CHAPTER 5--S.F.No. 578

An act relating to trusts; establishing the Minnesota Trust Code; recodifying certain provisions; modifying power of appointments; making conforming and technical changes;amending Minnesota Statutes 2014, sections 48.01, subdivision 2; 48A.07, subdivision 6; 317A.161, subdivision 24; 353.95, subdivision 4; 500.17, subdivision 2; 501B.31, subdivisions 2, 4, 5; 501B.41, subdivision 3; 501B.46; 508.62; 508A.62; 524.2-804, subdivision 1; 524.5-417; 529.06; 529.12; 529.14; 541.05, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 502; 507; proposing coding for new law as Minnesota Statutes, chapter 501C; repealing Minnesota Statutes 2014, sections 501B.01; 501B.012; 501B.02; 501B.03; 501B.04; 501B.05; 501B.06; 501B.07; 501B.08; 501B.09; 501B.12; 501B.13; 501B.14; 501B.15; 501B.151; 501B.152; 501B.154; 501B.155; 501B.16; 501B.17; 501B.18; 501B.19; 501B.20; 501B.21; 501B.22; 501B.23; 501B.24; 501B.25; 501B.56; 501B.561; 501B.57; 501B.571; 501B.59; 501B.60; 501B.61; 501B.62; 501B.63; 501B.64; 501B.65; 501B.665; 501B.67; 501B.68; 501B.69; 501B.705; 501B.71; 501B.72; 501B.73; 501B.74; 501B.75; 501B.76; 501B.79; 501B.80; 501B.81; 501B.82; 501B.87; 501B.88; 501B.89; 501B.895; 501B.90; 502.62; 502.63; 502.64; 502.65; 502.66; 502.67; 502.68; 502.69; 502.70; 502.71; 502.72; 502.73; 502.74; 502.75; 502.76; 502.77; 502.78; 502.79.

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

ARTICLE 1

GENERAL PROVISIONS

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

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

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

(a) This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that require the trust to be administered in the manner of an express trust.

(b) Sections 501C.0201 to 501C.0208 do not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. Sections 501C.0201 to 501C.0208 apply, 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 elects to apply sections 501C.0201 to 501C.0208, for such purposes only, 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 precludes the issuer from seeking approval under sections 501C.0201 to 501C.0208 of the creation of any express trust under a trust indenture and the appointment of a trustee to act as fiduciary for the benefit of the bondholders. As used in sections 501C.0201 to 501C.0208, "beneficiary" includes a bondholder.

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(c) This chapter does not apply to corporate trusts, except that sections 501C.0201 to 501C.0208 apply to corporate trusts that are administered by a trustee located in this state. For purposes of this paragraph, the following terms have the meanings given:

(1) "Corporate trust" means any trust created pursuant to a corporate trust agreement; and

(2) "Corporate trust agreement" means any indenture, pooling and servicing agreement, collateral agency agreement, or other contractual arrangement that establishes an express trust either before or upon the occurrence of an event of default and was entered into with a trustee as a party to facilitate a commercial transaction for the issuance of debt or equity securities or for the creation of other similar rights or interests, whether or not the securities are subject to any securities laws, including but not limited to the Trust Indenture Act of 1939, as amended.

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

In this chapter:

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

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

(c) "Beneficiary" means a person that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) has actual knowledge of it;

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

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

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

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

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

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

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

(1) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

JUDICIAL PROCEEDINGS

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

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

(b) As used in sections 501C.0201 to 501C.0208, "interested person" includes an acting trustee, any person named as successor trustee under the trust instrument, any person seeking court appointment as trustee whether or not named in the trust instrument, a beneficiary, a creditor, and any other person having a property or other right in or claim against the assets of the trust. Interested person also includes a fiduciary representing an interested person and any other person acting in a representative capacity as provided in

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sections 501C.0301 to 501C.0305, any person who takes action with respect to a trust in the absence of an acting trustee or otherwise within the meaning of section 501C.0701, an agent to whom a trustee has delegated a duty or power within the meaning of section 501C.0807, and any person with a power to direct the trustee within the meaning of section 501C.0808. The meaning of interested person, as it relates to a particular person, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any petition.

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

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

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

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

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

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

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

A judicial proceeding involving a trust may relate to one or more of the following matters:

(1) to confirm an action taken by a trustee;

(2) upon the 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, attorney, or accountant fees, or any other fees to be charged against the trust;

(6) to confirm the appointment of a trustee;

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(7) to accept a trustee's resignation and discharge the trustee from the trust as provided in section 501C.0705;

(8) to require a trustee to account;

(9) to remove a trustee as provided in section 501C.0706;

(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;

(11) to appoint an additional trustee or special fiduciary whether or not a vacancy in trusteeship exists as provided in section 501C.0704;

(12) to confirm an act taken by a person with respect to a trust while there was no acting trustee or otherwise in compliance with section 501C.0701;

(13) to subject a trust to or remove a trust from continuing court supervision under section 501C.0205;

(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, relating to charitable trusts;

(17) to determine the validity of a disclaimer under sections 524.2-1101 to 524.2-1116;

(18) to transfer the trust's principal place of administration as provided in section 501C.0108;

(19) to redress a breach of trust;

(20) to terminate a trust;

(21) to divide a trust or to merge two or more trusts as provided in section 501C.0417;

(22) to approve a nonjudicial settlement as provided in section 501C.0111;

(23) to approve, modify, or object to a proposed trust decanting as provided in section 502.851; or

(24) to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties, including a request for instructions and an action to declare rights.

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

Subdivision 1. **In rem judicial proceedings.** Upon the filing of a petition under the district court's in rem jurisdiction by an interested person, the court shall, by order, fix a time and place for a hearing. Notice of the judicial proceeding must be given by an interested person 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 current trustees and qualified beneficiaries of the trust whose identity is known and whose location is known or reasonably ascertainable to the petitioner after making reasonable

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efforts to locate such persons. In the case of a qualified beneficiary who is a minor or an incapacitated person as defined in section 524.5-102, notice of the judicial proceeding shall also be given to any representative person acting on behalf of the qualified beneficiary in accordance with the provisions of sections 501C.0301 to 501C.0305 who is known to the petitioner. The district court shall have the discretion to order that notice of the judicial proceeding may be given in any other manner as the court directs.

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

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

Subdivision 1. **In rem judicial proceedings.** Upon the hearing of a petition under the district court's in rem jurisdiction, the court shall make an order it considers appropriate. The order is 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 an order which, in effect, determines the petition may be taken by any party after service by any party of written notice of its filing as provided under the Rules of Appellate Procedure or, if no notice is served, within six months after the filing of the order.

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

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

(a) A person appointed as trustee of a trust 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 for appointment. Any such petition must be filed as an in rem proceeding in compliance with section 501C.0203, subdivision 1. Upon consideration of the petition, the court shall make an order it considers appropriate.

(b) A trustee whose appointment has been confirmed by court order under this section or a trustee otherwise subject to continuing court supervision by court order must file with the court administrator of the district court an inventory containing a list of all property belonging to the trust. The trustee shall 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 469.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3

REPRESENTATION

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

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

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

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

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

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

Sec. 2. **[501C.0302] REPRESENTATION BY 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 co-holders of a presently exercisable or testamentary general power of appointment, power of revocation, or unlimited power of withdrawal are deemed to represent and act for beneficiaries to the extent that their interests as permissible appointees, takers in default, or otherwise are subject to the power.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

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

(a) A trust may be created by:

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

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

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

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

(1) if the person by whom the purchase price was 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.

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

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

(a) A trust is created only if:

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

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

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

(i) a charitable trust; or

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

(4) the trustee has duties to perform.

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

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

(d) 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.

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

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

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

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

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

(3) any trust property was located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

SPENDTHRIFT TRUSTS; CREDITOR'S CLAIMS

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

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

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

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

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

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

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

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

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

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

(2) the trustee has abused the discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE 6

REVOCABLE TRUSTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7

OFFICE OF TRUSTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Each trustee shall exercise reasonable care to:

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

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

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

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

(a) A vacancy in the trusteeship occurs if:

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

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

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

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

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

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

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

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

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

(4) by a person appointed by the court.

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

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

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

(3) by a person appointed by the court.

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

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

(a) A trustee may resign:

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

(2) with the approval of the court.

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

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

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

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

(b) The court may remove a trustee if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8

DUTIES AND POWERS OF TRUSTEE

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

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

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

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

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

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

(2) the transaction was approved by the court;

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

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

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

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

(1) the trustee's spouse;

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

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

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

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

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

(2) payment of reasonable compensation to the trustee;

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

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

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

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

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

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

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

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

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

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

(1) selecting an agent;

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

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

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

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

(d) By accepting a delegation of powers or duties 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) veto or direct trust distributions; or

(12) provide direction regarding notification of qualified beneficiaries.

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

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

Subd. 6. **Duty and liability of excluded fiduciary.** (a) The excluded fiduciary shall act in accordance with the governing instrument and comply with the directing party's exercise of the powers granted to the directing party by the governing instrument. Unless otherwise provided in the governing instrument, an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a directing party's exercise of or failure to exercise any power granted to the directing party by the governing instrument, including but not limited to, any power related to the acquisition, disposition, retention, management, or valuation of any asset or investment. Except as otherwise provided in this section or the governing instrument, an excluded fiduciary is not liable, either individually or as a fiduciary, for any action, inaction, consent, or failure to consent by a directing party, including but not limited to, any of the following:

(1) if a governing instrument provides that an excluded fiduciary is to follow the direction of a directing party, and the excluded fiduciary acts in accordance with the direction, then except in cases of willful misconduct on the part of the excluded fiduciary in complying with the direction of the directing party, the excluded fiduciary is not liable for any loss resulting directly or indirectly from following the direction,

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including but not limited to, compliance regarding the valuation of assets for which there is no readily available market value;

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

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

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

(c) An excluded fiduciary is also relieved of any duty to communicate with, warn, or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or may have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the directing party.

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

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

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

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

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

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

(2) any existing or future trusts that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A trustee shall keep the qualified beneficiaries of an irrevocable trust reasonably informed about the administration of the trust and of the material facts necessary to protect their interests. Unless unreasonable

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under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of an irrevocable trust.

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

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

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

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

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

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

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

(c) A power that is limited or prohibited by paragraph (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power, or all of the trustees, acting by unanimous agreement, may appoint a special fiduciary with authority to exercise the power. A special fiduciary appointed by the other trustees may not be related to or subordinate to any trustee within the meaning of section 672(c) of the Internal Revenue Code.

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

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

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

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

(4) 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 paragraph (a);

(5) 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

(6) a trust created on or before May 14, 1993, if (i) the trust is not exempt from the 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.

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

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

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

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

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

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

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

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

(iii) any other powers conferred by this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) 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;

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

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

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

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

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

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

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ARTICLE 9

PRUDENT INVESTOR ACT RECODIFICATION

Section 1. **[501C.0901] 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.

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

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.

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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 trust instrument, 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. **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 that is a banking institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee that 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 that 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. 11. **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. 12. **Short title.** This section may be cited as the "Minnesota Prudent Investor Act."

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ARTICLE 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSON DEALING WITH TRUSTEE

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

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

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

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

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

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

(4) order a trustee to account;

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

(6) suspend the trustee;

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

(8) reduce or deny compensation to the trustee;

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

(10) order any other appropriate relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the termination of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subdivision 1. **Contents of certificate.** The settlor 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 fewer than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust must include:

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

(2) the date of the trust instrument;

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

(4) either (i) the following statement: "The trustees are authorized by the trust 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)" or (ii) information as to the powers of the trustee relating to the purposes for which the certificate is being offered;

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

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

The certificate of trust must be upon the representation of the settlor or trustee 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 (i) the powers of the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property or (ii) the authority of the trustees to exercise any other power identified in the certificate of trust. The signature of the settlor or trustee must be under oath before a notary public or other official authorized to administer oaths.

Subd. 2. **Real property transactions.** The certificate of trust may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real property. If so used, the certificate of trust shall identify the name of each settlor and the name of each original trustee and shall contain the following statement: "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property, except as limited by the following: (if none, so indicate)."

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

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Subd. 4. **Effect.** When a certificate of trust is recorded 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 or presented. Until amended or revoked under subdivision 5, or until the full trust instrument is recorded or presented, a certificate of trust is prima facie proof as to matters contained in it and any party may rely upon the continued effectiveness of the certificate.

Subd. 5. **Amendment or revocation.** Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor 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 in the office of the registrar of titles where the real property is situated.

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

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

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

STATE OF MINNESOTA)
) ss.
COUNTY OF)

AFFIDAVIT OF TRUSTEE

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

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

recorded ....., ..., 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 trustee or the settlor of the trust described in the Certificate of Trust (or set forth in the Trust Instrument), and which relates to real property in ..... County, Minnesota legally described as follows:

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

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

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

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

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

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

- OR -

4. The trust has terminated (or the trust instrument 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 power of 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:

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.....

.....

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

STATE OF MINNESOTA) AFFIDAVIT OF TRUSTEE
) ss.
COUNTY OF)

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

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

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

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

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

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

(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 the trust instrument has not been revoked.

- OR -

4. The Trust has terminated (or the trust instrument 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.

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

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

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

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

(4) 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;

(5) the requisite number of trustees 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 trustee or trustees who has actual knowledge of facts to the contrary.

Subd. 4. **Recording.** An Affidavit of Trustee or Trustees under subdivisions 1 and 2 may be recorded in the office of the county recorder for any county or in the office of the registrar of titles for any county

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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 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 as one document.

ARTICLE 11

UNIFORM PRINCIPAL AND INCOME ACT RECODIFICATION

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

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

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.

Sec. 2. **[501C.1102] 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 501C.1101 to 501C.1118;

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

(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 501C.1101 to 501C.1118.

Subd. 3. **Standards for exercise.** In exercising a power to adjust under section 501C.1112 or a discretionary power of administration regarding a matter within the scope of sections 501C.1101 to 501C.1118,

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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 501C.1101 to 501C.1118 is presumed to be fair and reasonable to all of the beneficiaries.

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

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 501C.1107 on bond premium and bond discount;

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

(4) corporate distributions as provided in section 501C.1106;

(5) accrued increment on bonds or other obligations issued at discount as provided in section 501C.1107;

(6) receipts from business and farming operations as provided in section 501C.1108;

(7) receipts from disposition of natural resources as provided in sections 501C.1109 and 501C.1110; and

(8) receipts from other principal subject to depletion as provided in section 501C.1111.

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 501C.1106;

(5) receipts from the disposition of corporate securities as provided in section 501C.1107;

(6) royalties and other receipts from disposition of natural resources as provided in sections 501C.1109 and 501C.1110;

(7) receipts from other principal subject to depletion as provided in section 501C.1111;

(8) profit resulting from a change in the form of principal;

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(9) allowances for depreciation established under sections 501C.1108 and 501C.1113, 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 501C.1101 to 501C.1118, the trustee shall charge to income or principal expenses and other charges as provided in section 501C.1113.

Sec. 4. **[501C.1104] 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;

(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.

Subd. 6. **Income payable to spouse.** If a gift or bequest is made in trust that is intended to qualify for the federal estate tax deduction for transfers under section 2056 of the Internal Revenue Code of 1986, as amended, or the federal gift tax deduction under section 2523 of the Internal Revenue Code of 1986,

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as amended, all distributions of income to the transferor's spouse shall not be made less frequently than annually.

Sec. 5. **[501C.1105] 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.

Sec. 6. **[501C.1106] 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,

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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;

(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;

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(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 501C.1101 to 501C.1118 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 501C.1101 to 501C.1118.

(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.

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

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.

Sec. 8. **[501C.1108] 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

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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 501C.1101 to 501C.1118 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.

Sec. 9. **[501C.1109] 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 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.

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

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

Except as provided in sections 501C.1109 and 501C.1110, 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 501C.1101 to 501C.1118 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.

Sec. 12. **[501C.1112] 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 501C.1102, subdivision 3, after applying section 501C.1102, 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.

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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 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 501C.1101 to 501C.1118 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

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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.

(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

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(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 501C.0201 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.

Sec. 13. **[501C.1113] 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,

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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;

(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 501C.1101 to 501C.1118 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 501C.1105;

(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 501C.1104.

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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.

Sec. 14. **[501C.1114] NONTRUST ESTATES.**

Subdivision 1. **Limitations.** Sections 501C.1101 to 501C.1118 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 501C.1101 to 501C.1118 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 501C.1101 to 501C.1118 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.

(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

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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.

Sec. 15. **[501C.1115] 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 501C.1101 to 501C.1118 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.

Sec. 16. **[501C.1116] ASCERTAINMENT OF INCOME OR PRINCIPAL.**

Sections 501C.1101 to 501C.1118 do not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

Sec. 17. **[501C.1117] UNIFORMITY OF INTERPRETATION.**

Sections 501C.1101 to 501C.1118 must be so construed as to effectuate their general purpose to make uniform the law of those states that enact them.

Sec. 18. **[501C.1118] SHORT TITLE.**

Sections 501C.1101 to 501C.1117 may be cited as the Uniform Principal and Income Act.

ARTICLE 12

MISCELLANEOUS PROVISIONS RECODIFICATION

Section 1. **[501C.1201] 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;

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(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.

Sec. 2. **[501C.1202] 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, sections 501C.0201 to 501C.0208 apply. 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. 3. **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. 4. **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.

Sec. 3. **[501C.1203] 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

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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.

Sec. 4. **[501C.1204] TRUSTS NOT AFFECTED.**

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.

Sec. 5. **[501C.1205] 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.

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(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 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

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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.

Sec. 6. **[501C.1206] 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 settlor 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 settlor or others to be held, managed, or administered by the individual or entity for the benefit of the settlor 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.

(e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501C.1205 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.

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(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.

Sec. 7. **[501C.1207] EFFECT OF DISSOLUTION OF MARRIAGE.**

Subdivision 1. **Revocation of certain trust provisions.** If after execution of a trust instrument in which a sole settlor reserves a power to alter, amend, revoke, or terminate the provisions of the trust, the settlor'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 settlor'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 settlor'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 settlor's marriage.

Subd. 3. **Revival of revoked provisions.** If provisions are revoked solely by this section, they are revived by the settlor'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.

Sec. 8. **[501C.1208] SETTLOR AND AGENTS OF SETTLOR.**

If a trust instrument reserves to the settlor, in a nonfiduciary capacity, the control over any or all investment decisions, the trustee is not responsible for the investment decisions made by the settlor or an agent of the settlor.

Sec. 9. **[507.48] 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.

Sec. 10. **[507.49] 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;

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(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, mortgage, lease, or transfer title to interests in real or personal property. The signature of the custodians or the owners of property held in the custodianship must be under oath before a notary public or other official authorized to administer oaths.

Subd. 2. **Effect.** A certificate of custodianship executed under subdivision 1 may be recorded in the office of the county recorder for any county or in the office of the registrar of titles with respect to registered land described in the certificate of custodianship or any attachment to it. When it is recorded 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 custodianship serves to document the existence of the custodianship, the identity of the custodians, the powers of the custodians and any limitations on those powers, and other matters the certificate of custodianship sets out, as though the full custodianship instrument had been recorded, filed, or presented. Until amended or revoked under subdivision 3, or until the full custodianship instrument is recorded or presented, a certificate of custodianship 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.** (a) Amendment or revocation of a certificate of custodianship may be made only by a written instrument executed by a custodian or an owner of property held in the custodianship. Amendment or revocation of a certificate of custodianship is not effective as to a party unless that party has actual notice of the amendment or revocation.

(b) 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 in the office of the registrar of titles where the real property is situated.

Subd. 4. **Application.** (a) Subdivisions 1 to 3 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.

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Sec. 11. **[507.50] 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:

1. Affiant is the custodian (one of the custodians) named in that certain Certificate of Custodianship (or Custodianship Instrument)

recorded ....., ..., 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.

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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;

(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.** An Affidavit of Custodian or Custodians under subdivision 1 may be recorded in the office of the county recorder for any county or in the office of the registrar of titles for any county with

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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 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 as one document.

Subd. 4. **Application.** (a) Subdivisions 1 to 3 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.

ARTICLE 13

APPLICATION AND CONSTRUCTION OF TRUST CODE

Section 1. **[501C.1301] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing sections 501C.0101 to 501C.1014, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 2. **[501C.1302] ELECTRONIC RECORDS AND SIGNATURES.**

The provisions of sections 501C.0101 to 501C.1208 governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7002, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Sec. 3. **[501C.1303] SEVERABILITY.**

If any provision located in sections 501C.0101 to 501C.1208 or their application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of any provision located in sections 501C.0101 to 501C.1208 which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 4. **[501C.1304] APPLICATION TO EXISTING RELATIONSHIPS.**

(a) Except as otherwise provided in sections 501C.0101 to 501C.1208:

(1) sections 501C.0101 to 501C.1208 apply to all trusts created before, on, or after its effective date;

(2) sections 501C.0101 to 501C.1208 apply to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) sections 501C.0101 to 501C.1208 apply to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or unfairly prejudice the rights of the parties;

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(4) any rule of construction or presumption provided in sections 501C.0101 to 501C.1208 apply to trust instruments executed before the effective date of this act unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act or omission that occurs before the effective date of sections 501C.0101 to 501C.1208 is not affected by sections 501C.0101 to 501C.1208.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of sections 501C.0101 to 501C.1208, that statute continues to apply to the right even if it has been repealed or superseded.

ARTICLE 14

POWERS OF APPOINTMENT

Section 1. **[502.80] COMMON LAW OF POWERS RETAINED, EXCEPT AS MODIFIED BY THIS CHAPTER.**

(a) The common law of powers remains in full force and effect and supplements the provisions of this chapter, unless explicitly modified or displaced by this chapter.

(b) If any provision of this chapter differs or is inconsistent with any provision in chapter 523 relating to powers of attorney, the provisions of chapter 523 shall prevail to the extent the provisions are different or inconsistent.

Sec. 2. **[502.81] DEFINITIONS.**

Subdivision 1. **Application.** The terms defined in this section apply to this chapter.

Subd. 2. **Appointee.** "Appointee" means the person in whose favor a power of appointment is exercisable.

Subd. 3. **Appointive property.** "Appointive property" means property which is the subject of a power of appointment.

Subd. 4. **Donee.** "Donee" means the person to whom a power is given or in whose favor a power is reserved.

Subd. 5. **Donor.** "Donor" means the person who creates or reserves a power.

Subd. 6. **Power.** "Power" means an authority to do any act in relation to property, including the creation or revocation of an estate therein or a charge thereon, that the donor of the power might do, except that the term, as used in this chapter, does not apply to a power of attorney to convey property in the name of the owner.

Sec. 3. **[502.82] VARIETIES OF POWER.**

Subdivision 1. **Powers of appointment and other powers.** This chapter applies to powers of appointment. A power of appointment, as the term is used in this chapter, is an authority created or reserved by a donor having property subject to the donor's disposition, enabling the donee to designate, within the limits that may be prescribed by the donor, the appointees of the property, the shares, or the manner in which the property shall be received.

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Subd. 2. **Classification of powers of appointment as to kind; general and special; exclusive and nonexclusive.** (a) A power of appointment is:

(1) general or special; and

(2) exclusive or nonexclusive.

(b) A power of appointment is general to the extent that it is exercisable wholly in favor of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate.

(c) All other powers of appointment are special.

(d) A special power of appointment is exclusive if it may be exercised in favor of one or more of the appointees to the exclusion of the others.

(e) A special power of appointment is nonexclusive if it must be exercised in favor of all the appointees.

Subd. 3. **Classification of powers of appointment as to time of exercise; presently exercisable, testamentary, and postponed.** (a) A power of appointment, as to the time of its exercise, may be presently exercisable, testamentary, or postponed.

(b) A power of appointment is presently exercisable if it may be exercised by the donee, during the donee's lifetime or by the donee's written will, at any time after its creation, and does not include a postponed power as described in paragraph (d).

(c) A power of appointment is testamentary if it is exercisable only by a written will of the donee.

(d) A power of appointment is postponed if it is exercisable by the donee only after the expiration of a stated time or after the occurrence or nonoccurrence of a specified event.

Subd. 4. **Classification of powers of appointment as to duty to exercise; imperative and discretionary.** (a) A power of appointment is either imperative or discretionary.

(b) A power of appointment is imperative if the instrument creating the power imposes on the donee a duty to exercise it, and the power may be imperative even though it is exclusive.

(c) A power of appointment is discretionary if the donee is authorized to exercise or not to exercise it.

Sec. 4. **[502.83] RULES FOR CREATION OF A POWER OF APPOINTMENT.**

The donor of a power of appointment:

(1) must be a person capable of transferring the appointive property;

(2) must have created or reserved the power by a written instrument executed by the donor in the manner required by law;

(3) must manifest the donor's intention to confer the power on a person capable of holding the appointive property; and

(4) must not nullify or alter the rights of creditors of the donee, as defined in this chapter, by any language in the instrument creating or reserving the power purporting to give the interest of the donee a spendthrift character.

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Sec. 5. **[502.84] EXTENT OF DONEE'S AUTHORITY TO APPOINT OR CONTRACT TO APPOINT AN ESTATE IN APPOINTIVE PROPERTY.**

Subdivision 1. **Scope of the authority of the donee.** The scope of the donee's authority as to appointees and as to the time and manner of the appointment is unlimited except as the donor manifests a contrary intention.

Subd. 2. **Contract to appoint; power presently exercisable.** The donee of a power of appointment which is presently exercisable, or of a postponed power which has become exercisable, can contract to make an appointment to the extent that the contract or the promised appointment does not confer a benefit upon a person who is not a permissible appointee under the power.

Subd. 3. **Contract to appoint; power not presently exercisable.** (a) The donee of a power of appointment which is not presently exercisable, or of a postponed power which has not become exercisable, must not contract to make an appointment, except that this prohibition shall not apply if the donor and donee are the same person. A prohibited contract under this subdivision, if made, must not be the basis of an action for specific performance or damages, but the promisee may obtain restitution of the value given by the promisee for the promise unless the donee has exercised the power pursuant to the contract.

(b) The provisions of this section do not abridge the ability of the donee of a power of appointment, which is not presently exercisable, to release the power pursuant to section 502.87, subdivision 2, except that where the donor designated persons or a class to take in default of the donee's exercise of the power, a release with respect to appointive property must serve to benefit all those so designated as provided by the donor.

Subd. 4. **Priority.** With respect to real property subject to a power of appointment, the interest of a donee and any appointee has priority as against creditors, purchasers, or encumbrancers of the real property, or as against a person having an estate in the real property, only from the time at which the instrument creating the power is duly recorded, but only if the creditors, purchasers, encumbrancers, and estate holders act in good faith or without notice. As against all other persons, this interest has priority from the time at which the instrument creating the power takes effect.

Sec. 6. **[502.85] EXERCISE OF A POWER OF APPOINTMENT.**

Subdivision 1. **Manifestation of intention of donee.** (a) Subject to paragraph (b), an effective exercise of a power of appointment does not require an express reference to the power. A power is effectively exercised if the donee manifests the donee's intention to exercise the power. A manifestation of the donee's intent exists when the donee:

(1) declares in substance that the donee is exercising all of the donee's powers;

(2) sufficiently identifying the appointive property or any part thereof, executes an instrument purporting to dispose of the property or part thereof; or

(3) makes a disposition which, when read with reference to the property the donee owned and the circumstances existing at the time of its making, manifests the donee's understanding that the donee was disposing of the appointive property.

(b) If the donor has expressly directed that no instrument is effective to exercise the power unless the instrument contains a specific reference to the power, an instrument not containing this reference does not validly exercise the power.

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Subd. 2. **Conformity to directions of donor.** The directions of the donor as to the manner, time, and conditions of the exercise of a power must be observed, except that:

(1) where the donor has authorized a power of appointment to be exercised by an instrument legally insufficient to dispose of the appointive property, the manner of exercise is to be determined by the provisions of this chapter;

(2) where the donor has directed any formality to be observed in the exercise of a power of appointment in addition to those which would be legally sufficient to dispose of the appointive property, no additional formality is necessary to a valid exercise of the power;

(3) where the donor has made a power of appointment exercisable only by deed, it is also exercisable by a written will unless exercise by will is expressly excluded; and

(4) where the donor of a general power of appointment has not expressly imposed a requirement of good faith or of reasonableness with respect to the donee's exercise of the power, neither requirement shall be implied.

Subd. 3. **Type of instrument.** 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.

Subd. 4. **Required consents.** (a) When the consent of the donor or of a third person to the exercise of a power of appointment is required, the consent must be expressed in a written instrument, subscribed by the person whose consent is required. To entitle the instrument of exercise to be recorded, the signatures of the donee and of the person consenting must be acknowledged or proved in the manner required by the laws of this state for the recording of a deed of real property.

(b) Unless the donor expressly provides otherwise:

(1) When the consents of two or more persons are required for the exercise of a power of appointment, all must consent.

(2) If before the exercise of the power:

(i) one or more of the persons required to consent die, the consent of the survivor is sufficient; or

(ii) one or more of the persons required to consent become incompetent, the consent of the competent person is sufficient.

Subd. 5. **Exercise of exclusive and nonexclusive power of appointment.** Unless the donor expressly provides otherwise:

(1) the donee of an exclusive power may appoint all or any part of the appointive property to one or more of the appointees to the exclusion of the others; or

(2) the donee of a nonexclusive power must appoint in favor of all of the appointees equally, unless the instrument creating the power manifests an intent that some other division be made.

Subd. 6. **Exercise by all donees; exceptions.** Except as provided in section 502.851, whenever a power of appointment is created in two or more donees, all must unite in the exercise of the power of appointment,

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unless the instrument creating the power provides otherwise. If, before its execution, one or more of the donees dies or becomes incompetent, the power may be exercised by the survivor or the competent donee, unless this exercise is explicitly barred by the terms of the instrument creating the power.

Subd. 7. **Imperative power of appointment; effectuation.** (a) The exercise of an imperative power of appointment devolves upon a court having jurisdiction over the instrument creating the power of appointment in the following cases:

(1) failure to designate the donee;

(2) death of the designated donee without exercising the power;

(3) incompetence of the sole donee; or

(4) defective exercise of the power, either wholly or in part, by the donee.

(b) Where an imperative power of appointment:

(1) is exclusive, and the donee dies without exercising the power, the power must be exercised for the benefit of all the appointees equally;

(2) has been exercised defectively by the donee, it may be properly exercised in favor of persons intended to be benefited by the donee;

(3) has been exercised defectively by the donee, a purchaser for a valuable consideration claiming under the defective exercise is entitled to the same relief as a similar purchaser claiming under a defective disposition from an actual owner;

(4) is nonexclusive, and the right of the appointee is assignable, creditors or assignees of the appointee can compel the exercise of the power for their benefit; or

(5) is nonexclusive, an appointee's guardian or estate conservator, as the case may be, can compel the exercise of the power.

Subd. 8. **Exercise of a power of appointment in further trust.** If the donee of a power of appointment exercises the power in favor of the trustee of a trust under a will or deed other than that under which the power was created, and, if the exercise is otherwise valid, the appointive property shall be distributed to the trustee of, and administered under the terms of, the trust under the will or deed, and jurisdiction over the appointive property must thereafter be in the court having jurisdiction over the trust created by the will or deed.

Sec. 7. **[502.851] TRUST DECANTING.**

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Appointed trust" means an irrevocable trust which receives principal from an invaded trust under subdivision 3 or 4, including another trust created by the settlor of the invaded trust, under the terms of the invaded trust or any other trust instrument, or by the trustees, in that capacity, of the invaded trust. For purposes of creating another trust, any requirement that a trust instrument be signed by the settlor shall be deemed satisfied by the signature of the trustee of the appointed trust.

(b) "Authorized trustee" means, as to an invaded trust, any trustee or trustees with authority to pay trust principal to or for one or more current beneficiaries other than a trustee who is the settlor, or a beneficiary

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to whom income or principal must be paid currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee, other than by the exercise of a power of appointment held in a nonfiduciary capacity.

(c) "Current beneficiary" or "beneficiaries" means the person or persons, or as to a class, any person or persons who are or will become members of that class, to whom the trustees may distribute principal at the time of the exercise of the power, provided that the interest of a beneficiary to whom income, but not principal, may be distributed at the discretion of the trustee of the invaded trust, may be continued in the appointed trust.

(d) "Invade" means the power to pay directly to the beneficiary of a trust or make application for the benefit of the beneficiary.

(e) "Invaded trust" means any existing irrevocable inter vivos or testamentary trust whose principal is appointed under subdivision 3 or 4.

(f) "Person or persons interested in the invaded trust" means all qualified beneficiaries as defined in section 501C.0103, paragraph (m).

(g) "Principal" includes the income of the trust at the time of the exercise of the power that is not currently required to be distributed, including accrued and accumulated income.

(h) "Unlimited discretion" means the unlimited power to distribute principal. A power to distribute principal that includes words such as best interests, welfare, comfort, or happiness shall not be considered a limitation of the power to distribute principal.

Subd. 2. **Power of appointment; effect when more or less extensive than authorized.** An exercise of a power of appointment is not void if the exercise is:

(1) more extensive than was authorized but is valid to the extent authorized by the instrument creating its power; or

(2) less extensive than authorized by the instrument creating the power, unless the donor has manifested a contrary intention.

Subd. 3. **Authorized trustee with unlimited discretion.** (a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of the principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one, or all of the current beneficiaries of the invaded trust, to the exclusion of any one or more of the current beneficiaries. The successor and remainder beneficiaries of the appointed trust may be none, one, more than one, or all of the successor and remainder beneficiaries of the invaded trust.

(b) An authorized trustee exercising the power under paragraph (a) may grant a discretionary power of appointment in the appointed trust to one or more of the current beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint may receive principal outright under the terms of the invaded trust.

(c) If the authorized trustee grants a power of appointment, the class of permissible appointees in favor of whom the beneficiary may exercise the power of appointment granted in the appointed trust may be broader or otherwise different from the current, successor, and remainder beneficiaries of the invaded trust.

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(d) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust may include present or future members of the class.

Subd. 4. **Authorized trustee without unlimited discretion.** (a) An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided that the current beneficiaries of the appointed trust shall be the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries shall be the same as the successor and remainder beneficiaries of the invaded trust.

(b) If the authorized trustee exercises the power under this subdivision, the appointed trust shall include the same language authorizing the trustee to distribute the income or invade the principal of the appointed trust as in the invaded trust.

(c) If the authorized trustee exercises the power under this subdivision to extend the term of the appointed trust beyond the term of the invaded trust, for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust pursuant to paragraph (b), may also include language providing the trustee with unlimited discretion to invade the principal of the appointed trust during this extended term.

(d) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust shall include present or future members of the class.

(e) If the authorized trustee exercises the power under this subdivision and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust shall grant the power of appointment in the appointed trust and the class of permissible appointees shall be the same as in the invaded trust.

Subd. 5. **Special power of appointment.** An exercise of the power to invade trust principal under subdivision 3 or 4 shall be considered the exercise of a special power of appointment.

Subd. 6. **Term of appointed trust.** The appointed trust to which an authorized trustee appoints the assets of the invaded trust may have a term that is longer than the term set forth in the invaded trust, including, but not limited to, a term measured by the lifetime of a current beneficiary.

Subd. 7. **Unlimited discretion governs.** If an authorized trustee has unlimited discretion to invade the principal of a trust, and the same trustee or another trustee has the power to invade principal under the trust instrument and that power is not subject to unlimited discretion, the authorized trustee having unlimited discretion may exercise the power of appointment under subdivision 3.

Subd. 8. **Current need to invade principal.** An authorized trustee may exercise the power to appoint in favor of an appointed trust under subdivision 3 or 4 whether or not there is a current need to invade principal under the terms of the invaded trust.

Subd. 9. **Fiduciary duty.** An authorized trustee exercising the power under this section has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances.

Subd. 10. **Subsequently discovered assets.** Unless the authorized trustee provides otherwise:

(1) the appointment of all the assets comprising the principal of the invaded trust to an appointed trust shall include subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust; and

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(2) the appointment of part but not all of the assets comprising the principal of the invaded trust to an appointed trust shall not include subsequently discovered assets belonging to the invaded trust and principal paid to or acquired by the invaded trust after the appointment to the appointed trust. These assets shall remain the assets of the invaded trust.

Subd. 11. **Requirements for exercise of power to appoint; notice.** (a) The exercise of the power to appoint to an appointed trust under subdivision 3 or 4 must be evidenced by an instrument in writing, signed, dated, and acknowledged by the authorized trustee. The exercise of the power shall be effective 60 days after the date of delivery of notice as specified in paragraph (c), unless each person entitled to notice agrees in writing to an earlier effective date or waives in writing the right to object to the exercise of the power.

(b) An authorized trustee may exercise the power authorized by subdivision 3 or 4 without the consent of the settlor or the persons interested in the invaded trust and without court approval, provided that the authorized trustee may seek court approval for the exercise with notice to all persons interested in the invaded trust.

(c) A copy of the instrument exercising the power, a copy of the appointed trust, and a copy of the invaded trust shall be delivered to:

(1) any person having the right, pursuant to the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under subdivision 3 or 4; and

(2) all persons interested in the invaded trust.

(d) Notice of an exercise of the power must be given in the same manner as provided in section 501C.0109.

(e) The instrument exercising the power shall state whether the appointment is of all the assets comprising the principal of the invaded trust or only a part of the assets comprising the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is subject to the appointment.

(f) A person entitled to notice may object to the authorized trustee's exercise of the power under this section by serving a written notice of objection upon the authorized trustee prior to the effective date of the exercise of the power. The failure to object shall not constitute a consent.

(g) If the authorized trustee does not receive a written objection to the proposed exercise from a person entitled to notice within the applicable period, the authorized trustee is not liable to any person who received the required notice for the exercise of the power.

(h) If the authorized trustee receives a written objection within the applicable period, either the authorized trustee or any person entitled to notice may petition the court to have the proposed exercise of a power performed as proposed, performed with modifications, or denied. In a proceeding, a person objecting to the proposed exercise has the burden of proof as to whether the authorized trustee's proposed exercise should not be performed. A person who has not objected is not estopped from opposing the proposed exercise in the proceeding. If the authorized trustee decides not to implement the proposed exercise, the trustee shall notify all persons entitled to notice of the decision not to exercise the power and the reasons for the decision, and the authorized trustee's decision not to implement the proposed exercise does not itself give rise to liability to any person interested in the invaded trust. A person entitled to notice may petition the court to have the exercise of a power performed and has the burden of proof as to whether it should be performed.

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(i) A copy of the instrument exercising the power and a copy of each of the invaded trust and the appointed trust shall be filed with records of the appointed trust and the invaded trust.

Subd. 12. **Rights of trustee.** This section shall not be construed to abridge the right of any trustee to appoint property in further trust that arises under the terms of the governing instrument of a trust or under any other provision of law or under common law, or as directed by any court having jurisdiction over the trust.

Subd. 13. **No duty to exercise a power to invade.** Nothing in this section is intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety shall be made as a result of an authorized trustee not exercising the power conferred under subdivision 3 or 4.

Subd. 14. **Power clarified.** A power authorized by subdivision 3 or 4 may be exercised, subject to the provisions of subdivision 9, unless expressly prohibited by the terms of the governing instrument, but a general prohibition of the amendment or revocation of the invaded trust or a provision that constitutes a spendthrift clause shall not preclude the exercise of a power under subdivision 3 or 4.

Subd. 15. **Prohibitions.** An authorized trustee may not exercise a power authorized by subdivision 3 or 4 to effect any of the following:

(1) to reduce, limit, or modify any beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a current right to withdraw a percentage of the value of the trust, or a current right to withdraw a specified dollar amount; provided, however, and subject to the other limitations in this section, an authorized trustee may exercise a power authorized by subdivision 3 or 4 to appoint to an appointed trust that is a supplemental needs trust that conforms to the provisions of section 501C.1205;

(2) notwithstanding section 501C.1008, paragraph (b), to decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(3) to alter or eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under subdivision 3 or 4, unless notice has been provided to the persons under subdivision 11, paragraph (c), or approval is granted by a court having jurisdiction over the trust;

(4) to make a binding and conclusive fixation of the value of any asset for purposes of distribution, allocation, or otherwise;

(5) to extend the term of the appointed trust beyond any permissible period of the rule against perpetuities of the invaded trust, and any exercise of the power which extends the term of the appointed trust beyond the permissible period of the rule against perpetuities of the invaded trust shall void the entire exercise of the power; or

(6) to jeopardize:

(i) the deduction or exclusion originally claimed with respect to any contribution to the invaded trust that qualified for the annual exclusion under section 2503(b) of the Internal Revenue Code; the marital deduction under section 2056(a) or 2523(a) of the Internal Revenue Code; or the charitable deduction under section 170(a), 642(c), 2055(a), or 2522(a) of the Internal Revenue Code;

(ii) the qualification of a transfer as a direct skip under section 2642(c) of the Internal Revenue Code; or

(iii) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer purposes under the Internal Revenue Code.

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Subd. 16. **Compensation; commissions.** For the purposes of this section:

(1) Unless a court otherwise directs, an authorized trustee may not exercise a power authorized by subdivision 3 or 4 to change the provisions regarding the determination of the compensation of any trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as in the invaded trust.

(2) No trustee shall receive any paying commission or other compensation for appointing of property from the invaded trust to an appointed trust pursuant to subdivision 3 or 4.

Subd. 17. **Application.** Unless the invaded trust expressly provides otherwise, this section applies to any trust governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state.

Sec. 8. **[502.86] RIGHTS OF CREDITORS IN APPOINTIVE PROPERTY.**

Subdivision 1. **Special power.** Property that is covered by either a special power of appointment or a general power of appointment that is exercisable solely for the support, maintenance, health, and education of the donee within the meaning of sections 2041 and 2514 of the Internal Revenue Code is not subject to the payment of the claims of creditors of the donee, the donee's estate, or the expenses of administering the donee's estate.

Subd. 2. **General power currently exercisable.** Property that is covered by a general power of appointment, other than one exercisable solely for the support, maintenance, health, and education of the donee within the meaning of sections 2041 and 2514 of the Internal Revenue Code, that is presently exercisable, or of a postponed power that has become exercisable, is subject to the payment of the claims of creditors of the donee, the donee's estate, and the expenses of administering the donee's estate, but only to the extent that other property available for the payment of the creditor's claim is insufficient for this payment. It is immaterial whether the donor of the power is the donee or some other person, or whether the donee has or has not purported to exercise the power.

Subd. 3. **Power subject to a condition.** A general power of appointment may be created subject to a condition precedent or subsequent, and, until the condition is fulfilled, it is not subject to the provisions of subdivision 2.

Subd. 4. **General power not presently exercisable.** Property that is covered by a general power of appointment which, when created, is not presently exercisable, is subject to the payment of the claims of creditors of the donee, the donee's estate, and the expenses of administering the donee's estate only if:

(1) the power was created by the donee in favor of the donee; or

(2) a postponed power becomes exercisable in accordance with the terms of the creating instrument, except in the case of a testamentary general power.

Sec. 9. **[502.87] REVOCATION AND RELEASE OF A POWER OF APPOINTMENT.**

Subdivision 1. **Revocability of a power of appointment.** (a) A power of appointment is irrevocable unless the donor reserves the right to revoke it.

(b) An exercise of power of appointment is irrevocable whenever:

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(1) the donor of a special power manifests an intent that the exercise of the special power be irrevocable; or

(2) the donee does not manifest in the instrument exercising the power an intent to reserve a power of revocation.

(c) If the donee in exercising a power reserves a power to revoke the appointment, but does not expressly reserve a power to reappoint, upon the exercise of the power of revocation, the donee may reappoint.

(d) An instrument exercising a power of appointment is affected by fraud in the same manner as a deed or will executed by an owner or by a trustee of property.

Subd. 2. **Release of a power of appointment.** (a) Any power of appointment, whether exercisable only by deed, only by will, or by either deed or will, and whether general or special, exclusive or nonexclusive, is releasable, either with or without consideration, by written instrument signed by the donee of the power and delivered as provided in paragraph (c).

(b) A releasable power of appointment may be released with respect to all or any part of the appointive property and may also be released in a manner as to reduce or limit the appointees, or classes of appointees, in whose favor the power is exercisable.

(c) A release may be delivered to any of the following persons in the order provided:

(1) any person specified for this purpose in the instrument creating the power;

(2) if no person is specified as provided in clause (1), any trustee of the property subject to the power; or

(3) if no person is specified as provided in clause (1) or serving as trustee as provided in clause (2), any person, other than the donee, who might be adversely affected by an exercise of the power.

(d) In addition to the provisions of paragraph (c), a release may be delivered to the county clerk of the county in which the donee resides or has a place of business or in which the instrument creating the power is filed, to be duly filed by the clerk upon the payment of the fees due for the filing or, if the power was created by will, to the clerk of the probate court having jurisdiction over the estate of the donor.

(e) This section applies to releases delivered on or after the effective date of this act.

Sec. 10. **[502.88] RULE AGAINST PERPETUITIES AND ACCUMULATIONS AS AFFECTED BY POWERS OF APPOINTMENT.**

Subdivision 1. **Scope.** Notwithstanding any provision of this section to the contrary, nothing in this section shall be construed, applied, or interpreted to be inconsistent with chapter 501A.

Subd. 2. **Time at which permissible period begins.** (a) If an estate is created by an instrument exercising a power of appointment, the permissible period of the rule against perpetuities begins:

(1) In the case of an instrument exercising either:

(i) a general power which is presently exercisable; or

(ii) any other power, whether presently exercisable, testamentary, or postponed, but only if the exercise of the power makes express reference to this item, section 502.88, subdivision 2, paragraph (a), clause (1), item (ii), in the instrument of exercise,

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the period shall begin on the effective date of the instrument of exercise.

(2) In all other cases, the period begins at the time of the creation of the power.

(b) If the creator of a trust reserves an unqualified power to revoke, the permissible period of the rule against perpetuities begins when the power to revoke terminates by reason of the death of the creator, by a release of the power, or otherwise.

Subd. 3. **Law which determines permissible period.** In all cases covered by subdivision 2, the permissible period of the rule against perpetuities is determined by the law in effect when the power is exercised or the unqualified power to revoke is terminated, and not by the law in effect when the power was created.

Subd. 4. **Facts to be considered.** When the permissible period of the rule against perpetuities must be computed from the time of the creation of the power of appointment, facts and circumstances existing on the effective date of the instrument exercising the power must be taken into account in determining the validity of interests created by the instrument exercising the power.

Subd. 5. **Rule against accumulations; law determining validity in exercise of a power of appointment.** When a direction for the accumulation of income is contained in an instrument exercising a power, whether the instrument is created before or after the effective date of this act, the validity of the direction is determined by the law in effect when the power is exercised or the unqualified power to revoke is terminated, and not by the law in effect when the power was created.

Sec. 11. **REPEALER.**

Minnesota Statutes 2014, sections 502.62; 502.63; 502.64; 502.65; 502.66; 502.67; 502.68; 502.69; 502.70; 502.71; 502.72; 502.73; 502.74; 502.75; 502.76; 502.77; 502.78; and 502.79, are repealed.

ARTICLE 15

CONFORMING CHANGES

Section 1. Minnesota Statutes 2014, section 48.01, subdivision 2, is amended to read:

Subd. 2. **Banking institution.** The term "banking institution" means any bank, trust company, bank and trust company, or savings bank which is now or may hereafter be organized under the laws of this state. For purposes of sections 48A.07, 48A.08, and ~~501B.151~~ 501C.0901, subdivision ~~11~~ 10, and to the extent permitted by federal law, "banking institution" includes any national banking association or affiliate exercising trust powers in this state.

Sec. 2. Minnesota Statutes 2014, section 48A.07, subdivision 6, is amended to read:

Subd. 6. **Investment authority.** (a) The bank or trust company may, in its discretion, retain and continue an investment and security or securities coming into its possession in a fiduciary capacity.

(b) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of an open-end or closed-end management company or unit investment trust registered under the federal Investment Company Act of 1940. The fact that the banking institution or an affiliate of the 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 does not preclude the trustee from investing in the securities of that investment company or trust. The banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and

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method of the compensation. This paragraph does not alter the degree of care and judgment required of trustees by section ~~501B.151~~ 501C.0901.

(c) Except as otherwise provided in this subdivision, a bank or trust company shall invest an amount not less than $500 received by it as representative or trustee or by order of the court, not required for the purposes of the trust and not to be accounted for within one year, as provided in this subdivision, in authorized securities then held by it or specially procured by it. Except as may be otherwise provided in the governing will, trust agreement, court order, or other instrument, any amount in any one trust account, may be invested in certificates of deposit or savings accounts in the same bank, or any other bank or banks if the certificates of deposit or savings accounts are fully insured by the Federal Deposit Insurance Corporation and receive the prevailing rate of interest on the certificates or savings accounts.

(d) Where funds are invested in authorized securities, as defined by law, the provisions of section 48.24 limiting the amount of liability of a person, corporation, or copartnership, with reference to a percentage of the capital and surplus of the bank, does not apply.

(e) A bank or trust company may invest all money received by it in trust in authorized securities. It is responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities at the time they are made. It is also responsible to the owner or cestui que trust for the safekeeping of these securities and evidences of them. When special directions are given in an order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which an investment must be made, the bank or trust company must follow these directions and is not responsible for the performance of the trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection of them, and is responsible for the validity, regularity, quality, and value of them at the time made, and for their safekeeping.

(f) As the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of the securities, or the whole of the funds so commingled must be owned and held by the bank or trust company in its several trust capacities. The bank or trust company is liable for the administration of these trusts in all respects as though separately invested. Not more than $100,000, at the cost price of the investments, may be invested for any one trust at any one time in fractional parts or as commingled funds for investment by a bank or trust company having capital and surplus of less than $500,000, unless the authority to invest in fractional parts or as commingled funds is given in the order, judgment, decree, will, or other written instrument governing the trust. Funds so commingled for investment must be designated collectively as a common trust fund. The trust company or bank shall maintain the common trust fund in conformity with the rules and regulations prevailing from time to time of the federal governmental agency that regulates the collective investment of trust funds by national banks. It may, in its discretion, retain and continue an investment and security or securities coming into its possession in any fiduciary capacity. Paragraphs (a) to (f) apply whether a corporate trustee is acting alone or with an individual cotrustee.

(g) Notwithstanding the provisions of paragraph (f), a bank or trust company may:

(1) establish and maintain common trust funds for the collective investment of funds held in a fiduciary capacity by it or by another bank or trust company that is owned or controlled by a corporation that owns or controls the bank or trust company; and

(2) as a fiduciary or cofiduciary, invest funds that it holds for investment in common trust funds established and maintained according to clause (1) if the investment is not prohibited by the instrument,

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judgment, decree, or order creating the fiduciary relationship. This section applies to fiduciary relationships now in existence or hereafter created.

To the extent not inconsistent with this paragraph, the provisions of paragraph (f) relating to common trust funds apply to the establishment and maintenance of common trust funds under this paragraph.

(h) A bank or trust company is entitled to reasonable compensation for the faithful performance of its duties and discharge of its trust, including all necessary expenses and interest at the legal rate, or the amount that has been or may be agreed upon by the parties. No compensation or commission paid or agreed to be paid by it for the negotiation of a loan, or the execution of a trust, is considered interest within the meaning of the law, and no excess over the legal rate of interest is considered usury.

Sec. 3. Minnesota Statutes 2014, section 317A.161, subdivision 24, is amended to read:

Subd. 24. **May invest trust property.** Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section ~~501B.151~~ 501C.0901.

Sec. 4. Minnesota Statutes 2014, section 353.95, subdivision 4, is amended to read:

Subd. 4. **Management and termination of account.** The city may deposit money in the account and may withdraw money from the account as needed for postemployment benefits owed on behalf of retired employees of the city or its subgroups. Such transactions must be at a time and in a manner required by the executive director of the Public Employees Retirement Association. The city of Duluth must ensure that the investment and management of the assets complies with the prudent investor rule in section ~~501B.151~~ 501C.0901 and that withdrawals comply with the requirements of this section. The account may be terminated only to the extent the city's postemployment benefit actuarial liability is satisfied or otherwise defeased. The city shall file with the state auditor an investment policy statement under section 356.219, subdivision 3, paragraph (a).

Sec. 5. Minnesota Statutes 2014, section 500.17, subdivision 2, is amended to read:

Subd. 2. **Accumulation.** Where the controlling will or other written instrument permits accumulation, either expressly or by necessary implication, income from personal property and rents and profits from real estate may be accumulated for the period during which the power of alienation may be suspended by future interests in real or personal property not held in trust under section ~~501B.09~~ 501C.1202, subdivision 3. Where any will or other instrument authorizes accumulation beyond the period permissible under this section, such authorization shall be void only as to the excess period.

Reasonable sums set aside for depreciation and depletion shall not be deemed an accumulation within the meaning of this section.

Sec. 6. Minnesota Statutes 2014, section 501B.31, subdivision 2, is amended to read:

Subd. 2. **Liberal interpretation; administration.** A charitable trust must be liberally construed by the courts so that the intentions of the donor are carried out when possible, and the trust must not fail solely because the donor has imperfectly outlined the purpose and object of the charity or the method of administration. If the district court of the proper county determines that the purpose and object of the donor's charity are imperfectly expressed, the method of administration is incomplete or imperfect, or circumstances have so changed since the execution of the instrument creating the trust as to render impracticable, inexpedient, or impossible a literal compliance with the terms of the instrument, the court may, upon the petition of the

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trustee under section ~~501B.16~~ 501C.0202, make an order directing that the trust must be administered or expended in a manner the court determines will, as nearly as possible, accomplish the general purposes of the instrument and the object and intention of the donor without regard to, and free from any specific restriction, limitation, or direction it contains.

Sec. 7. Minnesota Statutes 2014, section 501B.31, subdivision 4, is amended to read:

Subd. 4. **Determination of trust, gift, bequest, devise.** (a) This subdivision applies to a gift or trust made or created by a living person before April 15, 1927, or a gift, bequest, devise, or trust made or created by or under the will of a person who died before April 15, 1927.

(b) If a gift, trust, or devise has been made for a charitable, benevolent, educational, religious, or other public use or trust, or upon a condition, limitation, or restriction of any kind, the property given, entrusted, or devised may be used only for that use or trust and in accordance with the condition, limitation, or restriction. The grantee, devisee, trustee, or other holder of property may petition the court under section ~~501B.16~~ 501C.0202 for determination of the legal rights and relationship of the holder, the public, the grantor, and the grantor's heirs, representatives, or assigns in and to the property.

(c) If the court determines that circumstances have so changed since the execution of the instrument as to render impracticable, inexpedient, or impossible a literal compliance with the terms or conditions of the instrument, but the terms and purposes of the instrument may be substantially performed, the court may order that the terms of the instrument be performed and the property be administered or expended in a manner that will, in the judgment of the court, as nearly as possible, accomplish the general purposes of the instrument and the intention of the grantor without regard to, and free from any, specific restriction, limitation, condition, or direction contained in the instrument.

Sec. 8. Minnesota Statutes 2014, section 501B.31, subdivision 5, is amended to read:

Subd. 5. **Attorney general.** In cases arising under this section, the attorney general must be given notice of any court proceedings pursuant to section ~~501B.18~~ 501C.0203. The attorney general shall represent the beneficial interests in those cases and shall enforce affected trusts.

Sec. 9. Minnesota Statutes 2014, section 501B.41, subdivision 3, is amended to read:

Subd. 3. **Exemption from notice requirement.** The attorney general need not be provided with notice under subdivision 2 of a charitable gift, devise, or bequest (1) for which the donor or testator has named as a charitable beneficiary an organization that is then in existence; or (2) that is not held and continued by a private express trust or corporation, whether or not the gift, devise, or bequest creates a fiduciary relationship.

This subdivision does not affect any other notice to the attorney general required by this chapter or chapter 501C.

Sec. 10. Minnesota Statutes 2014, section 501B.46, is amended to read:

501B.46 PETITION FOR COURT ORDER TO SELL, MORTGAGE, OR LEASE REAL PROPERTY HELD IN TRUST.

(a) Except as provided in paragraph (c), if the assets of an express trust by will or other written instrument include real property in this state that the trustee is not, under the terms of the trust, then permitted to sell,

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mortgage, or lease, and if section ~~501B.23~~ 501C.0205 is applicable to the trust, the trustee or a beneficiary of the trust may petition the court then having jurisdiction of the trust for an order directing the trustee to sell, mortgage, or lease the real property or a part of the real property.

(b) Except as provided in paragraph (c), if the assets of an express trust by will or other written instrument include real property in this state that the trustee is not, under the terms of the trust, then permitted to sell, mortgage, or lease, and if section ~~501B.23~~ 501C.0205 is not applicable to the trust, the trustee or a beneficiary of the trust may petition an appropriate district court under section ~~501B.16~~ 501C.0202 for an order directing the trustee to sell, mortgage, or lease the real property or a part of the real property.

(c) If a trust is of the kind described in section ~~501B.09, subdivision 2a~~ 501C.1202, subdivision 3, no order described in paragraph (a) or (b) may be entered upon a petition filed by a person other than the trustee.

Sec. 11. Minnesota Statutes 2014, section 508.62, is amended to read:

508.62 TRUSTEE'S CONVEYANCE.

No instrument executed by an owner whose fee title to registered land is held in trust which transfers or plats the land, shall be registered except upon the written certification of the examiner of titles that the instrument is executed in accordance with a power conferred in the instrument of trust, or evidenced in a certificate of trust authorized by section ~~501B.56~~ 501C.1013, or is authorized by law, or upon the order of the district court directing its registration. The examiner shall not certify any such instrument unless:

(1) the trust is supervised by the court; or

(2) an affidavit of trustee authorized by section ~~501B.57~~ 501C.1014 and the document creating the trust, a certified copy of it, or a certificate of trust authorized by section ~~501B.56~~ 501C.1013 is registered as a memorial upon the certificate of title. The certified copy of the certificate setting forth the adoption of the resolution for voluntary dissolution of a corporate registered owner together with the certificate of the secretary of state that said certificate of dissolution has been filed for record in the secretary's office shall be deemed the document creating the trust.

Sec. 12. Minnesota Statutes 2014, section 508A.62, is amended to read:

508A.62 TRUSTEE'S CONVEYANCE.

No instrument executed by an owner, whose fee title to land is registered under sections 508A.01 to 508A.85 and is held in trust, which transfers or plats the land, shall be registered except upon the written certification of the examiner of titles that the instrument is executed in accordance with a power conferred in the instrument of trust, or evidenced in a certificate of trust authorized by section ~~501B.56~~ 501C.1013, or is authorized by law, or upon the order of the district court directing the registration of it. The examiner shall not certify any instrument unless:

(1) the trust is supervised by the court; or

(2) an affidavit of trustee authorized by section ~~501B.57~~ 501C.1014 and the document creating the trust, a certified copy of it, or a certificate of trust authorized by section ~~501B.56~~ 501C.1013 is registered as a memorial upon the CPT. The certified copy of the certificate setting forth the adoption of the resolution for voluntary dissolution of a corporate registered owner together with the certificate of the secretary of state that the certificate of dissolution has been filed for record in the secretary's office shall be deemed the document creating the trust.

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Sec. 13. Minnesota Statutes 2014, section 524.2-804, subdivision 1, is amended to read:

Subdivision 1. **Revocation upon dissolution.** Except as provided by the express terms of a governing instrument, other than a trust instrument under section ~~501B.90~~ 501C.1207, executed prior to the dissolution or annulment of an individual's marriage, a court order, a contract relating to the division of the marital property made between individuals before or after their marriage, dissolution, or annulment, or a plan document governing a qualified or nonqualified retirement plan, the dissolution or annulment of a marriage revokes any revocable:

(1) disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument;

(2) provision in a governing instrument conferring a general or nongeneral power of appointment on an individual's former spouse; and

(3) nomination in a governing instrument, nominating an individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

Sec. 14. Minnesota Statutes 2014, section 524.5-417, is amended to read:

524.5-417 GENERAL POWERS AND DUTIES OF CONSERVATOR.

(a) A conservator shall be subject to the control and direction of the court at all times and in all things.

(b) The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.

(c) The court may appoint a conservator if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:

(1) the duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this section shall be grounds for removal, but the conservator shall have no personal or monetary liability;

(2) the duty to pay out of the protected person's estate all lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;

(3) the duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or, with the approval of the court, compromise them, institute suit on behalf of the protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for

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the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48A.07, subdivision 6, ~~501B.151~~ 501C.0901, and 524.5-423, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section 524.5-418;

(5) the power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make; and

(6) the power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

(d) The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.

(e) Transaction set aside. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This paragraph does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.

(f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state in the same manner as provided in section 336.9-501. The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessaries, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

Sec. 15. Minnesota Statutes 2014, section 529.06, is amended to read:

529.06 GENERAL DUTIES OF CUSTODIAL TRUSTEE.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care set forth in section ~~501B.151~~ 501C.0901. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

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(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for ..... (name of beneficiary) under the Minnesota Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

Sec. 16. Minnesota Statutes 2014, section 529.12, is amended to read:

529.12 DECLINATION, RESIGNATION, INCAPACITY, DEATH, OR REMOVAL OF CUSTODIAL TRUSTEE; DESIGNATION OF SUCCESSOR CUSTODIAL TRUSTEE.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section 529.03 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 529.03. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 529.02, subsection (g), or 529.03 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, or the holder of the beneficiary's power of attorney, may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the conservator of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee in accordance with the procedures set forth in sections ~~501B.16~~ 501C.0201 to ~~501B.25~~ 501C.0208.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

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(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

Sec. 17. Minnesota Statutes 2014, section 529.14, is amended to read:

529.14 REPORTING AND ACCOUNTING BY CUSTODIAL TRUSTEE; DETERMINATION OF LIABILITY OF CUSTODIAL TRUSTEE.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under sections 529.01 to 529.19 or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

(g) All proceedings described in this section shall be conducted in accordance with the procedures set forth in sections ~~501B.16~~ 501C.0201 to ~~501B.25~~ 501C.0208.

Sec. 18. Minnesota Statutes 2014, section 541.05, subdivision 1, is amended to read:

Subdivision 1. **Six-year limitation.** Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within six years:

(1) upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed;

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(2) upon a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;

(3) for a trespass upon real estate;

(4) for taking, detaining, or injuring personal property, including actions for the specific recovery thereof;

(5) for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated;

(6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

~~(7) to enforce a trust or compel a trustee to account, where the trustee has neglected to discharge the trust, or claims to have fully performed it, or has repudiated the trust relation;~~

~~(8)~~ (7) against sureties upon the official bond of any public officer, whether of the state or of any county, town, school district, or a municipality therein; in which case the limitation shall not begin to run until the term of such officer for which the bond was given shall have expired;

~~(9)~~ (8) for damages caused by a dam, used for commercial purposes; or

~~(10)~~ (9) for assault, battery, false imprisonment, or other tort resulting in personal injury, if the conduct that gives rise to the cause of action also constitutes domestic abuse as defined in section 518B.01.

ARTICLE 16

REPEALER

Section 1. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall correct cross-references in Minnesota Statutes to sections that are repealed by this act or repealed and reenacted by this act, and if Minnesota Statutes, chapter 501B, is further amended in the 2015 legislative session, shall codify the amendments in a manner consistent with this act.

Sec. 2. **REPEALER.**

Minnesota Statutes 2014, sections 501B.01; 501B.012; 501B.02; 501B.03; 501B.04; 501B.05; 501B.06; 501B.07; 501B.08; 501B.09; 501B.12; 501B.13; 501B.14; 501B.15; 501B.151; 501B.152; 501B.154; 501B.155; 501B.16; 501B.17; 501B.18; 501B.19; 501B.20; 501B.21; 501B.22; 501B.23; 501B.24; 501B.25; 501B.56; 501B.561; 501B.57; 501B.571; 501B.59; 501B.60; 501B.61; 501B.62; 501B.63; 501B.64; 501B.65; 501B.665; 501B.67; 501B.68; 501B.69; 501B.705; 501B.71; 501B.72; 501B.73; 501B.74; 501B.75; 501B.76; 501B.79; 501B.80; 501B.81; 501B.82; 501B.87; 501B.88; 501B.89; 501B.895; and 501B.90, are repealed.

Sec. 3. **EFFECTIVE DATE.**

This act is effective January 1, 2016.

Presented to the governor March 17, 2015

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