recorded in the office of the county recorder for any county or filed with the office of the registrar of titles with respect to registered land described in the certificate of trust or any attachment to it. When it is recorded or filed in a county where real property is situated, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters the certificate of trust sets out, as though the full trust instrument had been recorded, filed, or presented. Until amended or revoked under subdivision 3, or until the full trust instrument is recorded, filed, or presented, a certificate of trust is prima facie proof as to the matters contained in it and any party may rely upon the continued effectiveness of the certificate.

Subd. 3. **Amendment or revocation.** Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the grantor or a trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation.

For purposes of this subdivision, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation containing the legal description of the real property has been recorded in the office of the county recorder or filed in the office of the registrar of titles where the real property is situated.

Subd. 4. **Application.** Subdivisions 1 to 3 are effective August 1, 1992, but apply to trust instruments whenever created or executed.

### **501B.561 CERTIFICATE OF CUSTODIANSHIP.**

Subdivision 1. **Contents of certificate.** (a) A custodian or the owner of property held in a custodianship, at any time after execution or creation of a custodianship instrument, may execute a certificate of custodianship that sets forth less than all of the provisions of the custodial instrument and any amendments to the instrument. The certificate of custodianship may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of custodianship must include:

- (1) the name of the custodianship, if one is given;
- (2) the date of the custodianship instrument;
- (3) the name of each owner of property held in the custodianship;
- (4) the name of each original custodian;
- (5) the name and address of each custodian empowered to act under the custodianship instrument at the time of execution of the certificate;
- (6) the following statement: "The custodians are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) any other custodianship provisions the custodians or owners of property held in the custodianship include; and
- (8) a statement as to whether the custodianship instrument has terminated or been revoked.

(b) The certificate of custodianship must be upon the representation of the custodians or the owners of property held in the custodianship that the statements contained in the certificate of custodianship are true and correct and that there are no other provisions in the custodianship instrument or amendments to it that limit the powers of the custodianship to sell, convey, pledge,







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(b) are the requisite number of trustees required by the provisions of the will to execute and deliver such an instrument.

4. The Trust has not terminated and has not been revoked.

- OR -

4. The Trust has terminated (or has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the Trust which limits the powers of the trustee(s) to execute and deliver the instrument described in paragraph 3.

6. The Trust is not supervised by any court.

- OR -

6. The Trust is supervised by the ..... Court of ..... County. .... All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating that the Trust is invalid.

.....  
, Affiant

Subscribed and sworn to before me this .....  
day of ....., .....

.....  
Signature of Notary Public or Other Official

Notary Stamp or Seal

This instrument was drafted by:

.....  
.....

**Subd. 2. Effect.** An affidavit by the trustee or trustees under subdivision 1 or 1a is proof that:

(i) the trust described in the affidavit is a valid trust;

(ii) either the trust has not terminated or been revoked or, if the trust has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the trust;

(iii) the powers granted the trustee or trustees extend to the real property described in the affidavit or attachment to the affidavit;

(iv) no amendment to the trust has been made limiting the power of the trustee or trustees to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;

(v) the requisite number of trustees have executed and delivered the instrument of conveyance described in the affidavit; and

(vi) any necessary court approval of the transaction has been obtained.

The proof is conclusive as to any party relying on the affidavit, except a party dealing directly with the trustee or trustees who has actual knowledge of facts to the contrary.

**Subd. 3. Recording or filing.** An Affidavit of Trustee or Trustees under subdivisions 1 and 1a may be recorded in the office of the county recorder for any county, or filed with the office of the registrar of titles for any county with respect to registered land described in the affidavit, or in the Certificate of Trust or Trust Instrument referred to in the affidavit, and may be recorded or filed as a separate document or combined with or attached to an original or certified copy of a Certificate of Trust or Trust Instrument, and recorded or filed as one document.

**501B.571 AFFIDAVIT OF CUSTODIAN IN REAL PROPERTY TRANSACTIONS.**

Subdivision 1. **Form of affidavit for custodianship.** An affidavit of a custodian or of custodians of a custodianship in support of a real property transaction may be substantially in the following form:

STATE OF MINNESOTA ) AFFIDAVIT OF CUSTODIAN  
) ss.  
COUNTY OF )  
....., being first duly sworn on oath says that:

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1. Affiant is the custodian (one of the custodians) named in that certain Certificate of Custodianship (or Custodianship Instrument) filed for record ....., ....., as Document No. .... (or in Book ..... of ....., Page .....) in the Office of the (County Recorder/Registrar of Titles) of ..... County, Minnesota, OR

to which this Affidavit is attached, executed by Affiant or another custodian or by the owner of the property that is held in the custodianship described in the Certificate of Custodianship (or set forth in the Custodianship Instrument), and which relates to real property in ..... County, Minnesota, legally described as follows:

.....  
.....  
(If more space is needed, continue on back or on attachment.)

2. The name(s) and address(es) of the custodian(s) empowered by the Custodian Instrument to act at the time of the execution of this Affidavit are as follows:

.....  
.....  
3. The custodian(s) who have executed that certain instrument relating to the real property described above between ....., as custodian(s) and ....., dated ....., ..:

- (i) are empowered by the provisions of the custodianship to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in custodianship; and
- (ii) are the requisite number of custodians required by the provisions of the custodianship to execute and deliver such an instrument.

4. The custodianship has not terminated and has not been revoked.

- OR -

4. The custodianship has terminated (or has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the custodianship.

5. There has been no amendment to the custodianship which limits the power of custodian(s) to execute and deliver the instrument described in paragraph 3.

6. The custodianship is not supervised by any court.

- OR -

6. The custodianship is supervised by the ..... Court of ..... County, ..... All necessary approval has been obtained from the court for the custodian(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating that the custodianship is invalid.

Subscribed and sworn to before me this .... day of ....., .....

.....  
.....  
....., Affiant

.....  
Signature of Notary Public or Other Official

Notary Stamp or Seal

This instrument was drafted by:

.....  
.....

Subd. 2. **Effect.** An affidavit by the custodian or custodians under subdivision 1 is proof that:

- (1) the custodianship described in the affidavit is a valid custodianship;
- (2) either the custodianship has not terminated or been revoked or, if the custodianship has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the custodianship;
- (3) the powers granted the custodian or custodians extend to the real property described in the affidavit or attachment to the affidavit;
- (4) no amendment to the custodianship has been made limiting the power of the custodian or custodians to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;

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(5) the requisite number of custodians have executed and delivered the instrument of conveyance described in the affidavit; and

(6) any necessary court approval of the transaction has been obtained.

The proof is conclusive as to any party relying on the affidavit, except a party dealing directly with the custodian or custodians who has actual knowledge of facts to the contrary.

Subd. 3. **Recording or filing.** An Affidavit of Custodian or Custodians under subdivision 1 may be recorded in the office of the county recorder for any county, or filed with the office of the registrar of titles for any county with respect to registered land described in the affidavit, or in the Certificate of Custodianship or Custodianship Instrument referred to in the affidavit, and may be recorded or filed as a separate document or combined with or attached to an original or certified copy of a Certificate of Custodianship or Custodianship Instrument, and recorded or filed as one document.

Subd. 4. **Application.** (a) Subdivisions 1 to 3 are effective August 1, 2006, but apply to custodianship instruments whenever created or executed.

(b) Subdivisions 1 to 3 apply only to custodianships established under a federal law or under a statute of this or any other state. Subdivisions 1 to 3 do not apply to custodianships governed by chapter 527 or by the similar laws of another state.

### 501B.59 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 501B.59 to 501B.76.

Subd. 1a. **Accounting period.** "Accounting period" means a calendar year unless another 12-month period is selected by the trustee. Accounting period includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

Subd. 2. **Income beneficiary.** "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

Subd. 3. **Inventory value.** "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

Subd. 4. **Remainderperson.** "Remainderperson" means the person entitled to principal, including income accumulated and added to principal.

Subd. 5. **Trustee.** "Trustee" means an original trustee and any successor or added trustee.

### 501B.60 DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURE.

Subdivision 1. **General rules of administration.** A trust must be administered with due regard to the respective interests of income beneficiaries and remainderpersons. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of sections 501B.59 to 501B.76;

(2) in the absence of contrary terms of the trust instrument, in accordance with sections 501B.59 to 501B.76;

(3) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which persons of ordinary prudence, discretion, and judgment would act in the management of their own affairs.

Subd. 2. **Trustee's discretion.** If a trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to sections 501B.59 to 501B.76.

Subd. 3. **Standards for exercise.** In exercising a power to adjust under section 501B.705 or a discretionary power of administration regarding a matter within the scope of sections 501B.59 to 501B.76, a fiduciary shall administer the trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 501B.59 to 501B.76 is presumed to be fair and reasonable to all of the beneficiaries.

### 501B.61 INCOME; PRINCIPAL; CHARGES.

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Subdivision 1. **Income defined.** "Income" means the return in money or property derived from the use of principal, including return received as:

- (1) rent of real or personal property, including sums received for cancellation or renewal of a lease;
- (2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal, except as provided in section 501B.65 on bond premium and bond discount;
- (3) income earned during administration of a decedent's estate as provided in section 501B.63;
- (4) corporate distributions as provided in section 501B.64;
- (5) accrued increment on bonds or other obligations issued at discount as provided in section 501B.65;
- (6) receipts from business and farming operations as provided in section 501B.665;
- (7) receipts from disposition of natural resources as provided in sections 501B.67 and 501B.68; and
- (8) receipts from other principal subject to depletion as provided in section 501B.69.

Subd. 2. **Principal defined.** "Principal" means the property set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderperson while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

- (1) consideration received by the trustee on the sale or other transfer of principal, on repayment of a loan, or as a refund, replacement, or change in the form of principal;
- (2) proceeds of property taken on eminent domain proceedings;
- (3) proceeds of insurance on property forming part of the principal, except proceeds of insurance on a separate interest of an income beneficiary;
- (4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in section 501B.64;
- (5) receipts from the disposition of corporate securities as provided in section 501B.65;
- (6) royalties and other receipts from disposition of natural resources as provided in sections 501B.67 and 501B.68;
- (7) receipts from other principal subject to depletion as provided in section 501B.69;
- (8) profit resulting from a change in the form of principal;
- (9) allowances for depreciation established under sections 501B.665 and 501B.71, subdivision 1, clause (2); and
- (10) gain or loss, including the purchase premium, if any, from the grant of an option to buy or sell property of the trust, whether or not the trust owns the property when the option is granted.

Subd. 3. **Charges.** After determining income and principal in accordance with the terms of the trust instrument or of sections 501B.59 to 501B.76, the trustee shall charge to income or principal expenses and other charges as provided in section 501B.71.

**501B.62 WHEN RIGHT TO INCOME ARISES; APPORTIONMENT OF INCOME.**

Subdivision 1. **General rule.** An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset that becomes subject to a trust because of the death of any person, it becomes subject to the trust as of the date of the death of the person or, if later, the date the estate or trust becomes entitled to the asset if acquired after the death of the person, even though there is an intervening period of administration of an estate or trust during which the beneficiary may have no right to a distribution of the income.

Subd. 2. **Receipts due but not paid; periodic payments.** In the administration of a decedent's estate or an asset that becomes subject to a trust by reason of a will:

- (1) receipts due but not paid at the date of death of the testator are principal;
- (2) receipts in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, not due at the date of the death of the testator must be treated as accruing from day to day. That portion of the receipt that accrues before the date of death is principal, and the balance is income.

Subd. 3. **Other receipts.** In all other cases, any receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

Subd. 4. **Termination of income interest.** On termination of an income interest, the income beneficiary whose interest is terminated, or the income beneficiary's estate, is entitled to:

- (1) income undistributed on the date of termination;

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(2) income due but not paid to the trustee on the date of termination; and  
(3) income in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

Subd. 5. **Corporate distributions to stockholders.** Corporate distributions to stockholders must be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

### **501B.63 INCOME EARNED DURING ADMINISTRATION OF A DECEDENT'S ESTATE.**

Subdivision 1. **Expenses.** Unless a will provides otherwise and subject to subdivision 2, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs must be charged against the principal of the estate.

Subd. 2. **Income.** Unless the will or trust instrument provides otherwise, income from the assets of a decedent's estate after the death of the testator and before distribution and income from the assets of a trust after an income interest in a trust terminates, including income from property used to discharge liabilities, must be determined in accordance with the rules applicable to a trustee and distributed as follows:

(1) to specific devisees or to any beneficiary who is to receive specific property from a trust, the income from the property devised or distributed to them respectively, less property taxes, ordinary repairs, interest, and other expenses of management and operation of the property, and less an appropriate portion of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration or after an income interest in a trust terminates;

(2) to a devisee or to any beneficiary who receives a pecuniary amount outright, the interest or any other amount provided by the will, the terms of the trust instrument or applicable law from income determined in accordance with the rules applicable to a trustee or, to the extent income is insufficient, from principal. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust instrument or applicable law, the trustee shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will;

(3) to all other devisees or beneficiaries, the balance of the income determined in accordance with the rules applicable to a trustee, less the balance of property taxes, ordinary repairs, interest, and other expenses of management and operation of all property from which the estate or trust is entitled to income, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration or after an income interest terminates, in proportion to their respective interests in the undistributed assets of the estate or trust computed at times of distribution on the basis of inventory value.

For purposes of this subdivision, an income interest in a trust terminates upon the occurrence of any event which causes the right of a person to receive mandatory or discretionary distributions of income from the trust to end.

Subd. 3. **Income received by trustee.** Income received by a trustee under subdivision 2 must be treated as income of the trust.

### **501B.64 ENTITY DISTRIBUTIONS.**

Subdivision 1. **Distribution of ownership interests; shares; stock splits; stock dividends; subscription rights.** Distributions of shares of a distributing corporation or similar equity ownership interests in noncorporate entities, including distributions in the form of or equivalent to a stock split or stock dividend, are principal. An entity owner's right to subscribe to shares, ownership interests, or other securities of the distributing entity and the proceeds of any sale of that right are principal.

Subd. 2. **Redemption; merger; reorganization; liquidation.** Subject to subdivisions 3 and 4, and except to the extent that the entity indicates that some part of an entity distribution is a settlement of preferred or guaranteed corporate dividends or distribution preferences based upon a return on invested capital accrued under the governing instrument since the trustee acquired the related ownership interest or is in lieu of an ordinary cash dividend or similar distribution from current earnings of the entity, an entity distribution is principal if the distribution is pursuant to:

(1) redemption of the ownership interest or a call of shares;

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(2) a merger, consolidation, reorganization, or other plan by which assets of the entity are acquired by another entity; or

(3) a total or partial liquidation of the entity, including a distribution the entity indicates is a distribution in total or partial liquidation or distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

Subd. 3. **Regulated investment company; real estate investment trust.** Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from short-term or long-term capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

Subd. 4. **Distributions from pass-through entities.** Distributions from pass-through entities must be allocated between income and principal as reasonably and equitably determined by the trustee. This subdivision applies for any accounting period during which an entity is a pass-through entity for any portion of the accounting period. In making its determination, the trustee may consider the following:

(1) characterization of income, distributions, and transactions in financial or other information received from the entity, including financial statements and tax information;

(2) whether the entity completed a significant capital transaction outside of the ordinary course of business that the trustee believes has resulted in a distribution to the owners of the entity in the nature of a partial liquidating distribution;

(3) the extent to which the burden for income tax with respect to the income of the entity is to be paid by the trustee out of trust assets or by the beneficiaries of the trust;

(4) the net amount of distributions from the entity available to the trustee after estimating or accounting for tax payments by the trustee or distributions to beneficiaries for the purpose of paying taxes on income earned by the entity;

(5) whether distributions appear to be made out of or contributed to by income earned by the entity and subjected to income taxes in a prior accounting period which may include accounting periods prior to the date the trustee acquired the related ownership interest;

(6) whether the entity is consistently a pass-through entity during multiple accounting periods or a change to or from being a pass-through entity has or will occur in accounting periods preceding or subsequent to the current accounting period;

(7) if the trust owns a controlling interest or total interest in an entity, the trustee may reasonably allocate distributions between income and principal and not necessarily as if that business interest were owned by the trust as a proprietorship; and

(8) other facts and circumstances as the trustee reasonably considers relevant to its determination.

Subd. 5. **Other distributions.** Except as provided in subdivisions 1, 2, 3, and 4, all distributions from entities are income. "Entity distributions" includes cash dividends, distributions of or rights to subscribe to shares or securities or obligations of entities other than the distributing entity, and the proceeds of the rights or property distributions. Except as provided in subdivisions 1, 2, 3, and 4, if the distributing entity gives the owner of an ownership interest an option to receive a distribution either in cash or in an ownership interest in the entity, the distribution chosen is income.

Subd. 6. **Reliance on statements.** The trustee may rely on a statement of the distributing entity as to a fact relevant under a provision of sections 501B.59 to 501B.76 concerning the source or character of dividends or distributions of corporate assets.

Subd. 7. **Definitions.** The definitions in this subdivision apply to this section.

(a) Entity. "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common or collective trust fund, or any other organization in which a trustee has an interest other than a trust or estate governed by any other provision of sections 501B.59 to 501B.76.

(b) Pass-through entity. "Pass-through entity" means any entity that passes through income, loss, deductions, credits, and other tax attributes to the owners of an interest in the entity under the Internal Revenue Code in such manner that the owner is directly subject to income taxation on all or any part of the income of the entity (whether or not the pass-through of the tax attributes is related to distributions from the entity), including, but not limited to, S corporations, partnerships, limited liability companies, or limited liability partnerships.

**501B.65 BOND PREMIUM AND DISCOUNT.**

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Subdivision 1. **Principal.** Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subdivision 2 for discount bonds. No provision may be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

Subd. 2. **Income.** The increment in value realized upon sale, redemption, or other disposition of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued or in accordance with a fixed schedule of appreciation, is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal must be reimbursed for the increment when realized.

### **501B.665 SOLE PROPRIETORSHIPS.**

Subdivision 1. **Separate account.** A trustee who conducts a business or other activity as a sole proprietor may establish and maintain a separate account for the transactions of the business or other activity, whether or not its assets are segregated from other trust assets, if the trustee determines that it is in the best interest of all the beneficiaries to establish a separate account instead of accounting for the business or other activity as part of the trust's general accounting records.

(a) A trustee who establishes a separate account for a business or other activity shall determine the extent to which its net cash receipts will be retained in the separate account for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity or will be transferred out of the separate account and accounted for as principal or income in the trust's general accounting records as the trustee reasonably and equitably determines. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, and determines that any portion of the amount received is no longer required in the conduct of the business the trustee shall transfer that portion out of the separate account and shall account for that portion as principal in the trust's general accounting records.

(b) A trustee may not account separately for a traditional securities portfolio to avoid the provisions of sections 501B.59 to 501B.76 that otherwise apply to securities.

Subd. 2. **Other income or losses.** If a trustee does not maintain a separate account for a business or other activity conducted as a sole proprietorship, the net profits of the sole proprietorship in any fiscal or calendar year, as reasonably and equitably determined by the trustee, must be allocated to income while any net loss in that year must be charged to principal and must not be carried into any other fiscal or calendar year for purposes of calculating net income.

### **501B.67 DISPOSITION OF NATURAL RESOURCES.**

Subdivision 1. **Allocation of receipts.** If a part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land must be allocated under paragraphs (a) to (c).

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

(b) If received from a production payment carved out of a mineral property, the receipts are income to the extent of a factor for interest or its equivalent provided in the governing instrument or a greater amount determined by the trustee to be reasonable and equitable in view of the interests of those entitled to income as well as those entitled to principal. The receipts not allocated to income are principal.

(c) If received as a royalty, overriding or limited royalty, or bonus or from a working, net profit, or other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) must be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts from these properties must be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal. The amount allocated to principal must be presumed to be reasonable and equitable if it is neither substantially more nor less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986. Any allocated amount must be added to principal as an allowance for depletion of the

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asset. The balance of the gross receipts, after payment from the receipts of all direct and indirect expenses, is income.

Subd. 2. **Timber excepted.** This section does not apply to timber.

#### **501B.68 TIMBER.**

Subdivision 1. **Net receipts.** If a part of the principal consists of land from which merchantable timber may be removed, the net receipts from taking the timber from the land must be allocated as follows:

(1) to income to the extent that the amount of timber removed from the land during the accounting period does not exceed the rate of growth of the timber;

(2) to principal to the extent that the amount of timber removed from the land during the accounting period exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in clause (1) or (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to clause (1), (2), or (3).

Subd. 2. **Depletion.** In determining net receipts to be allocated pursuant to subdivision 1, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

Subd. 3. **Scope.** This section applies whether or not timber was harvested from the property before it became subject to the trust.

#### **501B.69 ANNUITIES, QUALIFIED AND NONQUALIFIED EMPLOYEE COMPENSATION, RETIREMENT PLANS AND OTHER PROPERTY SUBJECT TO DEPLETION.**

Except as provided in sections 501B.67 and 501B.68, if part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, rights to receive payments on a contract for deferred compensation, qualified and nonqualified employer retirement plans, individual retirement accounts, and annuities, the receipts from the property must be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal. The trustee may determine the allocation based on a fixed percentage of each payment, an amortization of the inventory value of the series of payments, or, if the individual retirement account, pension, profit-sharing, stock-bonus, or stock-ownership plan consists of segregated and identifiable assets, the trustee may apply the provisions of sections 501B.59 to 501B.76 to the receipts in the account or plan in order to characterize the payments received during a trust accounting period. To the extent that a payment is characterized by the payer as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The amount allocated to principal is presumed to be reasonable and equitable if it is neither substantially more nor less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986.

#### **501B.705 TRUSTEE'S POWER TO ADJUST.**

Subdivision 1. **Power to adjust.** A trustee may adjust between principal and income to the extent the trustee considers necessary to comply with section 501B.60, subdivision 3, after applying section 501B.60, subdivisions 1 and 2, if the trustee invests and manages the trust assets as a prudent investor and the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.

Subd. 2. **Factors to consider.** In deciding whether and to what extent to exercise the power conferred by subdivision 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent



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to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other provisions of sections 501B.59 to 501B.76 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the anticipated tax consequences of an adjustment; and

(10) the investment return under current economic conditions from other portfolios meeting fiduciary requirements.

**Subd. 3. Limitation on trustee's power.** A trustee may not make an adjustment:

(1) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(2) that changes the amount payable to a beneficiary as fixed annuity or a fixed fraction of the value of the trust assets;

(3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; provided, however, that this limitation does not apply to any trust created prior to August 1, 2001, to the extent the trustee receives amounts during the accounting period which would, under the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August 1, 2001, have been allocated to income;

(4) if possessing or exercising the power to make an adjustment causes an individual to be treated as owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make adjustment;

(5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove or appoint the trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(6) if the trustee is a beneficiary of the trust; or

(7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

**Subd. 4. Cotrustee may exercise power.** If the provisions of subdivision 3, clause (4), (5), (6), or (7), apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

**Subd. 5. Release of power.** A trustee may release the entire power conferred by subdivision 1 or may release only the power to adjust from income to principal or to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5), or (7), or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.

**Subd. 6. Power may be negated by specific reference.** Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subdivision 1.

**Subd. 7. No duty to adjust; remedy.** Nothing in this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment. In a proceeding with respect to the trustee's nonexercise of the power to make an adjustment from principal to income (or with respect to the trustee's failure to make a greater adjustment from principal to income), the sole remedy is to direct or deny an adjustment (or greater adjustment) from principal to income.

**Subd. 8. Notice of determination.** A trustee may give notice of a proposed action regarding a matter governed by this section as provided in this subdivision. For purposes of this subdivision, a proposed action includes a course of action and a determination not to take action.

(a) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. Notice may be given to any other beneficiary.

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(b) The notice of proposed action must state that it is given pursuant to this subdivision and must state the following:

(1) the name and mailing address of the trustee;

(2) the name and telephone number of a person who may be contacted for additional information;

(3) a description of the action proposed to be taken and an explanation of the reasons for the action;

(4) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and

(5) the date on or after which the proposed action may be taken or is effective.

(c) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(d) If a trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period, the trustee is not liable for an action regarding a matter governed by this chapter to a beneficiary if:

(1) the beneficiary is an adult (or is a minor with a duly appointed conservator of the estate) and the notice is mailed to the adult beneficiary or conservator at the address determined by the trustee after reasonable diligence;

(2) the beneficiary is an adult (or is a minor with a duly appointed conservator of the estate) and the adult beneficiary or conservator receives actual notice;

(3) the beneficiary is not an adult and has no duly appointed conservator of the estate and an adult having a substantially identical interest and having no conflicting interest receives actual notice;

(4) the beneficiary (or the conservator of the estate of a minor beneficiary) consents in writing to the proposed action either before or after the action is taken; or

(5) the beneficiary is not an adult and has no duly appointed conservator of the estate and an adult having a substantially identical interest and having no conflicting interest consents in writing to the proposed action either before or after the action is taken.

(e) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

(f) Nothing in this subdivision limits the right of a trustee or beneficiary to petition the court pursuant to section 501B.16 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subdivision. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

**501B.71 CHARGES AGAINST INCOME AND PRINCIPAL.**

Subdivision 1. **Income.** The following charges must be made against income:

(1) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against a portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderperson, or trustee, interest paid by the trustee, and ordinary repairs;

(2) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation of that portion of real property used by a beneficiary as a residence or for depreciation of property held by the trustee on January 1, 1970, for which the trustee is not then making an allowance for depreciation;

(3) one-half of the court costs, attorneys' fees, and other fees on periodic accountings or judicial proceedings, unless the court directs otherwise;

(4) court costs, attorneys' fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

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(5) one-half of the trustee's regular compensation for services performed for the income beneficiary or in the production of income whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income; and

(6) any tax levied on receipts defined as income under sections 501B.59 to 501B.76 or the trust instrument and payable by the trustee.

Subd. 2. **Unusual charges.** If charges against income are of an unusual amount, the trustee may charge them over a reasonable period of time or, by means of reserves or other reasonable means, withhold from distribution sufficient sums to regularize distributions.

Subd. 3. **Principal.** The following charges must be made against principal:

(1) trustee's compensation not chargeable to income under subdivision 1, clause (5), special compensation of the trustee, expenses reasonably incurred in connection with principal, court costs and attorneys' fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(2) charges not provided for in subdivision 1, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(3) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by subdivision 1, clause (2), and by section 501B.63;

(4) any tax levied on profit, gain, or other receipts allocated to principal, even if the taxing authority calls the tax an income tax;

(5) any amount apportioned to a trust, including interest and penalties, if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderperson have an interest.

Subd. 4. **Regular charges payable from income.** Regularly recurring charges payable from income must be apportioned to the same extent and in the same manner that income is apportioned under section 501B.62.

Subd. 5. **Exceptions.** Paragraphs (a) to (c) are exceptions to the requirements of subdivisions 1 to 4.

(a) With respect to a revocable living trust, during the lifetime of the grantor, all of the trustee's regular compensation for services performed must be charged against income, unless directed otherwise by the grantor.

(b) If charging a part or all of the trustee's regular compensation to principal, in the judgment of the trustee, is impracticable, because of the lack of sufficient cash and readily marketable assets, or inadvisable, because of the nature of the principal assets, the trustee may determine to pay part or all of the compensation out of income. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of income is conclusive, and the income of the trust is not entitled to reimbursement from principal at any subsequent time or times.

(c) If charging a part or all of the trustee's regular compensation to income, in the judgment of the trustee, is impracticable, because of the lack of sufficient income, or inadvisable, because of a desire to provide maximum income to the beneficiary, the trustee may determine to pay part or all of such compensation out of principal. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of the principal is conclusive.

#### **501B.72 NONTRUST ESTATES.**

Subdivision 1. **Limitations.** Sections 501B.59 to 501B.76 apply to nontrust estates, subject to:

- (1) agreement of the parties;
- (2) specific direction in the instrument creating the nontrust estates;
- (3) subdivision 2; and
- (4) other applicable statutes.

References in sections 501B.59 to 501B.76 to trusts and trustees must be read as applying to nontrust estates and to tenants and remainderpersons as the context requires.

Subd. 2. **Application.** In applying sections 501B.59 to 501B.76 to nontrust estates, the rules in paragraphs (a) to (d) must be followed.

(a) A legal life tenant or a remainderperson who has incurred a charge for the tenant's or remainderperson's benefit without the consent or agreement of the other, shall pay the charge in full.

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(b) Costs of an improvement, including special taxes or assessments representing an addition to value of property forming part of the principal that cannot reasonably be expected to outlast the legal life estate, must be paid by the legal life tenant.

(c) If the improvement can reasonably be expected to outlast the legal life estate, only a portion of the costs must be paid by the legal life tenant and the balance by the remainderperson.

(1) The portion payable by the legal life tenant is that fraction of the total found by dividing the present value of the legal life estate by the present value of an estate of the same form as that of the legal life estate but limited to a period corresponding to the reasonably expected duration of the improvement.

(2) The present value of the legal life estate must be computed by applying the federal estate tax regulations for the calculation of the value of life estates under section 2031 of the Internal Revenue Code of 1986. The federal estate tax regulations applied must be those in force on the date when the costs of the improvement are initially determined by assessment, agreement, or otherwise. No other evidence of duration or expectancy may be considered.

(d) No allowance may be made for depreciation of property held by a legal life tenant on January 1, 1990, if the life tenant was not making the allowance with respect to the property prior to January 1, 1990.

#### **501B.73 APPLICATION.**

Except as specifically provided in the governing instrument, Minnesota Statutes 1988, sections 501.48 to 501.63, apply to a receipt or expense received or incurred after January 1, 1970, and before January 1, 1990, by any trust or decedent's estate whether established before or after January 1, 1970, and whether the asset involved was acquired by the trustee before or after January 1, 1970.

Except as specifically provided in the governing instrument, sections 501B.59 to 501B.76 apply to a receipt or expense received or incurred after December 31, 1989, by a trust or decedent's estate whether established before, on, or after January 1, 1990, and whether the asset involved or legal estate was acquired by the trustee, personal representative, legal life tenant, or remainderperson before, on, or after January 1, 1990.

#### **501B.74 ASCERTAINMENT OF INCOME OR PRINCIPAL.**

Sections 501B.59 to 501B.76 do not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

#### **501B.75 UNIFORMITY OF INTERPRETATION.**

Sections 501B.59 to 501B.76 must be so construed as to effectuate their general purpose to make uniform the law of those states that enact them.

#### **501B.76 SHORT TITLE.**

Sections 501B.59 to 501B.76 may be cited as the Uniform Principal and Income Act.

#### **501B.79 TRUSTEE DEFINED.**

As used in sections 501B.79 to 501B.82, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a trust created under a written instrument, whichever in a particular case is appropriate.

#### **501B.80 INCORPORATION BY REFERENCE.**

By a clear expression in a written instrument of the intention of the grantor, one or more of the powers in section 501B.81, as they exist at the time of the signing of the written instrument, may be incorporated by reference as though that language were set forth verbatim in the instrument.

#### **501B.81 ENUMERATED POWERS OF TRUSTEE.**

Subdivision 1. **Trust assets.** The trustee may retain trust assets until, in the judgment of the trustee, disposition of the assets should be made, without regard to any effect retention may have on the diversification of the assets of the trust. The property may be retained even though it includes an asset in which the trustee is personally interested.

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Subd. 2. **Additions to trust assets.** The trustee may receive from any source additions to the assets of the trust.

Subd. 3. **Business or enterprise.** The trustee may continue or participate in the operation of a business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

Subd. 4. **Undivided interest in trust asset.** The trustee may acquire an undivided interest in a trust asset in which the trustee, in a trust capacity, holds an undivided interest.

Subd. 5. **Investment of trust assets.** The trustee may invest and reinvest trust assets in any property or any undivided interest in the property. These investments include but are not limited to bonds, debentures, secured or unsecured notes, preferred or common stocks of corporations, mutual funds, real estate or real estate improvements or interests, wherever located, oil and mineral leases, royalty or similar interests, and interests in trusts, including investment trusts and common trust funds maintained by a corporate trustee, and insurance upon the life of a person who is or may become a trust beneficiary. These investments may be made without regard to diversification.

Subd. 6. **Deposits.** The trustee may deposit trust funds in a bank, including a bank operated by the trustee, or in a state or federal savings association.

Subd. 7. **Purchase and sale.** The trustee may acquire, sell, or otherwise dispose of an asset, at public or private sale, for cash or on credit, with or without security as the trustee deems advisable, and manage, develop, exchange, partition, change the character of, or abandon a trust asset or any interest in it.

Subd. 8. **Options.** The trustee may grant an option for the sale or other disposition of a trust asset, or take an option for the acquisition of an asset.

Subd. 9. **Leases.** The trustee may enter into a lease as lessor or lessee, with or without option to purchase or renew, though the term of the lease, renewal, or option extends beyond the terms of the trust.

Subd. 10. **Repairs; improvements; alterations.** The trustee may make ordinary or extraordinary repairs, improvements, or alterations in buildings or other structures or in other trust assets, and remove or demolish improvements.

Subd. 11. **Buildings; party walls.** The trustee may raze existing or erect new party walls or buildings, alone or jointly with owners of adjacent property.

Subd. 12. **Subdivision; development; dedication to public use.** The trustee may subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; on exchange or partition, adjust differences in valuation by giving or receiving consideration; and dedicate easements to public use without consideration.

Subd. 13. **Exploration and removal of natural resources.** The trustee may enter into a lease or arrangement for exploration for and removal of oil, gas, and other minerals or natural resources, and may enter into pooling and unitization agreements.

Subd. 14. **Insurance.** The trustee may insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons.

Subd. 15. **Voting stock or securities.** The trustee may vote shares of stock or other securities held by the trustee, in person or by general or limited proxy, and enter into voting trust agreements on terms and for periods the trustee considers advisable.

Subd. 16. **Securities calls, assessments, and charges.** The trustee may pay calls, assessments, and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures, or other corporate securities in the hands of the trustee.

Subd. 17. **Stock rights.** The trustee may sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, or liquidations, and consent, directly or through a committee or other agent, to corporate sales, leases, and encumbrances. In the exercise of these powers the trustee may, if the trustee considers it expedient, deposit stocks, bonds, or other securities with a protective or other similar committee, on terms and conditions respecting the deposit that the trustee approves.

Subd. 18. **Ownership in other name.** The trustee may hold any asset in the name of a nominee or nominees, without disclosure of a fiduciary relationship, but the trustee is liable for acts and omissions of the nominee relating to those assets.

Subd. 19. **Borrowing; mortgages.** The trustee may borrow money and mortgage or otherwise encumber or pledge trust assets for a term within or extending beyond the term of the trust, in connection with the exercise of a power vested in the trustee.

Subd. 20. **Contracts.** The trustee may enter into contracts binding on the trust that are reasonably incident to the administration of the trust and that the trustee believes to be for the best interests of the trust.

Subd. 21. **Settlement of claims.** The trustee may pay, compromise, contest, submit to arbitration, or otherwise settle claims in favor of or against the trust or the trustee.

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Subd. 22. **Release of claims.** The trustee may release, in whole or in part, a claim or lien belonging to the trust.

Subd. 23. **Trust expenses.** The trustee may pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

Subd. 24. **Reserves.** The trustee may create reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.

Subd. 25. **Payments to minors and those under legal disability.** The trustee may pay a sum distributable to a minor or other beneficiary under legal disability, without liability to the trustee, in one or more of the following ways:

- (1) directly to the beneficiary;
- (2) to the legal guardian or conservator of the beneficiary;
- (3) directly for the maintenance, education, and general welfare of the beneficiary;
- (4) to a parent of the beneficiary;
- (5) to a person who has custody and care of the person of the beneficiary; or
- (6) to a custodian under a uniform transfers to minors statute.

Subd. 26. **Distribution of interests.** The trustee may distribute property and money in divided or undivided interests and adjust resulting differences in valuation.

Subd. 27. **Employment of advisors, assistants.** The trustee may employ attorneys, accountants, investment advisors, agents, or other persons, even if they are associated with the trustee, to advise or assist the trustee in the performance of duties. The trustee may act without independent investigation upon their recommendations, and instead of acting personally, may employ one or more agents to perform any act of administration whether or not discretionary.

Subd. 28. **Legal actions.** The trustee may prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of duties.

Subd. 29. **Advances to beneficiaries.** The trustee may advance income to or for the use of a beneficiary, for which advance the trustee has a lien on the future benefits of that beneficiary.

Subd. 30. **Advances by trustee; repayment.** The trustee may advance money for the protection of the trust or its assets, for all expenses and liabilities sustained or incurred in or about the administration or protection of the trust, or because of the holding or ownership of any trust assets, for which advances the trustee has a lien on the trust assets, and may be reimbursed out of the trust assets with interest.

Subd. 31. **Execution and delivery of instruments.** The trustee may execute and deliver instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

Subd. 32. **Multiple trusts.** The trustee may hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation between the trusts or parts of trusts, if the separate trusts or parts of trusts have undivided interests and if no holding defers the vesting of an estate in possession or otherwise.

#### **501B.82 CITATION.**

Sections 501B.79 to 501B.82 may be cited or referred to as the "Minnesota Trustees' Powers Act."

#### **501B.87 TRUSTS FORMING PART OF RETIREMENT PLANS FOR PARTICIPATING MEMBERS.**

If a trust forms part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions and investing, accumulating, and distributing to the persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan, the power of a person beneficially interested in the trust to sell, assign, or transfer that beneficial interest, to anticipate payments under the plan, or to terminate the trust, may be limited or withheld in accordance with the provisions of the plan, whether or not the person furnished consideration for the creation of the trust.

#### **501B.88 TRUSTS NOT AFFECTED.**

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Notwithstanding other law to the contrary, a trust created before June 1, 1973, relating to one's "minority" or "majority" or other related terms is governed by the definitions of those terms existing at the time of the creation of the trust.

**501B.89 TRUST PROVISIONS LINKED TO PUBLIC ASSISTANCE ELIGIBILITY; SUPPLEMENTAL NEEDS TRUSTS.**

Subdivision 1. **Trusts containing limitations linked to eligibility for public assistance.** (a) Except as allowed by subdivision 2 or 3, a provision in a trust that provides for the suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

(b) This subdivision applies to trust provisions created after July 1, 1992. For purposes of this section, a trust provision is created on the date of execution of the first instrument that contains the provision, even though the trust provision is later amended or reformed or the trust is not funded until a later date.

Subd. 2. **Supplemental trusts for persons with disabilities.** (a) It is the public policy of this state to enforce supplemental needs trusts as provided in this subdivision.

(b) For purposes of this subdivision, a "supplemental needs trust" is a trust created for the benefit of a person with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

(c) For purposes of this subdivision, a "person with a disability" means a person who, prior to creation of a trust which otherwise qualifies as a supplemental needs trust for the person's benefit:

(1) is considered to be a person with a disability under the disability criteria specified in Title II or Title XVI of the Social Security Act; or

(2) has a physical or mental illness or condition which, in the expected natural course of the illness or condition, either prior to or following creation of the trust, to a reasonable degree of medical certainty, is expected to:

(i) last for a continuous period of 12 months or more; and

(ii) substantially impair the person's ability to provide for the person's care or custody.

Disability may be established conclusively for purposes of this subdivision by the written opinion of a licensed professional who is qualified to diagnose the illness or condition, confirmed by the written opinion of a second licensed professional who is qualified to diagnose the illness or condition.

(d) The general purpose of a supplemental needs trust must be to provide for the reasonable living expenses and other basic needs of a person with a disability when benefits from publicly funded benefit programs are not sufficient to provide adequately for those needs. Subject to the restrictions contained in this paragraph, a supplemental needs trust may authorize distributions to provide for all or any portion of the reasonable living expenses of the beneficiary. A supplemental needs trust may allow or require distributions only in ways and for purposes that supplement or complement the benefits available under medical assistance, Minnesota supplemental aid, and other publicly funded benefit programs for disabled persons. A supplemental needs trust must contain provisions that prohibit disbursements that would have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to the beneficiary or rendering the beneficiary ineligible for publicly funded benefits.

(e) A supplemental needs trust is not enforceable if the trust beneficiary becomes a patient or resident after age 64 in a state institution or nursing facility for six months or more and, due to the beneficiary's medical need for care in an institutional setting, there is no reasonable expectation that the beneficiary will ever be discharged from the institution or facility. For purposes of this paragraph "reasonable expectation" means that the beneficiary's attending physician has certified that the expectation is reasonable. For purposes of this paragraph, a beneficiary participating in a group residential program is not deemed to be a patient or resident in a state institution or nursing facility.

(f) The trust income and assets of a supplemental needs trust are considered available to the beneficiary for medical assistance purposes to the extent they are considered available to the beneficiary under medical assistance, Supplemental Security Income, or Minnesota family investment program methodology, whichever is used to determine the beneficiary's eligibility for medical assistance. For other public assistance programs established or administered under

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state law, assets and income will be considered available to the beneficiary in accordance with the methodology applicable to the program.

(g) Nothing in this subdivision requires submission of a supplemental needs trust to a court for interpretation or enforcement.

(h) Paragraphs (a) to (g) apply to supplemental needs trusts whenever created, but the limitations and restrictions in paragraphs (c) to (g) apply only to trusts created after June 30, 1993.

**Subd. 3. Supplemental needs trusts under federal law.** A trust created on or after August 11, 1993, which qualifies as a supplemental needs trust for a person with a disability under United States Code, title 42, section 1396p(c)(2)(B)(iv) or 1396p(d), as amended by section 13611(b) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, commonly known as OBRA 1993, is enforceable, and the courts of this state may authorize creation and funding of a trust which so qualifies.

**Subd. 4. Annual filing requirement for supplemental needs trusts.** (a) A trustee of a trust under subdivision 3 and United States Code, title 42, section 1396p(d)(4)(A) or (C), shall submit to the commissioner of human services, at the time of a beneficiary's request for medical assistance, the following information about the trust:

- (1) a copy of the trust instrument; and
- (2) an inventory of the beneficiary's trust account assets and the value of those assets.

(b) A trustee of a trust under subdivision 3 and United States Code, title 42, section 1396p(d)(4)(A) or (C), shall submit an accounting of the beneficiary's trust account to the commissioner of human services at least annually until the trust, or the beneficiary's interest in the trust, terminates. Accountings are due on the anniversary of the execution date of the trust unless another annual date is established by the terms of the trust. The accounting must include the following information for the accounting period:

- (1) an inventory of trust assets and the value of those assets at the beginning of the accounting period;
- (2) additions to the trust during the accounting period and the source of those additions;
- (3) itemized distributions from the trust during the accounting period, including the purpose of the distributions and to whom the distributions were made;
- (4) an inventory of trust assets and the value of those assets at the end of the accounting period; and
- (5) changes to the trust instrument during the accounting period.

(c) For the purpose of paragraph (b), an accounting period is 12 months unless an accounting period of a different length is permitted by the commissioner.

**501B.895 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.**

(a) It is the public policy of this state that individuals use all available resources to pay for the cost of long-term care services, as defined in section 256B.0595, before turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual or an individual's spouse from such use.

(b) When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination. For purposes of this section, any inter-vivos trust and any legal instrument, device, or arrangement similar to an inter-vivos trust:

- (1) shall be deemed to be located in and subject to the laws of this state; and
- (2) is created as of the date it is fully executed by or on behalf of all of the settlors or others.

(c) For purposes of this section, a legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust means any instrument, device, or arrangement which involves a grantor who transfers or whose property is transferred by another including, but not limited to, any court, administrative body, or anyone else with authority to act on their behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal obligations to the grantor or others to be held, managed, or administered by the individual or entity for the benefit of the grantor or others. These legal instruments, devices, or other arrangements are irrevocable inter-vivos trusts for purposes of this section.

(d) In the event of a conflict between this section and the provisions of an irrevocable trust created on or after July 1, 2005, this section shall control.



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(e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501B.89 or to trusts meeting the criteria of United States Code, title 42, section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

(f) This section applies to all trusts first created on or after July 1, 2005, as permitted under United States Code, title 42, section 1396p, and to all interests in real or personal property regardless of the date on which the interest was created, reserved, or acquired.

#### **501B.90 EFFECT OF DISSOLUTION OF MARRIAGE.**

Subdivision 1. **Revocation of certain trust provisions.** If after execution of a trust instrument in which a sole grantor reserves a power to alter, amend, revoke, or terminate the provisions of the trust, the grantor's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition, provision for beneficial enjoyment or appointment of property made by the trust instrument to a grantor's former spouse, any provisions conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee, unless the trust instrument expressly provides otherwise.

Subd. 2. **Passing of property.** Property prevented from passing to a former spouse because of revocation by dissolution or annulment of marriage passes as if the former spouse died on the date of the entry of the judgment and decree dissolving or annulling the grantor's marriage and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse died on the date of the entry of the judgment and decree dissolving or annulling the grantor's marriage.

Subd. 3. **Revival of revoked provisions.** If provisions are revoked solely by this section, they are revived by the grantor's remarriage to the former spouse. For purposes of this chapter, dissolution of marriage includes divorce. A decree of separation which does not terminate the status of husband and wife is not a dissolution of marriage for purposes of this section. No change of circumstances other than as described in this section revokes a trust instrument.

#### **502.62 COMMON LAW OF POWERS IS LAW OF STATE; EXCEPTIONS.**

The common law of powers is hereby declared to be the law in this state, except as modified by statute.

#### **502.63 DONOR MAY CREATE POWER OF APPOINTMENT.**

A donor may create a power of appointment only by an instrument executed with the same formalities as one which would pass title to the property covered by the power.

#### **502.64 DONEE MAY EXERCISE POWER OF APPOINTMENT.**

A donee may exercise a power of appointment only by an instrument executed with sufficient formalities to pass title to the property covered by the power. When a power of appointment is exercisable only by will, a donee may not exercise it by deed. When a power of appointment is exercisable by deed, a donee may exercise it by will.

#### **502.65 POWER, WHEN NOT VOID.**

A power of appointment authorized to be exercised by an instrument which would not be sufficient to transfer title to the property covered by the power is not void, but its execution must conform to the provisions of this chapter. When the power of appointment directs that formalities in addition to those prescribed in this chapter be observed in the execution of the power, the direction may be disregarded.

#### **502.66 POWER OF APPOINTMENT, WHO MAY EXERCISE.**

Any donee, except a minor, who would be capable of conveying the property covered by the power may exercise a power of appointment.

#### **502.67 POWER OF APPOINTMENT VESTED IN TWO OR MORE PERSONS.**

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When a power of appointment is vested in two or more persons, all must unite in its exercise; provided, if one or more of such persons die, become legally incapable of exercising the power, or renounce such power, the power may be exercised by the others.

#### **502.68 CONSENTS MUST BE IN WRITING.**

When the consent of the donor, or of any other person is required by the donor for the exercise of a power of appointment, this consent must be in writing. To entitle the instrument exercising the power to be recorded, the signature of any person consenting must be acknowledged; and, if the consent be given in a separate instrument, that instrument must be attached to the instrument exercising the power. If any person whose consent is required dies or becomes legally incapable of consenting, the donee may exercise the power with the consent of the other persons whose consent is required. If there be no such person, the donee may exercise the power in the manner provided by section 502.64, unless the donor has manifested a contrary intent in the instrument creating the power.

#### **502.69 INTENT OF POWER.**

Unless a contrary intent is manifest in the instrument creating the power, the donee may appoint all of the property to one or more of the objects to the exclusion of the others. A direction to appoint "to," "among," or "between" two or more objects is not a sufficient manifestation of a contrary intent; provided, that when the donee is prevented from excluding any object by the instrument creating the power, each object must receive an equal share, unless the instrument creating the power manifests an intent that some other division may be made.

#### **502.70 POWERS OF CREDITOR OF DONEE.**

When a donee is authorized either to appoint to the donee or to appoint to the donee's estate all or part of the property covered by a power of appointment, a creditor of the donee, during the life of the donee, may subject to the creditor's claim all property which the donee could then appoint to the donee and, after the death of the donee, may subject to the creditor's claim all property which the donee could at death have appointed to the donee's estate, but only to the extent that other property available for the payment of the creditor's claim is insufficient for such payment. When a donee has exercised such a power by deed, the rules relating to fraudulent conveyances shall apply as if the property transferred to the appointee had been owned by the donee. When a donee has exercised such a power by will in favor of a taker without value or in favor of a creditor, a creditor of the donee or a creditor of the donee's estate may subject such property to the payment of the creditor's claim, but only to the extent that other property available for the payment of the claim is insufficient for such payment.

#### **502.71 EFFECT OF DEED.**

When the donee of a power of appointment makes a deed purporting to transfer all of the donee's property, the property covered by the power is included in such transfer unless it be shown that the donee did not so intend.

#### **502.72 CONVEYANCE.**

A deed either creating or exercising a power of appointment over real property is a conveyance within the meaning of section 507.01. A will appointing real property is a devise within section 524.1-201.

#### **502.73 RIGHT OF ALIENATION SUSPENDED, WHEN.**

The period during which the power of alienation, within the meaning of section 501B.09, may be suspended by any instrument in execution of a power is to be computed from the time of the creation of the power and not from the date of the instrument, except that in the case of a general power presently exercisable, the period is to be computed from the date of the instrument.

#### **502.74 ADVANCEMENTS.**

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Every estate or interest given to a descendant of the donee by the exercise of a power is an advancement to such descendant to the same extent that a gift of property owned by the donee would be an advancement.

#### **502.75 POWER PASSES TO ASSIGNEE.**

Under a general assignment for the benefit of creditors, a power of appointment in the assignor by which the assignor is authorized to appoint the property to the assignor passes to the assignee.

#### **502.76 POWER OF REVOCATION.**

When the grantor in a conveyance personally reserves, for the grantor's own benefit, an absolute power of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

#### **502.77 POWER IF PART OF SECURITY.**

When a power to sell lands is given to the grantee in a mortgage, or other conveyance intended to secure the payment of money, the power is a part of the security and vests in, and may be executed by, any person who becomes entitled to the money so secured to be paid.

#### **502.78 ABSOLUTE POWER OF DISPOSITION.**

Where an absolute power of disposition is given to a grantee or devisee of real or personal property and no reversion, remainder, or gift in default of the property undisposed of by the grantee or devisee is expressed in the instrument creating the power, the grantee or devisee is the absolute owner of the property.

#### **502.79 RELEASE OF POWERS OF PROPERTY HELD IN TRUST.**

Subdivision 1. **Releasable powers.** A power of appointment over property held in trust, whether or not coupled with an interest, and whether or not existing on the effective date of Laws 1949, Chapter 607, and whether the power is held by the donee in an individual or in a fiduciary capacity, may be released, wholly or partially, by the donee thereof, unless otherwise expressly provided in the instrument creating the power; provided, however, that a power of appointment held by a person by reason of being a trustee of an express trust shall not be releasable hereunder unless (1) the release is approved by a court of competent jurisdiction on the ground that it is for the best interests of the trust estate and of the beneficiaries thereof as a whole, or (2) the trustee or trustees having the power could exercise it only in their own favor at the time the power was released. As used in this section, the term "power of appointment" shall include all powers in respect of any kind of property, real or personal, held in trust which are in substance and effect powers of appointment, all powers to alter, amend, revoke or terminate an express trust, and all powers by the exercise of which the possession or enjoyment of property held in trust may be changed, regardless of the language used in creating them.

Subd. 2. **Delivery of release.** A power releasable according to subdivision 1 may hereafter be released, wholly or partially, only by the delivery to the trustee of a written release executed by the donee of the power.

Subd. 3. **Extent of release.** A release executed by the donee of a power releasable according to subdivision 1 and delivered in accordance with subdivision 2, whether heretofore or hereafter executed, shall be, and if heretofore executed and delivered shall be deemed to have been effective to release the power to the extent provided in such release.

Subd. 4. **Release by one of several persons.** If a power of appointment releasable according to subdivision 1 is or may be exercisable by two or more persons in conjunction with one another or successively, a release or disclaimer of the power, in whole or in part, executed and delivered in accordance with subdivision 2 by any one of the donees of the power shall, subject to the provisions of subdivision 2, be effective to release or disclaim, to the extent therein provided, all right of such persons to exercise, or to participate in the exercise of, the power, but, unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees thereof.

Subd. 5. **Release defined.** The word "release" as used in subdivisions 2 to 5 shall include (a) an instrument wherein the person who executes it in substance states that that person wholly releases, or agrees in no respect to exercise or participate in the exercise of, a power of

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appointment; and (b) an instrument wherein the person who executes it in substance states that that person releases all right to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits therein defined, or agrees not to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits there defined.

Subd. 6. **Effect of section.** This section shall not impair the validity of any releases heretofore made, and shall not create any implication that powers other than those specified herein are not releasable.