

CHAPTER 501

USES AND TRUSTS

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501.01 ABOLISHED IN PART.

Uses and trusts, except as authorized and modified in this chapter and except as authorized by law, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute.

History: (8081) RL s 3240; 1961 c 740 s 1

501.02 EXECUTED USES CONFIRMED.

Every estate which is now held as a use executed under laws as they formerly existed is confirmed as a legal estate.

History: (8082) *RL s 3241*

501.03 RIGHT OF POSSESSION AND PROFITS A LEGAL ESTATE.

Every person who, by virtue of any grant, assignment, or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein of the same quality and duration, and subject to the same conditions, as the person's beneficial interests.

History: (8083) *RL s 3242; 1986 c 444*

501.04 ACTIVE TRUSTS NOT AFFECTED.

The provisions of section 501.03 shall not divest the estate of any trustee in any existing trust where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

History: (8083) *RL s 3242*

501.05 PASSIVE TRUSTS ABOLISHED.

Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other to the use of, or in trust for, such person; and, if made to one or more persons in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

History: (8084) *RL s 3243*

501.06 LIMITING PRECEDING SECTIONS.

Sections 501.01 to 501.05 shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

History: (8085) *RL s 3244*

501.07 RESULTING TRUSTS.

When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of section 501.08.

History: (8086) *RL s 3245*

501.08 FRAUD AGAINST CREDITORS.

Every such conveyance shall be presumed fraudulent as against the creditors, at that time, of the person paying the consideration; and when a fraudulent intent is not disproved a trust shall result in favor of such creditors to the extent that may be necessary to satisfy their just demands.

History: (8087) *RL s 3246*

501.09 LIMITING THE EFFECT OF SECTION 501.07.

Section 501.07 shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance in the alienee's own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, has purchased the lands so conveyed with moneys belonging to another person.

History: (8088) *RL s 3247; 1986 c 444*

501.10 BONA FIDE PURCHASERS PROTECTED.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

History: (8089) *RL s 3248*

501.11 EXPRESS TRUSTS, PURPOSES.

Express trusts may be created for any of the following purposes:

- (1) To sell lands for the benefit of creditors;
- (2) To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon;
- (3) To receive the rents and profits of lands, and apply them to the use of any person, during the life of the person, or for any shorter term, subject to the rules prescribed in chapter 500;
- (4) To receive the rents and profits of lands, and to accumulate them, for either of the purposes, and within the limits prescribed in chapter 500;
- (5) To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan them for the benefit of the beneficiaries of the express trust; and the district and county courts of the state shall, upon petition and hearing, have power to appoint a trustee for the purpose herein set forth, requiring the trustee to give a bond for the faithful execution of the express trust as the court deems right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court;
- (6) For the beneficial interests of any person, whether the trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it, provided that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for 21 years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in chapter 500; provided, however, that the aforesaid limitation on the period of continuance of trusts shall not apply to a trust forming a part of a disability, medical, or other employee welfare plan or a part of a stock bonus, pension, or profit sharing plan of an employer or an employee organization for the exclusive benefit of some or all of the employees or members of an employee organization, nor to a trust forming a part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions thereunder and investing, accumulating, and distributing to those persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan.

(7) Any city may receive, by grant, gift, devise, or bequest, and take charge of, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, for the benefit of any public library, or any public cemetery, or any public park, located in, or within ten miles of, the city, or for the purpose of establishing or maintaining a school or institution of learning therein.

Provided that the city shall, with the approval of the district court of the county in which the city is located, sell, lease, or otherwise dispose of, freed of the provisions of the trust, any tract, lot, parcel, reserve, block, or subdivision of the platted part of the city, embraced within the area described in the grant, gift, devise, or bequest when the tract, lot, parcel, reserve, block, or subdivision of the platted part of the city is found to be unfit for the uses and purposes expressed in the grant, gift, devise or bequest.

The income realized from the sale, lease, or disposal of the trust property shall be credited to the funds of the trust of the city in which the property is located.

Each city in this state, in addition to the foregoing, may receive by grant, gift, devise, or bequest, and take charge of, convert, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, of any kind or nature and wherever located, for any public or charitable purpose, or

to provide, enlarge, improve, lease, and maintain for the use and benefit of the inhabitants of the city, animal, bird, fish, game, and hunting preserves, public parks, public grounds, public waterways, public bath houses and grounds used in connection therewith, and public playgrounds within or without the limits of the city, whether within or without this state, or for the support, medical treatment, and nursing of the worthy poor residing in the city.

History: (8090) *RL s 3249; 1915 c 98 s 1; 1925 c 133; 1929 c 110; 1931 c 65 s 1; 1947 c 597 s 1; 1955 c 434 s 1; 1955 c 508 s 1; 1973 c 123 art 5 s 7; 1976 c 74 s 1; 1977 c 184 s 1; 1983 c 34 s 2; 1986 c 444*

501.115 PRIVATE FOUNDATIONS; CHARITABLE TRUSTS; SPLIT-INTEREST TRUSTS.

Subdivision 1. Any will or trust instrument creating a trust which is a "private foundation", as defined in section 509(a) of the Internal Revenue Code of 1954, or a "charitable trust", as defined in section 4947(a) (1) of the Internal Revenue Code of 1954, or a "split-interest trust", as defined in section 4947(a) (2) of the Internal Revenue Code of 1954, and any other instrument governing the trustee of any such trust or the use, retention, or disposition of any of the income or property of such trust, shall be deemed to have incorporated within such will, trust instrument, or other governing instrument with the same effect as though such language were set forth verbatim in such will, trust instrument, or other governing instrument, the following provisions with respect to such trust and the trustee thereof, and, except as the contrary is provided in subdivision 2, such provisions shall govern the administration and distribution of any such trust irrespective of any provisions of any applicable will, trust instrument, or other governing instrument, statute or law of this state to the contrary:

(a) The trustee shall distribute for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954;

(b) The trustee shall not engage in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(c) The trustee shall not retain any "excess business holdings", as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(d) The trustee shall not make any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(e) The trustee shall not make any "taxable expenditure", as defined in section 4945(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

Subd. 2. Subdivision 1 shall not apply to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the will, trust instrument, or other governing instrument described in subdivision 1 and that such will, trust instrument or other governing instrument may not be changed to conform to subdivision 1.

Subd. 3. As used in this section, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a testamentary or inter vivos trust estate, whichever in a particular case shall be appropriate. Any reference to a particular section of the Internal Revenue Code of 1954 herein shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.

Subd. 4. Nothing in this section shall impair the rights and powers of the attorney general or the courts of this state with respect to any trust.

History: *1971 c 189 s 1*

501.12 EXPRESS TRUSTS FOR CHARITABLE, EDUCATIONAL, RELIGIOUS, AND OTHER PUBLIC USES.

Subdivision 1. Creation. Express trusts of real or personal property, or both, may be created to receive by grant, devise, gift, or bequest, and to take charge of, invest, and administer in accordance with the terms of the trust, upon and for any charitable, benevolent, educational, religious, or other public use or trust.

Subd. 2. Validity and construction. No such trust shall be invalid because of indefiniteness or uncertainty of the object of such trust or of the beneficiaries thereof designated in the instrument creating the same nor by reason of the same contravening any statute or rule against perpetuities, but no such trust shall be construed so as to prevent or limit the free alienation of the title to any of the trust estate by the trustee in the administration of the trust, except as may be permitted under existing or subsequent statutes.

Subd. 3. Liberal interpretation; administration. Such trust shall be liberally construed by the courts so that the intentions of the donor thereof shall be carried out when possible and no such trust shall fail solely because the donor has imperfectly outlined the purpose and object of such charity or the method of administration. When it shall appear to the district or county court of the proper county that the purpose and object of such charity is imperfectly expressed, or the method of administration is incomplete or imperfect, or that the 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 such instrument, such court may, upon the application and with the consent of the trustee, and upon such notice as the court may direct, make an order directing that such trust shall be administered or expended in such manner as in the judgment of the court will, as nearly as can be, 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 contained therein. No such order shall be made without the consent of the donor of the trust if then living and mentally competent. The attorney general shall represent the beneficiaries in all cases arising under this section and shall enforce such trusts by proper proceedings in the courts.

Subd. 4. Laws not affected. Nothing in this section contained shall in any manner impair, limit, or abridge the operation and efficacy of the whole or any part of any existing statute authorizing the creation of corporations for charitable purposes or permitting municipal corporations to act as trustee for any public or charitable purpose under any existing statute. Nothing in this section, except as provided in subdivision 5, shall apply to any gift, bequest, devise, or trust made, created, or arising by or under the provisions of the will of any person whose decease occurred before this section became effective.

Subd. 5. Determination of trust, gift bequest, devise. Where any gift or trust has been made or created by any living person or persons prior to April 15, 1927, or when any gift, bequest, devise or trust has been made or created by or under the will of any person whose decease occurred prior to April 15, 1927, and such gift, trust, bequest or devise has been made for any charitable, benevolent, educational, religious or other public use or trust or upon a condition, limitation or restriction of any kind that the property so given, bequeathed, devised, or entrusted be used only for the charitable, benevolent, educational, religious or other public use or trust therein expressed, the grantee, devisee, trustee or other holder of such property may have determined in the district court the legal rights and relationship of such holder, of the public, and the grantor, the grantor's heirs, representatives or assigns in and to such property. Notice of the application for such determination shall be personally served upon the donor, if living, and upon the attorney general. Service upon all other interested persons may be made by three weeks published notice, provided however, that the court may direct personal service or service by mail at the last known address of any person or persons. If it shall appear to the court 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 such instrument but the terms and purposes of such instrument may be substantially performed, the court may make an order directing that the terms of such instrument shall be performed and such property shall be administered or expended in such manner as in the judgment of the court will, as nearly as can be, 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, condition, or direction therein contained. No such order shall be made without the consent of the donor if then living and mentally competent.

History: (8090-1, 8090-2, 8090-3, 8090-4) 1927 c 180 s 1-4; 1955 c 138 s 1,2; 1977 c 184 s 2; 1986 c 444

501.125 KINDS OF PROPERTY A TRUSTEE MAY ACQUIRE.

Subdivision 1. General properties and investments. (a) In acquiring, investing, reinvesting, exchanging and managing property, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other individual or corporate obligations, mutual funds, and corporate stocks. A trustee, in determining the prudence of a particular investment, shall consider the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying the total asset management approach, a trustee shall exercise the judgment and care under the circumstances then prevailing, which 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. If the trustee has special skills or expertise or if the trustee holds itself out as having special skills or expertise, the trustee is under a duty to use those skills or expertise.

(b) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a trustee in applying the total asset management approach:

- (1) the probable income as well as the probable safety of the capital;
- (2) marketability of investments;
- (3) length of the term of investments;
- (4) duration of the trust;
- (5) liquidity needs;
- (6) requirements of the beneficiary or beneficiaries;
- (7) other assets of the beneficiary or beneficiaries, including earning capacity; and
- (8) effect of investments in increasing or diminishing liability for taxes.

Subd. 1a. Investment in certain growth enterprises. Subject to the standards of subdivision 1, a trustee is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in those enterprises. The aggregate amount of investments held by a trustee under the authority of this subdivision valued at cost may not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after the investment is made. Any investment that would have been authorized by this subdivision if it had been in effect at the time the investment was made is authorized by this subdivision.

Subd. 2. Shall not be compelled to dispose of property. Unless the trust instrument or a court order specifically directs otherwise, a trustee shall not be required to dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee shall determine in the exercise of a sound discretion that it is advisable to dispose of the same, but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property.

Subd. 3. **Not to alter terms of will.** Nothing contained in this section shall be construed as authorizing any departure from or variation of the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the trustee's duties and powers, but the terms "authorized securities," or "authorized investments," or "legal investments," or words of similar import, as used in any such instrument or in the statutes of this state insofar as they relate to the investment of trust funds by corporate trustees or by individual trustees, shall be taken to mean every kind of property, real, personal or mixed, and every kind of investment, which a trustee is authorized to acquire under the terms of subdivision 1.

Subd. 4. **Not to be construed to limit powers of court.** Nothing contained in this section shall be construed as restricting the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of any will, agreement, court order or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of trust property.

Subd. 5. **Who are trustees.** The term "trustee," as used in this section, includes individual trustees and corporations having trust powers and the provisions hereof shall govern trustees acting under wills, agreements, court orders and other instruments now existing or hereafter made.

Subd. 6. **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.

(b) Nothing in this subdivision shall be construed to alter the degree of care and judgment required of trustees by subdivision 1.

History: 1943 c 635; 1985 c 187 s 3; 1986 c 442 s 7-9

NOTE: Subdivision 1a, as added by Laws 1986, chapter 442, section 8, is effective August 1, 1987. See Laws 1986, First Special Session chapter 3, article 3, section 9.

501.13 DEVISES AS POWERS.

A devise of lands to executors or other trustees to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

History: (8091) *RL s 3250*

501.14 TRUST PROFIT SURPLUS SUBJECT TO CREDITORS' RIGHTS.

When a trust is created to receive the rents and profits of lands and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the person for whose benefit the trust is created, shall be subject in equity to the claims of creditors in the same manner as other personal property which cannot be reached by an execution at law.

History: (8092) *RL s 3251; 1986 c 444*

501.15 EXPRESS TRUSTS; POWERS IN TRUST.

When an express trust is created for any purpose not heretofore in this chapter enumerated, no estate shall vest in the trustee; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in chapter 502.

History: (8093) *RL s 3252*

501.16 LEGAL TITLE IN BENEFICIARY.

When the trust is valid as a power the land to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

History: (8094) *RL s 3253*

501.17 TRUSTEES TAKE ESTATE, WHEN.

Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustee, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands but may enforce the performance of the trust in a court of competent jurisdiction.

History: (8095) *RL s 3254; 1977 c 184 s 3*

501.18 SECTION 501.17 QUALIFIED.

Section 501.17 shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates shall belong in the event of the failure or termination of the trust nor from granting or devising such lands, subject to the execution of the trust. Every such grantee shall have a legal estate in the lands as against all persons, except the trustees and those lawfully claiming under them.

History: (8096) *RL s 3255; 1986 c 444*

501.19 REVERSION IN GRANTOR.

When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or the creator's heirs, as a legal estate.

History: (8097) *RL s 3256; 1986 c 444*

501.195 REVERSIONARY INTERESTS; POSSIBILITIES OF REVERTER; RESULTING TRUSTS.

It is hereby declared to be the law of Minnesota that no express trust of property, whether real or personal, heretofore or hereafter created under the laws of this state shall under any circumstances be deemed to give rise, by operation of law or otherwise, to any reversionary interest, possibility of reverter or resulting trust of the trust property or of any interest or estate therein in the settlor of the trust or the estate of the settlor or the heirs at law of the settlor as such, if by the terms of the controlling trust instrument the settlor manifested irrevocably the intention to be divested of all interest in said trust property or in said interest or estate therein, as the case may be, or expressly and irrevocably surrendered the right to revoke the trust and the right to make the settlor or the estate of the settlor a beneficiary of said trust property, or of said interest or estate therein, as the case may be. In any case where, but for the application of the principles herein expressed, a reversionary interest, possibility of reverter or resulting trust would be recognized in the settlor of the trust or the estate of the settlor or the heirs at law of the settlor as such, the subject matter thereof shall be deemed to be held upon a resulting trust for the state of Minnesota.

History: 1949 *c 201 s 1; 1986 c 444*

501.20 ALIENATION RESTRAINED; LIMITATION.

No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; provided, the power to sell or sign or transfer such beneficial interest shall in no manner be abridged or curtailed, where such beneficial interest in the first instance shall have been acquired by purchase; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

History: (8098) *RL s 3257; 1931 c 66 s 1*

501.21 EFFECT OF OMITTING TRUST IN CONVEYANCE.

When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

History: (8099) *RL s 3258*

501.211 DISCLAIMER OF INTERESTS PASSING BY DEED, ASSIGNMENT, UNDER CERTAIN NONTESTAMENTARY INSTRUMENTS OR UNDER CERTAIN POWERS OF APPOINTMENT.

Subdivision 1. As used in this section, unless otherwise clearly required by the context:

(a) "Beneficiary" means and includes any person entitled, but for the person's disclaimer, to take an interest: as grantee; as donee; under any assignment or instrument of conveyance or transfer; by succession to a disclaimed interest, other than by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; as beneficiary of an inter vivos trust or insurance contract; pursuant to the exercise or nonexercise of a nontestamentary power of appointment; as donee of a power of appointment created by a nontestamentary instrument; or otherwise under any nontestamentary instrument.

(b) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto.

(c) "Disclaimer" means a written instrument which declines, refuses, releases or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares, portions or assets thereof, by filing a disclaimer in court in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent, or deceased beneficiary, on deeming it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Subd. 3. Such disclaimer shall be filed at any time after the creation of the interest, but in all events within nine months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or the disclaimant's interest has not then become indefeasibly fixed both in quality and in quantity, such disclaimer shall be filed not later than nine months after the event which would cause the disclaimant so to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. Such disclaimer shall be effective upon being filed in any district court of the state of Minnesota. A copy of the disclaimer shall be delivered or mailed to the trustee of any trust in which the interest disclaimed exists or to such other person as has legal title to, or possession of, the property in which the interest disclaimed exists, and no such trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the court administrator of the district or county court wherein the same has been filed, shall also be filed with the county recorder or with the registrar of titles, as hereinafter provided, in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such filing. If title to such real estate has not been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the county recorder. If title to such real estate has been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the registrar of titles.

Subd. 5. Unless otherwise provided in the nontestamentary instrument creating

the interest with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity and, in any case, the disclaimer shall relate for all purposes to that date, whether filed before or after such death or other event. However, one disclaiming an interest in a nonresiduary gift under a trust instrument or otherwise shall not be excluded, unless the disclaimer so provides, from sharing in a gift of the residue even though, through lapse, such residue includes the assets disclaimed.

Subd. 6. The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to any interest in real or personal property, by any beneficiary or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before the beneficiary has disclaimed, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Subd. 7. The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this section, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under the disclaimant or waiving beneficiary, except that a beneficiary so waiving may thereafter transfer, assign or release the waiving beneficiary's interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of subdivision 4, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any spouse's statutory or common law right or estate by curtesy or in dower or otherwise in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Subd. 8. This section shall not abridge the right of any person, apart from this section, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

Subd. 9. Any interest which exists on May 22, 1965 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after May 22, 1965 in the manner provided herein.

Subd. 10. The survivor or survivors of a bank deposit or certificate of deposit held in the names of the decedent and such survivor or survivors may at any time disclaim such interest by authorizing the inclusion of the proceeds of such bank deposit or certificate of deposit in the inventory and appraisal required to be filed by the representative or executor of the estate of such decedent pursuant to law. For purposes of this clause, a bank deposit or certificate shall include a checking account or savings account in a banking institution as defined in section 48.01, subdivision 2, or in a federal savings and loan association, or in any other savings institution authorized to accept deposits.

History: 1965 c 552 s 2; 1976 c 181 s 2; 1977 c 184 s 4; 1980 c 439 s 27,28; 1986 c 444; 1Sp1986 c 3 art 1 s 82

501.22 TRUST ESTATES.

Subdivision 1. **Contravention void.** When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustee, in contravention of the trust, shall be absolutely void.

Subd. 2. **Sale, mortgage.** The district or county court of the county wherein such property held in trust is situate, may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether the trustee be beneficially interested in such trust property or not, to mortgage or sell such real property or any part thereof when it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary or for the benefit of the estate or of the persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion, or remainder.

Subd. 3. **Five year limitation on leases.** A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income, and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years without application to the court.

Subd. 4. **Court may lengthen term of lease.** The district or county court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewal term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term.

Subd. 5. **Protection of ward.** The court shall not grant an order to mortgage or sell such real property or lease the same for a term exceeding five years, unless it appears to the satisfaction of the court that a written notice, stating the time and place of the application therefor, and the object thereof, has been served upon the beneficiary of such trust and every other person in being having an estate vested or contingent in reversion or remainder in the real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard, or absentee, until proof of the service, on such beneficiary or other person, of such notice as the court or a judge thereof prescribes. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind, or habitual drunkard who shall not be represented by a committee or guardian duly appointed.

Subd. 6. **Petition contents; publication.** The application must be by petition duly verified, which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application be granted. Such petition shall contain a description of the estate to be sold, mortgaged, or leased, a clear statement of the interest of the petitioner therein, and a copy of the will, deed, or other instrument in writing by which the estate is created; all persons in being who are interested in the estate, or who may, by the terms of the will, deed or other instrument creating the estate, thereafter become interested therein as heir, reversioner, or otherwise shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the petitioner, or if the residence of any such person is unknown to the petitioner, the facts shall be verified by the affidavit of the petitioner, then such notice shall be served upon such unknown persons whose residence is unknown, by publication for six successive weeks, once in each week in some newspaper published in the county in which the property is held in trust.

Subd. 7. **Final order; bond.** After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold, or leased upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of the trust and for the due accounting for all moneys received by the trustee pursuant to the order. If the trustee elects not

to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specially direct. Before a mortgage, sale, or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and report the agreement to the court under oath. Upon the confirmation thereof, by order of the court the trustee must execute, as directed by the court, a mortgage, deed, or lease.

Subd. 8. Validity. A mortgage, deed, or lease made pursuant to a final order granted as provided in this section and sections 501.20 and 501.21 shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards, and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in the real property and against all other persons so interested or having such estates who shall consent to such order, or who, having been made parties to such proceeding as herein provided, shall not appear therein and object to the granting of such order.

Subd. 9. Voluntary consent. All parties in interest may appear voluntarily and consent in writing to such sale, mortgaging, or leasing of such real property; and testamentary guardians and guardians appointed by the probate court, may assent thereto in the place of their wards.

Subd. 10. Rights of purchaser. A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by the person from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

History: (8100) *GS 1878 c 43 s 21; GS 1894 s 4294; RL s 3259; 1905 c 339; 1977 c 184 s 5-7; 1986 c 444*

501.23 SALE, MORTGAGE, PLEDGE, OR LEASE OF PROPERTY IN TRUST CREATED BY WRITTEN INSTRUMENT; VOID, WHEN; COURT POWERS.

When any trust is expressed in the instrument creating the trust estate every sale, conveyance, or other act of the trustee in contravention of the trust shall be absolutely void, except as in sections 501.23 to 501.32 provided. The district or county court of the county wherein the property, whether real or personal, or any part thereof, held in trust is situate may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether the trustee be beneficially interested in such trust property or not, to sell or otherwise dispose of, mortgage, or pledge all or any part of such trust property, whether real or personal, when it appears to the satisfaction of the court that it is necessary, or for the best interest, or for the benefit of the trust estate, or of the person or persons beneficially interested therein holding the first and present estate, interest, or use, and that it will do no substantial injury to the heirs or next of kin, or others in succession, expectancy, reversion, or remainder, in respect of such property.

History: (8100-1) *1925 c 360 s 1; 1977 c 184 s 8; 1986 c 444*

501.24 LEASES; AUTHORITY OF TRUSTEE; ORDER OF COURT FOR LEASE.

The trustee appointed to hold real property in trust during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to or for the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The district or county court may, by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee, the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term.

History: (8100-2) *1925 c 360 s 2; 1977 c 184 s 9*

501.25 SALE; APPLICATION FOR; PETITION, NOTICE, AND ORDER FOR HEARING; FILING.

Application to the court for such order to sell or otherwise dispose of, mortgage, or pledge such trust property, real or personal, or any part thereof, or to lease such trust property, real, or any part thereof, shall be by petition, duly verified, made by such trustee, or any person beneficially interested in such property. Such petition shall set forth the nature of the trust estate, the particular facts making it necessary or proper for the application to be granted, a description of the trust property to be sold or otherwise disposed of, mortgaged, pledged, or leased, and the interest of the petitioner therein. Such petition and the notice of hearing thereof shall set out, so far as appears of record or as known to the petitioner, the names, and in addition such petition shall set out the places of residence, of all persons, who have any right, title, interest, estate, or lien, and the nature thereof, in or upon the trust property, or who, by the terms of the instrument creating the trust, may, at any time thereafter, have any such right, title, interest, estate, or lien, and the nature thereof. If there be persons having, or claiming to have, or who, at any time thereafter, may have any interest in the trust property, whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof, by the name and description of unknown persons interested in the trust property, and, to that end, such petition and notice, in addition to setting out the names of the persons aforesaid, may contain the following: "Also all other persons unknown, having, or claiming to have, or who at any time may have any right, title, or interest, estate, or lien in or upon the trust property". Such petition, together with a copy, annexed thereto, of the deed, will, or other written instrument creating the trust estate, shall be filed in the office of the court administrator of the district or county court of the county wherein such property, or some part thereof, is situate. Upon the filing of any such petition, the district court shall, by order, fix a time and place of hearing the same. Such hearing may be at chambers, or at a general or special term of the court wherein the proceedings are pending.

History: (8100-3) 1925 c 360 s 3; 1977 c 184 s 10; 1Sp1986 c 3 art 1 s 82

501.26 NOTICE OF HEARING; SERVICE.

Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate, or lien in or upon the trust property, or who, by the terms of the instrument creating such trust, may, at any time thereafter, have any such right, title, interest, estate, or lien. Such notice shall be served, except as provided in section 501.27, in the same manner as a summons in a civil action, at least ten days before such time of hearing. If any such person, whose name is set out in the petition, be not a resident of the state, or if the person's place of residence be unknown to the petitioner, then, upon the filing in the court of an affidavit of the petitioner, the petitioner's agent or attorney, alleging belief that such person is not a resident of the state, and that the petitioner or the petitioner's agent or attorney has mailed a copy of such notice to the person at the last known place of residence, or that the person's place of residence is not known and cannot be ascertained by the affiant, the service of such notice upon such person may be made by publication thereof for two successive weeks in a qualified newspaper. Service of such notice may be had upon all persons named and described in such petition and notice, as unknown persons interested in the trust property, by publication of such notice in the same manner and for the same time, as in the case of nonresidents whose names are set out in the petition upon the filing in the court of an affidavit by the petitioner, the petitioner's agent or attorney, stating that there are, or that affiant is informed or believes there are, certain persons, in addition to those whose names are set out in such petition, who have, or claim to have, or may have some right, title, interest, estate, or lien in or upon the trust property, the nature of which is, as well as the names and places of residence of whom are, to affiant unknown.

History: (8100-4) 1925 c 360 s 4; 1986 c 444

501.27 LEGAL INCOMPETENCE; NOTICE; SERVICE; GUARDIAN AD LITEM.

In case any person, whose name is set out in such petition, is a minor, mentally ill, mentally retarded, chemically dependent, or a person who has difficulty managing money, such notice of hearing shall be served upon the duly appointed guardian, conservator, committee, or other legal representative, of such person, if any. If there be none, then the court in which such proceedings are pending shall appoint a guardian ad litem to such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian ad litem.

History: (8100-5) 1925 c 360 s 5; 1977 c 184 s 11; 1985 c 21 s 66

501.28 HEARING; FINAL ORDER; REPORT OF SALE; CONVEYANCE BY TRUSTEE; DISPOSITION OF PROCEEDS; BONDS.

Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof as it may deem best, and make and enter a final order upon the application. If the application is granted, the final order shall authorize the sale or other disposition, or the mortgaging, pledging, or leasing, as the case may be, of such trust property, or any part thereof, in manner and upon such terms as the court may prescribe. Any such sale or other disposition, mortgaging, pledging, or leasing of such trust property, by such trustee, shall be reported to the court for confirmation and confirmed by the court, before the same shall become effective and valid. Upon such confirmation, such trustee shall make, execute, and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment, and transfer or mortgage, pledge, or lease, as the case may be. On receipt by such trustee of the money or other proceeds derived from any such sale or other disposition, or mortgaging, pledging, or leasing of such trust property, such money or other proceeds shall be held, administered, distributed, or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will, or other written instrument creating the trust estate, but subject, at all times, to the direction and order of the court. The court in its discretion may require such trustee to give bond in such amount and with such sureties as the court shall direct, conditioned for accounting for all such money or other proceeds so received by such trustee and for the faithful discharge of the trust.

History: (8100-6) 1925 c 360 s 6; 1986 c 444

501.29 FINAL ORDER, EFFECT OF; OBJECTIONS, TIME FOR.

The final order of the court in such proceedings, made or had with respect to such unknown persons, shall have the same effect and be as binding and conclusive upon them, as though they had been named and described in such petition and notice by their proper names. If any such unknown persons be minors without guardian ad litem or other guardian or legal representative duly appointed when such order is made, they may be allowed to appear and object to such order and the granting thereof at any time within one year after becoming of age.

History: (8100-7) 1925 c 360 s 7

501.30 PERSONS ENTITLED TO OBJECT.

In every case where service of such notice is made and had by publication, as provided in sections 501.23 to 501.32, any person so served shall have the right to appear and oppose the granting of such petition before the making of such final order, and the right to appear and object to such order and the granting thereof, on such terms as may be just, at any time within one year after such order has been made and entered. If the objection be sustained in such case or in the case of a minor without a guardian, as provided in section 501.29, the direction of the court shall be such as seems to it just and equitable in the circumstances.

History: (8100-8) 1925 c 360 s 8

501.31 FINAL ORDERS AND CONVEYANCES VALID AS TO PERSONS SERVED WITH NOTICE.

The final order of the court in such proceedings, and every deed or other instrument of conveyance, assignment, transfer, mortgage, pledge, or lease made, executed, and delivered by such trustee pursuant to any such final order shall be valid and effectual against all persons whose names are set out in such petition, and all persons therein named and described as unknown persons interested in the trust property, served with notice of hearing as provided in sections 501.23 to 501.32 or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons, or any of them, are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion, or in remainder, or otherwise, at the time of the granting of such order.

History: (8100-9) 1925 c 360 s 9

501.32 LIMITATION; LIABILITY OF PERSONS PAYING MONEY TO TRUSTEE.

Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition, or from the mortgaging, pledging, or leasing of such trust property, or any part thereof, shall not be responsible for the proper application of such money or other proceeds in accordance with the terms of the trust; and any right, title, interest, or estate derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid.

History: (8100-10) 1925 c 360 s 10

501.33 TRUSTEE; CONFIRMATION OF APPOINTMENT; COURT JURISDICTION.

Upon petition of any person appointed as trustee of an express trust by any will or other written instrument, or upon petition of any beneficiary of such trust, the district or county court of the county wherein such trustee resides or has a place of business, or the district or county court of the county wherein the will is being probated in the case of an express trust by will, shall consider the application to confirm the appointment of the trustee and specify the manner in which the trustee shall qualify. Thereafter such district or county court, or the court to which jurisdiction is transferred, shall have jurisdiction of such trust as a proceeding in rem.

History: (8100-11) 1933 c 259 s 1; 1971 c 585 s 1; 1977 c 184 s 12; 1986 c 444

501.34 INVENTORY, FILING; ANNUAL ACCOUNT.

Any trustee whose appointment has thus been confirmed shall file with the court administrator of the district or county court an inventory containing a true and complete list of all property received by the trustee belonging to the trust estate. Thereafter such trustee shall render to such court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts. The provisions of this section shall not apply to trusts established in connection with bonds issued pursuant to chapter 474.

History: (8100-12) 1933 c 259 s 2; 1977 c 184 s 13; 1978 c 611 s 1; 1Sp1986 c 3 art 1 s 82

501.35 MAY APPLY TO COURT FOR INSTRUCTIONS.

Any trustee of an express trust by will or other written instrument whose appointment has been confirmed, or any beneficiary of that trust, may petition the court then having jurisdiction of the trust as a proceeding in rem, and any trustee of an express trust by will or other written instrument whose appointment has not been confirmed, or any beneficiary of that trust, may petition the district or county court of the county in which the unconfirmed trustee resides or has a place of business, for instructions in

the administration of the trust, for the confirmation of any action taken by the trustee, for a construction of the trust instrument, or upon or after the filing of any account, for the settlement and allowance thereof. Upon the filing of the petition, the court shall make an order fixing a time and place for hearing it, unless hearing has been waived in writing by the beneficiaries of the trust then in being. Notice of hearing shall be given by publishing a copy of the order one time in a legal newspaper of the county at least 20 days before the date of the hearing, and by mailing a copy of it to each beneficiary of the trust then in being, at each beneficiary's last known address, at least ten days before the date of the hearing or in any other manner as the court orders. If the court deems further notice necessary, it shall be given in the manner specified in the order. At the hearing the court shall make such order as it deems appropriate. The order shall be final and conclusive as to all matters determined by it and binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, even though unascertained or not in being, except that appeal may be taken in the manner provided in section 487.39.

History: (8100-13) 1933 c 259 s 3; 1977 c 184 s 14; 1983 c 247 s 183; 1986 c 444

501.351 RELEASE OF JURISDICTION.

Any trustee of an express trust by will or other written instrument whose appointment has been confirmed, or any beneficiary of the trust, may at any time petition the court pursuant to section 501.35 for an order terminating the court's jurisdiction of the trust as a proceeding in rem. If upon the hearing on the petition no beneficiary then in being objects to the termination of the court's jurisdiction of the trust as a proceeding in rem, the court shall enter an order terminating its jurisdiction of the trust as a proceeding in rem. If upon the hearing on the petition any beneficiary then in being objects to the termination of the court's jurisdiction of the trust as a proceeding in rem, the court shall make such order as it deems appropriate. After the entry of an order terminating the court's jurisdiction of the trust as a proceeding in rem, the requirements set forth in section 501.34 shall no longer apply to the trustee of the trust. Nothing in this section shall prohibit a trustee or any beneficiary of the trust from thereafter petitioning the court pursuant to sections 501.33 or 501.35 as if the appointment of the trustee had never been confirmed.

History: 1977 c 184 s 15

501.36 GUARDIAN MAY BE APPOINTED.

If any person upon whom the court has ordered that personal service be made is a minor or otherwise incompetent to act in the person's own behalf and has no general guardian within the state, or if any party in interest is unascertained or not in being, or unknown to the trustee or outside this state, the court shall be deemed to represent such person, but may, upon the application of the trustee, or any other person interested therein, appoint a guardian ad litem for any such minor or incompetent person.

History: (8100-14) 1933 c 259 s 4; 1986 c 444

501.37 APPLICATION.

The provisions of sections 501.33 to 501.38 shall not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts, provided, however, that such provisions shall apply, unless otherwise provided in the trust instrument, to trusts established in connection with bonds issued pursuant to chapter 474. The word "person", as used therein, shall refer to an artificial as well as to a natural person. The word "beneficiary" as used therein shall also include a bondholder.

History: (8100-15) 1933 c 259 s 5; 1978 c 611 s 2

501.38 NOT TO LIMIT JURISDICTION OF COURT.

Nothing in sections 501.33 to 501.37 shall be deemed to limit or abridge the power or jurisdiction of the district or county court over trusts and trustees.

History: (8100-16) 1933 c 259 s 6; 1977 c 184 s 16

501.39 MISAPPLICATION OF PAYMENT TO TRUSTEE.

No person who actually and in good faith makes any payment to a trustee which the trustee, as such, is authorized to receive, shall be responsible for the proper application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

History: (8101) *RL s 3260*

501.40 TERMINATION OF TRUSTEES' ESTATE.

When the purposes for which an express trust is created cease, the estate of the trustee shall also cease.

History: (8102) *RL s 3261*

501.41 TRUST TO VEST IN DISTRICT COURT ON DEATH OF TRUSTEE.

Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to the trustee's heirs, nor pass to the trustee's personal representatives; but the trust, if then unexecuted, shall vest in the district court with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

History: (8103) *RL s 3262; 1986 c 444*

501.42 RESIGNATION OF TRUSTEE.

Upon the petition of any trustee of an express trust, the district or county court may accept the trustee's resignation and discharge the trustee from the trust, under such rules as it shall establish for that purpose and upon such terms as the rights and interests of the person interested in the execution of the trust require.

History: (8104) *RL s 3263; 1977 c 184 s 17; 1985 c 248 s 70; 1986 c 444*

501.43 REMOVAL OF TRUSTEE.

Any person interested in an express trust may petition the district or county court wherein a trustee resides or has a place of business for the removal of that trustee for cause at any time. Upon filing of the petition the court shall fix a time and place for hearing. Notice shall be given to the trustee and other interested parties pursuant to the provisions of section 501.35 or as the court shall otherwise order.

Cause for removal exists when removal is in the best interests of the trust estate, when the trustee has violated the trust, has become incapable of discharging the duties of office, or has mismanaged the trust estate. In determining the best interests of the trust estate, the trustee's compensation and fees, and administrative expenses, shall also be considered.

History: (8105) *RL s 3264; 1979 c 137 s 1; 1986 c 444*

501.44 POWERS OF COURT.

The district or county court has full power to appoint a new trustee in place of one deceased, resigned, or removed; and when, in consequence of such death, resignation, removal, or other cause, there is no acting trustee, the court, in its discretion, may appoint a trustee, or cause the trust to be executed by one of its officers under its direction; and when any person other than the trustee originally named, or appointed by a court of this state, has in good faith done any act in execution of the trust, the court may confirm such act.

History: (8106) *RL s 3265; 1977 c 184 s 18*

501.45 FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE.

Subdivision 1. Definitions. When used in this section unless the context otherwise requires:

(a) "War service" includes the following, during the period the United States is engaged in war or other major military engagement with any foreign nation:

(1) Active membership in the military, naval, or air forces of the United States or any of its allies;

(2) Acceptance for membership in the military, naval, or air forces of the United States or any of its allies and awaiting induction into that service;

(3) Participation in any work abroad in connection with a governmental agency of the United States or any of its allies, with the Red Cross, or with any other similar service;

(4) Internment by an enemy or absence from the United States and inability to return;

(5) Any service arising out of or in connection with the war or other major military engagement, which in the opinion of the court prevents the fiduciary from giving the proper attention to duties.

(b) "Fiduciary" refers to a trustee of a testamentary trust or of an express trust, a guardian of the person or estate of any person, an executor of a will, an administrator of the estate of the decedent, or an advisor or consultant in a testamentary or express trust.

Subd. 2. Powers of fiduciary may be suspended; petition. Whenever any fiduciary contemplates entering war service, such fiduciary may petition, or whenever any fiduciary is engaged in war service, such fiduciary or cofiduciary or any interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of war service and until the further order of the court, and in like manner any one of such persons may petition for the reinstatement of such fiduciary upon the fiduciary's return.

Subd. 3. Notice of hearing. Notice of the hearing on the petition shall be given to such persons and in such manner as the court may direct.

Subd. 4. Hearing; order. Upon a hearing on the petition or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(a) Order the suspension of the powers and duties of the fiduciary who is in war service for the period of the war service and until the further order of the court;

(b) Appoint a successor fiduciary to serve for the period of suspension of the powers and duties of the fiduciary and until the further order of the court, if upon suspension of powers and duties, there is no fiduciary to exercise the powers and duties of the fiduciary who is in war service, or if in the opinion of the court the appointment of a cofiduciary is advisable.

(c) Decree that the ownership and title to the trust res shall vest in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers and discretions, or such of the powers and discretions as are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary;

(d) Make such further orders in the premises as the court may deem advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary.

(e) Reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

Upon a petition therefor, the court shall thereafter order the reinstatement of the fiduciary when the fiduciary's war service has terminated if it appears that the trust is not fully executed or administration of the estate is not completed.

Subd. 5. Responsibility of fiduciary. The fiduciary shall have no responsibility for the acts and doings of the cofiduciary or successor fiduciary during the period of the suspension of the fiduciary's powers and duties, but is not hereby relieved of responsibility for the fiduciary's own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed hereunder shall have no responsibility for the acts and doing of the predecessor fiduciary.

History: 1943 c 497 s 1-5; 1951 c 177 s 1; 1986 c 444

501.46 TRUSTS FORMING PART OF RETIREMENT PLANS FOR PARTICIPATING MEMBERS.

In case of a trust forming part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions thereunder and investing, accumulating, and distributing to such persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan, the power of any person beneficially interested in such trust to sell, assign or transfer such beneficial interest, to anticipate payments thereunder, 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.

History: 1955 c 628 s 1; 1986 c 444

501.461 TRUSTS NOT AFFECTED.

Notwithstanding any other provisions of law to the contrary, the provisions of any trust created prior to June 1, 1973 relating to one's "minority" or "majority" or other relating terms shall be governed by the definitions of such terms existing at the time of the creation of such trust.

History: 1973 c 725 s 88

501.47 [Repealed, 1969 c 1006 s 17]

UNIFORM PRINCIPAL AND INCOME ACT**501.48 UNIFORM PRINCIPAL AND INCOME ACT; DEFINITIONS.**

Subdivision 1. As used in sections 501.48 to 501.63, the following terms have the meanings given them by this section.

Subd. 2. "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" 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" means the person entitled to principal, including income which has been accumulated and added to principal.

Subd. 5. "Trustee" means an original trustee and any successor or added trustee.

History: 1969 c 1006 s 1; 1986 c 444

501.49 DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURE.

Subdivision 1. A trust shall 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

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of sections 501.48 to 501.63;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of sections 501.48 to 501.63; or

(c) 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. If the 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 a provision of sections 501.48 to 501.63.

History: 1969 c 1006 s 2; 1986 c 444

501.50 INCOME; PRINCIPAL; CHARGES.

Subdivision 1. Income is the return in money or property derived from the use of principal, including return received as

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

(b) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in section 501.53 on bond premium and bond discount;

(c) corporate distributions as provided in section 501.52;

(d) accrued increment on bonds or other obligations issued at discount as provided in section 501.53;

(e) receipts from business and farming operations as provided in section 501.54;

(f) receipts from disposition of natural resources as provided in sections 501.55 and 501.56;

(g) receipts from other principal subject to depletion as provided in section 501.57;

(h) receipts from disposition of unproductive property as provided in section 501.58.

Subd. 2. Principal is the property which has been 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

(a) consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in section 501.52;

(e) receipts from the disposition of corporate securities as provided in section 501.53;

(f) royalties and other receipts from disposition of natural resources as provided in sections 501.55 and 501.56;

(g) receipts from other principal subject to depletion as provided in section 501.57;

(h) any profit resulting from any change in the form of principal except as provided in section 501.58 on unproductive property;

(i) receipts from disposition of unproductive property as provided in section 501.58;

(j) any allowances for depreciation established under sections 501.54 and 501.59, subdivision 1, clause (b).

Subd. 3. After determining income and principal in accordance with the terms of the trust instrument or of sections 501.48 to 501.63, the trustee shall charge to income or principal expenses and other charges as provided in section 501.59.

History: 1969 c 1006 s 3; 1986 c 444

501.51 WHEN RIGHT TO INCOME ARISES; APPORTIONMENT OF INCOME.

Subdivision 1. 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 becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator or date of receipt in the estate if acquired after death, even though there is an intervening period of administration of the testator's estate during which the beneficiary may have no right to a distribution of the income.

Subd. 2. In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will

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

(b) 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 shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

Subd. 3. 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. On termination of an income interest, the income beneficiary whose interest is terminated, or the income beneficiary's estate, is entitled to

(a) income undistributed on the date of termination;

(b) income due but not paid to the trustee on the date of termination;

(c) 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 shall 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.

History: 1969 c 1006 s 4; 1986 c 444

501.52 CORPORATE DISTRIBUTIONS.

Subdivision 1. Corporate distributions of shares of the distributing corporation, including distribution in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

Subd. 2. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any 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. 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 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. Except as provided in subdivisions 1, 2, and 3, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subdivisions 2 and 3, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

Subd. 5. The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of sections 501.48 to 501.63 concerning the source or character of dividends or distributions of corporate assets.

History: 1969 c 1006 s 5

501.53 BOND PREMIUM AND DISCOUNT.

Subdivision 1. 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 shall 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. 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 shall be reimbursed for the increment when realized.

History: 1969 c 1006 s 6

501.54 BUSINESS AND FARMING OPERATIONS.

Subdivision 1. If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

Subd. 2. Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

History: 1969 c 1006 s 7

501.55 DISPOSITION OF NATURAL RESOURCES.

Subdivision 1. If any 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 shall be allocated as follows:

(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, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall 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. Twenty-seven and one-half percent of the gross receipts, but not to exceed 50 percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

Subd. 2. If holding an item of depletable property of a type specified in this section on January 1, 1970, a trustee shall allocate receipts from the property in the manner

used before January 1, 1970, but as to all depletable property acquired after January 1, 1970 by an existing or new trust, the method of allocation provided herein shall be used.

Subd. 3. This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

History: 1969 c 1006 s 8; 1986 c 444

501.56 TIMBER.

If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with section 501.49, subdivision 1, clause (c).

History: 1969 c 1006 s 9

501.57 OTHER PROPERTY SUBJECT TO DEPLETION.

Except as provided in sections 501.55 and 501.56, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of five percent per year of its inventory value, are income, and the balance is principal.

History: 1969 c 1006 s 10

501.58 UNPRODUCTIVE PROPERTY.

Subdivision 1. Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has been unproductive for more than a year, including as income the value of any beneficial use of the property by the income beneficiary, shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charges paid while the property was unproductive.

Subd. 2. The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was unproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was unproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

Subd. 3. An income beneficiary or the income beneficiary's estate is entitled to delayed income under this section as if it accrued from day to day while a beneficiary.

Subd. 4. If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages, for example, realty acquired by or in lieu of foreclosure, the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

History: 1969 c 1006 s 11; 1986 c 444

501.59 CHARGES AGAINST INCOME AND PRINCIPAL.

Subdivision 1. The following charges shall be made against income:

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

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

(c) Court costs, attorney's fees, and other fees on accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(d) Trustee's compensation for services performed for the income beneficiary or in the production of income and all expenses reasonably incurred for current management of principal and application of income;

(e) Any tax levied upon receipts defined as income under sections 501.48 to 501.63 or the trust instrument and payable by the trustee.

Subd. 2. If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

Subd. 3. The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under subdivision 1(d), expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) 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;

(c) 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 (b), and by section 501.54;

(d) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority;

(e) 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, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

Subd. 4. Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under section 501.51.

History: 1969 c 1006 s 12; 1986 c 444

501.60 APPLICATION.

Except as specifically provided in the trust instrument or the will or in sections 501.48 to 501.63, sections 501.48 to 501.63 shall apply to any receipt or expense received or incurred after January 1, 1970 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.

• **History:** 1969 c 1006 s 13

501.61 ASCERTAINMENT OF INCOME OR PRINCIPAL.

The provisions of sections 501.48 to 501.63 shall not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

History: 1969 c 1006 s 14

501.62 UNIFORMITY ON INTERPRETATION.

Sections 501.48 to 501.63 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1969 c 1006 s 15

501.63 SHORT TITLE.

Sections 501.48 to 501.63 may be cited as the revised uniform principal and income act.

History: 1969 c 1006 s 16

MINNESOTA TRUSTEES' POWERS ACT

501.64 DEFINITION.

As used in sections 501.64 to 501.67, "trustee" means a corporation, individual or other legal entity acting as an original, added or successor trustee of a testamentary or inter vivos trust estate, whichever in a particular case shall be appropriate.

History: 1971 c 130 s 1

501.65 INCORPORATION BY REFERENCE.

Subdivision 1. By a clearly expressed intention of the testator or settlor so to do contained in a will, or in an instrument in writing whereby a trust estate is created inter vivos, any or all of the powers enumerated in section 501.66, as they exist at the time of the signing of the will by the testator or at the time of the signing by the first settlor who signs the trust instrument, may be, by appropriate reference made thereto, incorporated in whole or in part in any such will or other written trust instrument, to be applicable to the trustee authorized to administer a trust estate established or to be established pursuant to the terms of the will or other written instrument, with the same effect, and subject to the same judicial interpretation and control in appropriate cases, as though such language were set forth verbatim in such instrument. Incorporation of one or more of the powers contained in section 501.66, by reference to that section shall be in addition to and not in limitation of all other common law or statutory powers of the trustee.

Subd. 2. The powers enumerated in section 501.66 may be incorporated in whole or in part in any other kind of instrument or agreement by reference.

History: 1971 c 130 s 2

501.66 ENUMERATED POWERS OF TRUSTEE.

Subdivision 1. The powers listed in this section may be incorporated by reference to this section.

Subd. 2. The trustee may collect, hold, and retain trust assets until, in the judgment of the trustee, disposition of the assets should be made, without regard to any effect the retention may have upon the diversification of the trust estate; and the property may be retained even though it includes an asset in which the trustee is personally interested.

Subd. 3. The trustee may receive from any source additions to the assets of the trust.

Subd. 4. The trustee may continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

Subd. 5. The trustee may acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.

Subd. 6. The trustee may invest and reinvest trust assets in any property or any undivided interest therein wherever located, including but not limited to bonds,

debentures, notes, secured or unsecured, stocks of corporations, whether preferred or common, mutual funds, real estate or improvements thereon, or any interest therein, oil and mineral leases or royalty or similar interests and interests in trusts, including investment trusts and common trust funds maintained by a corporate trustee, contracts which insure the life of a person who is or may become a trust beneficiary, and any such investments may be made, regardless of any lack of diversification.

Subd. 6a. The trustee may invest and reinvest trust assets in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in those enterprises; provided that the aggregate amount of investments held by a trustee under the authority of this subdivision valued at cost may not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after the investment is made.

Subd. 7. The trustee may deposit trust funds in a bank, including a bank operated by the trustee, or in a state or federal savings and loan association.

Subd. 8. The trustee may acquire or sell or otherwise dispose of an asset, at public or private sale, for cash or on credit, with or without security as the trustee deems advisable; and to manage, develop, exchange, partition, change the character of, or abandon a trust asset or any interest therein.

Subd. 9. The trustee may grant an option for the sale or other disposition of a trust asset, or to take an option for the acquisition of any asset.

Subd. 10. The trustee may enter into a lease as lessor or lessee, with or without option to purchase or renew, though the term of the lease or renewal thereof, or of such option, extends beyond the term of the trust.

Subd. 11. The trustee may make ordinary or extraordinary repairs, improvements or alterations in buildings or other structures or in any other trust assets, and to remove or demolish any improvements.

Subd. 12. The trustee may raze existing or erect new party walls or buildings, alone or jointly with owners of adjacent property.

Subd. 13. The trustee may subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or on exchange or partition to adjust differences in valuation by giving or receiving consideration; or to dedicate easements to public use without consideration.

Subd. 14. The trustee may enter into a lease or arrangement for exploration for and removal of oil, gas and other minerals or other natural resources; and to enter into pooling and unitization agreements.

Subd. 15. The trustee may insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons.

Subd. 16. The trustee may vote shares of stock or other securities held by the trustee, in person or by general or limited proxy, and to enter into voting trust agreements upon such terms and for such periods as the trustee deems advisable.

Subd. 17. The trustee may pay calls, assessments, and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities in the hands of the trustee.

Subd. 18. The trustee may sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and to consent, directly or through a committee or other agent, to corporate sales, leases and encumbrances. In the exercise of such powers the trustee shall be authorized, where the trustee deems such course expedient, to deposit stocks, bonds or other securities with any protective or other similar committee, under such terms and conditions respecting the deposit thereof as the trustee may approve.

Subd. 19. The trustee may hold any stock or other security in the name of a nominee or nominees, without disclosure of any fiduciary relationship, but the trustee shall be liable for any and all acts and omissions of the nominee relating to such assets.

Subd. 20. The trustee may borrow money, and mortgage or otherwise encumber or pledge trust assets, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee.

Subd. 21. The trustee may enter into contracts binding upon the trust which are reasonably incident to the administration of the trust, and which the trustee believes to be for the best interests of the trust.

Subd. 22. The trustee may pay, compromise, contest, submit to arbitration, or otherwise settle any and all claims in favor of or against the trust or the trustee.

Subd. 23. The trustee may release, in whole or in part, any claim or lien belonging to the trust.

Subd. 24. The trustee may pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration and protection of the trust.

Subd. 25. The trustee may create reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.

Subd. 26. The trustee may make payment of any sum distributable to a minor or other beneficiary under legal disability, without liability to the trustee, by paying the sum in any one or more of the following ways:

- (a) Directly to the beneficiary;
- (b) To the legal guardian of the beneficiary;
- (c) Directly for the maintenance, education and general welfare of the beneficiary;
- (d) To a parent of the beneficiary; or
- (e) To anyone who shall have custody and care of the person of the beneficiary.

Subd. 27. The trustee may effect distribution of property and money in divided or undivided interests, and adjust resulting differences in valuation.

Subd. 28. The trustee may employ attorneys, accountants, investment advisors, agents or other persons, even if they are associated with the trustee, to advise or assist the trustee in the performance of duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; except that:

- (1) the trustee may not delegate all of the trustee's duties; and
- (2) the employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care.

Subd. 29. The trustee may prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of duties.

Subd. 30. The trustee may advance income to or for the use of the beneficiaries, for which advance such trustee shall have a lien on the future benefits of such beneficiary.

Subd. 31. The trustee may advance money for the protection of the trust or its assets, and for all expenses and liabilities sustained or incurred in or about the administration or protection of the trust, or because of the holding or ownership of any trust assets, for which advances with interest thereon the trustee shall have a lien on the trust assets, and may be reimbursed out of the trust assets.

Subd. 32. The trustee may execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

Subd. 33. The trustee may hold two or more trusts or parts of such trusts created by the same instrument, as an undivided whole, without separation as between such trusts or parts of such trusts, provided that such separate trusts or parts of such trusts shall have undivided interests and provided further that no such holding shall defer the vesting of any estate in possession or otherwise.

History: 1971 c 130 s 3; 1978 c 524 s 1; 1985 c 187 s 4; 1986 c 442 s 10,11; 1986 c 444

NOTE: Subdivision 6a, as added by Laws 1986, chapter 442, section 10, is effective August 1, 1987. See Laws 1986, First Special Session chapter 3, article 3, section 9.

501.67 CITATION.

Sections 501.64 to 501.67 may be cited or referred to as the "Minnesota trustees' powers act."

History: 1971 c 130 s 4

SUPERVISION OF CHARITABLE TRUSTS AND TRUSTEES ACT

501.71 CITATION.

Sections 501.71 to 501.81 shall be known and may be cited as the supervision of charitable trusts and trustees act.

History: 1975 c 243 s 1

501.72 CHARITABLE TRUSTS; SUPERVISION BY ATTORNEY GENERAL.

Sections 501.71 to 501.81 shall apply to all charitable trusts and all trustees holding property for charitable purposes. The attorney general shall have and exercise, in addition to all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts, the rights, duties and powers set forth in sections 501.71 to 501.81.

History: 1975 c 243 s 2

501.73 DEFINITIONS.

Subdivision 1. For the purposes of sections 501.71 to 501.81, the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Charitable purpose" means any charitable, benevolent, philanthropic, religious, social service, educational, eleemosynary or other public use or purpose, either actual or purported.

Subd. 3. "Trustee" means a person or group of persons either in an individual or a joint capacity, or a director, officer or other agent of an association, foundation, trustee corporation, corporation or other legal entity who is vested with the control or responsibility of administering property held for any charitable purpose.

Subd. 4. "Charitable trust" means any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the trustee by whom the property is held to fiduciary duties to deal with the property for charitable purposes.

Subd. 5. The definition of the terms "trustee" and "charitable trust" contained in this section are for the purposes of sections 501.71 to 501.81 and shall not be construed to modify or abridge any law or rule respecting the nature of any charitable trust or the nature and extent of the duties of any trustee except such duties as may be imposed by sections 501.71 to 501.81.

History: 1975 c 243 s 3

501.74 EXCLUSIONS.

The registration and reporting provisions of sections 501.75 and 501.76 shall not apply to

(a) A charitable trust administered by the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or to any of their agencies or subdivisions.

(b) An educational institution which is under the general supervision of the state board of education, the state university board, the state board for community colleges, or the university of Minnesota or the north central association of colleges and secondary schools, or by any other national or regional accrediting association, and all charitable trusts organized and operated exclusively for educational purposes which are administered by any such institution.

(c) Religious associations organized pursuant to chapters 315 and 317 and all charitable trusts organized and operated exclusively for religious purposes which are administered by any such religious association.

(d) Institutions and corporations organized and operated as hospitals or as medical centers engaged in medical care, education and research.

(e) An organization described in section 509(a)(3) of the Internal Revenue Code of 1954 which is operated, supervised or controlled by or in connection with one or more organizations described in clauses (b) to (d), a pooled income fund as defined in section 642(c)(5) of the Internal Revenue Code of 1954 which is maintained by an organization described in clauses (b) to (d), and a charitable remainder annuity trust or unitrust, as defined in section 664 of the Internal Revenue Code of 1954.

(f) A trust in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance or gift tax purposes and a trust not all of the unexpired interests in which are devoted to one or more charitable purposes and in which the only charitable interest is an annuity or an income interest with respect to which a charitable deduction is allowed the trust under applicable Minnesota income tax laws.

(g) An organization which does not have at least \$10,000 of gross assets at any time during a taxable year.

(h) Any organization which is subject to the requirements of sections 309.50 to 309.61.

(i) A trust for individual and charitable beneficiaries which is described in section 4947(a)(2) of the Internal Revenue Code of 1954, also known as a split-interest trust.

(j) A charitable gift, bequest or devise not held and continued by a private express trust or corporation even though the gift, bequest or devise creates a fiduciary relationship, unless there is no named charitable beneficiary in existence or unless a named charitable beneficiary elects in a writing filed with the attorney general and with the fiduciary to come within the provisions of sections 501.75 and 501.76.

History: 1975 c 243 s 4; 1975 c 321 s 2; 1978 c 601 s 15

501.75 REGISTER OF TRUSTS AND TRUSTEES.

Subdivision 1. **Establishment of register; transfer to attorney general.** The attorney general shall establish and maintain a register of charitable trusts and trustees subject to the provisions of sections 501.71 to 501.81. All registrations, annual reports and other filings made pursuant to sections 501.71 to 501.81 shall be transferred by the department of commerce to the attorney general. All registrations and annual reports filed with the department of commerce shall remain in effect as if there had been no transfer in the register.

Subd. 2. **Filing of instruments.** Every charitable trust subject to the provisions of sections 501.71 to 501.81 shall register and file with the attorney general a copy of the instrument creating the charitable trust, including any amendments thereto, within three months after the charitable trust first receives possession or control of any property authorized or required to be applied, either at present or in the future, for charitable purposes.

History: 1975 c 243 s 5; 1978 c 601 s 16; 1980 c 516 s 2; 1981 c 39 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

501.76 FILING OF ANNUAL REPORTS.

Subdivision 1. **Reports required; deadlines; extensions.** Every charitable trust subject to the provisions of sections 501.71 to 501.81 shall, in addition to filing copies of the instruments previously required, file with the attorney general annual written reports setting forth any information the trust is required to report pursuant to sections 6056(b), 6033, 6034 and 6056 of the Internal Revenue Code of 1954. These reports shall be filed annually on or before the fifteenth day of the fifth month following the close of the charitable trust's taxable year as established for federal tax purposes. The

time for filing may be extended by application to the attorney general, but no such extension shall be for more than six months. A charitable trust which files the information required under this subdivision with the attorney general is not required to file the same information with the commissioner of revenue.

Subd. 2. Suspension of filing. The attorney general may suspend the filing of reports as to a particular charitable trust for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general and if the attorney general files in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that annual reports are not required for proper supervision by the attorney general's office.

History: 1975 c 243 s 6; 1978 c 601 s 17; 1980 c 516 s 2; 1981 c 39 s 2; 1986 c 444

501.77 PUBLIC INSPECTION OF RECORDS.

The register, copies of instruments, and the reports filed with the attorney general shall be open to public inspection.

History: 1975 c 243 s 7; 1978 c 601 s 18; 1980 c 516 s 2; 1981 c 39 s 3

501.78 INVESTIGATORY POWERS OF THE ATTORNEY GENERAL; CUSTODIANS TO FURNISH COPIES OF RECORDS.

Subdivision 1. The attorney general may conduct investigations reasonably necessary for the administration of sections 501.71 to 501.81 and for the purpose of determining whether the property held for charitable purposes is properly administered. In connection with an investigation under this section the attorney general may obtain discovery from any agent, trustee, fiduciary, beneficiary, institution, association, corporation or other person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the investigation, in accordance with the provisions of this subdivision. The discovery may be obtained without commencement of a civil action and without leave of court, except as expressly required by the provisions of subdivision 2. The applicable protective provisions of rules 26.02, 30.02, 30.04 and 31.04 of the rules of civil procedure for the district court shall apply to any discovery procedures instituted pursuant to this section. The attorney general or any person to whom discovery is directed may apply to and obtain leave of the district court in order to reduce or extend the time requirements of this subdivision, and upon a showing of good cause the district court shall order a reduction or extension. In order to obtain discovery, the attorney general may:

(a) Serve written interrogatories on any person. Within 20 days after service of interrogatories, separate written answers and objections to each interrogatory shall be mailed to the attorney general.

(b) Upon reasonable written notice of no less than 15 days, require any person to produce for inspection and copying any documents, papers, books, accounts, letters, photographs, objects, or tangible things which are in the person's possession, custody, or control.

(c) Upon reasonable written notice of no less than 15 days, take the testimony of any person by deposition as to any fact or opinion relevant to the subject matter involved in the pending investigation.

Subd. 2. If any person fails or refuses to answer interrogatories, to produce materials, or to be examined under oath, as required by the provisions of subdivision 1, the attorney general may give notice that the attorney general will apply to the district court in the county where the person receiving it resides or is found, and the court, on a showing by the attorney general of cause therefor, may issue an order as may be required to compel compliance with the discovery procedures authorized by this section.

Subd. 3. The custodians of the records of a court having jurisdiction of probate matters or of charitable trusts, and any custodian of records of any department, agency or political subdivision of this state shall furnish free of charge copies of papers, records

and files of the custodian's office relating to the subject of sections 501.71 to 501.81 as the attorney general requires.

Subd. 4. Report of applications for tax exemption. Every officer, agency, board or commission of this state receiving applications for exemption from taxation of any charitable trust subject to sections 501.71 to 501.81 shall annually file with the attorney general a list of all applications received during the year and shall notify the attorney general of any suspension or revocation of a tax exempt status previously granted.

History: 1975 c 243 s 8; 1978 c 601 s 19-21; 1978 c 674 s 60; 1980 c 516 s 2; 1981 c 39 s 4; 1984 c 655 art 1 s 67; 1986 c 444

501.79 BREACH OF TRUST; PROCEEDINGS TO SECURE COMPLIANCE.

Subdivision 1. The attorney general may institute appropriate proceedings to secure compliance with the provisions of sections 501.71 to 501.81 and to secure the proper administration of any charitable trust. The powers and duties of the attorney general provided herein are in addition to existing powers and duties.

Subd. 2. The attorney general shall be notified of and has the right to participate as a party in all court proceedings:

- (a) To terminate a charitable trust or to liquidate or distribute its assets, or
- (b) To modify or depart from the objects or purposes of a charitable trust as are set forth in the instrument governing the trust, including any proceeding for the application of the doctrine of cy pres, or
- (c) To construe the provisions of an instrument with respect to a charitable trust, or
- (d) To review an accounting of a charitable trust submitted by a trustee, or
- (e) Any other proceeding involving a charitable trust when the interests of the uncertain or indefinite charitable beneficiaries may be affected.

Subd. 3. The notice required by subdivision 2 need not be provided to the attorney general of a charitable gift, devise, or bequest (1) for which the donor or testator has named as a charitable beneficiary an organization which is then in existence; or (2) which 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 shall not affect any other notice to the attorney general required by this chapter.

Subd. 4. A judgment or order rendered in proceedings without service of process and pleadings upon the attorney general, are voidable, unenforceable, and may be set aside at the option of the attorney general upon the attorney general's motion seeking relief. With respect to those proceedings, no compromise, settlement agreement, contract or judgment agreed to by any or all of the parties having or claiming to have an interest in any charitable trust is valid unless the attorney general was made a party to the proceedings and joined in the compromise, settlement agreement, contract or judgment, or unless the attorney general, in writing waives the right to participate. The attorney general is expressly authorized to enter into a compromise, settlement agreement, contract or judgment as in the attorney general's opinion may be in the best interests of the people of the state and the uncertain or indefinite beneficiaries.

Subd. 5. The personal representative shall send to the attorney general a copy of the petition or application for probate together with a copy of the last will and testament, including any codicils which have been admitted to probate:

- (a) when a will provides for a bequest or devise for a charitable purpose for which there is no named charitable beneficiary, or there is then in existence no named charitable beneficiary; or
- (b) when a will provides for bequests or devises for charitable purposes in excess of \$60,000; or
- (c) when a will provides for a bequest or devise to a named charitable beneficiary which is in receivership; or

(d) upon a written request served on the personal representative by any named charitable beneficiary prior to the order allowing the final account or, in unsupervised proceedings, within 30 days after service of the final account on the charitable beneficiary.

The personal representative shall serve the documents on the attorney general and shall file with the appropriate court a copy of the affidavit of service on the attorney general. If the personal representative was requested to notify the attorney general of the probate proceedings pursuant to clause (d), the party so requesting shall file with the court a copy of the request and the affidavit of service on the personal representative.

Whenever objections are filed to any will or codicil containing any bequest or devise to a charitable trust, the person filing the objections, at least 14 days prior to the hearing thereon, shall send to the attorney general a copy of the objections, together with a copy of the petition or application for probate and a copy of the will, together with any codicils thereto which have been offered for probate.

Any notice or documents required to be sent to the attorney general pursuant to this section shall be served by certified mail, return receipt requested. Upon receiving any notice or documents pursuant to this subdivision the attorney general may become a party in the estate proceedings.

Subd. 6. The failure of a trustee to register as required by section 501.75, or to file annual reports as required by section 501.76, or to administer and manage property held for charitable purposes in accordance with law or consistent with fiduciary obligations constitutes a breach of trust.

Subd. 7. The attorney general may institute a civil action in order to remedy and redress a breach of trust, as described in subdivision 6 or as otherwise provided by law, committed by a trustee subject to the provisions of sections 501.71 to 501.81. Whenever it appears to the attorney general that a breach of trust has been committed, the attorney general is entitled to sue for and have:

(a) Injunctive relief in any court of competent jurisdiction against the breach of trust or threatened breach of trust;

(b) The removal of a trustee who has committed or is committing a breach of trust;

(c) The recovery of damages; and

(d) Any other appropriate remedy.

History: 1975 c 243 s 9; 1976 c 161 s 1; 1978 c 601 s 22-24; 1986 c 444

501.80 CONTRARY PROVISIONS OF INSTRUMENT INVALID.

Sections 501.71 to 501.81 apply regardless of any contrary provisions of any instrument.

History: 1975 c 243 s 10

501.81 COST OF INVESTIGATIONS AND PROCEEDINGS; REGISTRATION AND FILING FEES.

Subdivision 1. [Repealed, 1978 c 601 s 29]

Subd. 2. [Repealed, 1978 c 601 s 29]

Subd. 3. In any proceeding brought by the attorney general, or in which the attorney general intervenes, pursuant to sections 501.71 to 501.81, the judgment or order may provide that the trustee shall pay the reasonable expenses necessarily incurred by the attorney general in the investigation and prosecution of such action, including attorneys' fees, if it shall also be determined in such proceeding that the trustee has been guilty of an intentional or grossly negligent breach of trust.

Subd. 4. All moneys received by the attorney general pursuant to this section shall be deposited in the state treasury and shall be credited to the general fund.

History: 1975 c 243 s 11; 1976 c 239 s 124; 1978 c 601 s 25,26