

**CHAPTER 501B****TRUSTS**

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## GENERAL PROVISIONS

### 501B.01 PURPOSES FOR WHICH EXPRESS TRUSTS MAY BE CREATED.

An active express trust may be created for any lawful purpose.

**History:** 1989 c 340 art 1 s 1

### 501B.012 MEMORIAL FUND.

Subdivision 1. **Establishment.** A trust may be created for the purpose of establishing a fund for the benefit of one or more individuals with a single transfer under the Minnesota Uniform Custodial Trust Act in the manner and form provided by section 529.17. A trust authorized under this section must be created and administered and is subject to the Minnesota Uniform Custodial Trust Act.

Subd. 2. **Additional funds.** Notwithstanding subdivision 1, after a fund has been created, additional funds may be transferred to the fund without the formalities required by chapter 529 if the transferor manifests a reasonable expression of intent to make the transfer, together with a reasonable form of delivery of the property including, but not limited to, the following:

(1) a check payable to the name of the fund and delivered to the trustee or the trustee's custodial agent;

(2) delivery of cash or tangible personal property to the trustee or to the trustee's custodial agent;

(3) delivery and recording of title of stock or other registered security in the name of the fund;

(4) delivery of a deed and acceptance of the deed by the trustee of the fund, or the recording of a deed in the name of the trustee of the fund with the applicable county recorder or registrar of titles for real property; and

(5) any other means of transfer and delivery so that a reasonable person would conclude that the transferor intended the property be titled in the name of, and used for the benefit of the beneficiaries of, the fund.

**History:** 2004 c 146 art 1 s 1

#### **501B.02 PASSIVE TRUSTS ABOLISHED.**

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

**History:** 1989 c 340 art 1 s 2

#### **501B.03 TERMINATION OF TRUST PURPOSES.**

If the purposes for which an active express trust is created have been accomplished, or become impossible of accomplishment or illegal, the trust will be terminated.

**History:** 1989 c 340 art 1 s 3

#### **501B.04 REVERSION IN GRANTOR.**

Every legal estate and interest not embraced in an express trust and not otherwise disposed of remains in the grantor.

**History:** 1989 c 340 art 1 s 4

#### **501B.05 BONA FIDE PURCHASERS PROTECTED.**

An express trust not declared in the disposition to the trustee or a constructive or resulting trust does not defeat the title of a purchaser from the trustee for value and without notice of the trust, or the rights of a creditor who extended credit to the trustee in reliance upon the trustee's apparent ownership of the trust property.

**History:** 1989 c 340 art 1 s 5

#### **501B.06 MISAPPLICATION OF PAYMENT TO TRUSTEE.**

A person who actually and in good faith makes a payment to a trustee that the trustee, as such, is authorized to receive, is not responsible for the proper application of the payment according to the trust. No right or title derived by the person from the trustee, in consideration of the payment, may be impeached or called in question because of a misapplication of the payment by the trustee.

**History:** 1989 c 340 art 1 s 6

#### **501B.07 PURCHASE MONEY RESULTING TRUSTS.**

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

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

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

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

**History:** 1989 c 340 art 1 s 7

#### **501B.08 APPOINTMENT OF AND ACQUISITION OF TITLE BY SUCCESSOR TRUSTEES AND CONFIRMATION OF ACTS PERFORMED DURING VACANCIES IN TRUSTEESHIP.**

If the terms of a trust provide for the appointment of a successor trustee and direct how the successor is to qualify, title to the trust assets vests in the successor trustee upon qualification, unless the terms of the trust expressly provide otherwise.

If the terms of a trust do not effectively provide for the appointment of a successor trustee and appointment of a successor is required, or if title to the trust assets does not vest in a successor trustee, the district court may appoint a successor trustee or vest title in a successor trustee.

Whenever the district court appoints a successor trustee, it is presumed that a corporate trustee must be replaced by another corporate trustee unless the court finds it would best serve the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust to not appoint a corporate trustee.

The district court may confirm an act performed by a person in execution of the trust while there was no acting trustee.

**History:** 1989 c 340 art 1 s 8; 2004 c 146 art 1 s 2

#### **501B.09 SUSPENSION OF THE POWER OF ALIENATION.**

Subdivision 1. **Suspension; exceptions.** The power of alienation is suspended if there are no persons in being who, alone or in conjunction with others, can convey an absolute fee in possession or absolute ownership of real property or absolute ownership of personal property.

(a) There is no suspension of the power of alienation by the terms of a trust or by interests in property held in trust if there is an unlimited power in one or more persons then in being to terminate the trust, by revocation or otherwise, and to acquire an absolute fee in possession or absolute ownership of the trust property.

(b) There is no suspension of the power of alienation by the terms of a trust or by interests in property held in trust if the trustee has power to sell an absolute fee in possession or absolute ownership of the trust property.

Subd. 2. **Suspension for 21 years.** The power of alienation of property held in trust may be suspended, by the terms of the trust, for a period of not more than 21 years. During any period of suspension of the power of alienation of real property, section 501B.46 applies. Notwithstanding any contrary term of a trust, suspension of the power of alienation by the terms of a trust ceases after a period of 21 years, after which the trustee has the power to convey an absolute fee in possession or absolute ownership of the trust property, and to mortgage, pledge, and lease the same. A provision in the terms of a trust for forfeiture of the interest of a trustee or beneficiary

if the trustee or beneficiary participates in or seeks to convey, mortgage, pledge, or lease trust property after the expiration of a 21-year period of suspension is void.

Subd. 2a. **Inapplicable to certain trusts.** Subdivision 2 does not apply to a trust if the beneficial interests in the trust are evidenced by or constitute securities within the meaning of section 2(1) of the Securities Act of 1933, title 15, United States Code, section 77(b)(1).

Subd. 3. **Void future interests.** Every future interest in real or personal property not held in trust is void in its creation if it might suspend the power of alienation for a period longer than a life or lives in being plus 21 years.

**History:** 1989 c 340 art 1 s 9; 1990 c 581 s 2

**501B.10** [Repealed, 1996 c 314 s 8]

**501B.11** [Repealed, 1996 c 314 s 8]

### **501B.12 GRANTOR AND AGENTS OF GRANTOR.**

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

**History:** 1989 c 340 art 1 s 12

### **501B.13 NONMERGER OF TRUSTS.**

Subdivision 1. **Same trustee and beneficiary.** No trust is invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

Subd. 2. **Applicability.** Subdivision 1 applies to all trusts whenever executed or created.

**History:** 1992 c 548 s 1

### **501B.14 PROHIBITION AGAINST EXERCISE OF POWERS BY TRUSTEE.**

Subdivision 1. **Prohibition.** No trustee may exercise or participate in the exercise of any of the following powers:

(1) any power of the trustee to make discretionary distributions of either principal or income to or for the benefit of the trustee as beneficiary, unless by the terms of the will or other written instrument those discretionary distributions are limited by an ascertainable standard relating to that trustee's health, education, maintenance, or support as described in sections 2041 and 2514 of the Internal Revenue Code of 1986, as amended through December 31, 1992; or

(2) any power to make discretionary distributions of either principal or income to discharge any legal support or other obligations of the trustee to any person.

Subd. 2. **Exercise of affected powers.** Any power described in subdivision 1 that is conferred upon two or more trustees may be exercised by the trustee or trustees who are not disqualified under subdivision 1. If there is no trustee qualified to exercise the power, any trustee or other person interested in the trust may petition the district court pursuant to section 501B.16 to appoint an additional trustee. The district court may limit the powers of an additional trustee appointed under this subdivision to exercise the power to make discretionary distributions when no other trustee may exercise that power.

Subd. 3. **Application.** (a) Except as provided in paragraph (b), this section applies to any exercise of any powers of the trustee after May 14, 1993, under any trust created before, on, or after May 14, 1993, unless the terms of the trust refer specifically to this section and provide that this section does not apply.

(b) This section does not apply to a trustee:

(1) who retains or is granted an unlimited lifetime or testamentary power, exercisable in a capacity other than as trustee, to revoke the trust, or to withdraw all of the income and principal of the trust, or to appoint all of the income and principal of the trust to the trustee individually or the trustee's estate;

(2) of a trust created on or before May 14, 1993, if the entire principal of the trust would be included in the gross estate of the trustee for federal estate tax purposes if the trustee had died on May 14, 1993, without regard to any power described in subdivision 1;

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

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

(c) This section has no effect on an action taken by a trustee on or before May 14, 1993.

**History:** 1993 c 169 s 1; 2004 c 146 art 1 s 3

## **501B.15 DIVISION AND MERGER OF TRUSTS.**

Subdivision 1. **Division.** A trustee may, without the approval of any court, divide a trust, before or after it is funded, into two or more separate trusts if the trustee determines that dividing the trust is in the best interests of all persons interested in the trust and will not substantially impair the accomplishment of the purposes of the trust.

Subd. 2. **Merger.** A trustee may, without the approval of any court, merge two or more trusts having substantially similar terms and identical beneficiaries into a single trust if the trustee determines that merging the trusts is in the best interests of all persons interested in the trusts and will not substantially impair the accomplishment of the purposes of the trusts.

Subd. 3. **Application.** Subdivisions 1 and 2 apply to all trusts whenever executed or created.

**History:** 1995 c 130 s 2

## **501B.151 INVESTMENT AND MANAGEMENT OF TRUST ASSETS.**

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

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

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

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

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

- (1) general economic conditions;
- (2) the possible effect of inflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries known to the trustee, including earning capacity;
- (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries if consistent with the trustee's duty of impartiality.

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

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

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

Subd. 4. **Duties at inception of trusteeship.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this section.

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

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

Subd. 7. **Language invoking standard.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy

permitted under this section: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

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

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

Subd. 10. **Trustees defined.** As used in this section, "trustee" means individual trustees and corporations having trust powers acting under wills, agreements, court orders, and other instruments, whether existing on January 1, 1997, or made at a later time.

Subd. 11. **Investment companies.** (a) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that a trustee which is a banking institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee which is a banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. A trustee which is a banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation.

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

Subd. 12. **Application to existing trusts.** This section applies to trusts existing on and created after January 1, 1997. As applied to trusts existing on January 1, 1997, this section governs only decisions or actions occurring after that date.

Subd. 13. **Short title.** This section may be cited as the "Minnesota Prudent Investor Act."

**History:** 1996 c 314 s 4

## **501B.152 AGENTS OF TRUSTEE.**

(a) Unless prohibited or otherwise restricted by the terms of the trust instrument, a trustee may delegate to any person, even if the person is associated with the trustee, any trust function that a prudent person of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;



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

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

(b) In performing a delegated trust function, an agent owes a duty to the trust to comply with the terms of the delegation and to act in a manner consistent with the purposes and terms of the trust. This duty shall be enforced by the trustee.

(c) A trustee who complies with the requirements of paragraph (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the trust function was delegated.

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

**History:** 1996 c 314 s 5

#### **501B.154 NONJUDICIAL SETTLEMENT AGREEMENTS.**

(a) The trustee and all beneficiaries of a trust not under court supervision may enter into a binding nonjudicial settlement agreement with respect to the matters listed in paragraph (c).

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust, subject to paragraph (c), clause (5), and includes terms and conditions that could be properly approved by the court under applicable law.

(c) Matters that may be resolved by nonjudicial settlement agreement are:

- (1) the approval of a trustee's accounting;
- (2) the resignation of a trustee;
- (3) the determination of a trustee's compensation;
- (4) the transfer of the trust's situs; and

(5) the termination of a noncharitable trust and distribution of the trust property if the fair market value of the trust is less than \$50,000, as determined on the date of the nonjudicial settlement agreement, and it has been determined that relative to the costs of administering the trust, continuance pursuant to its existing terms will defeat or substantially impair the accomplishment of its purposes. The trust property must be distributed in a manner which conforms as nearly as possible to the intention of the grantor. The existence of a spendthrift or similar protective provision in the trust does not conclusively make this clause inapplicable.

**History:** 2004 c 146 art 1 s 4

#### **501B.155 REPRESENTATION; PLEADINGS; WHEN PARTIES ARE BOUND BY OTHERS; NOTICE.**

Subdivision 1. **Applicability.** Subdivisions 2 to 4 apply in judicial proceedings involving trusts and in nonjudicial settlement agreements under section 501B.154.

Subd. 2. **Description to give reasonable notice.** Interests to be affected must be described in the agreement or pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

Subd. 3. **Binding effect of orders and agreements.** (a) Persons are bound by orders and nonjudicial settlement agreements binding others in the cases in paragraphs (b) to (d).

(b) Orders and agreements binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind all persons to the extent that their interests, as objects, takers in default, or otherwise are subject to the power.

(c) To the extent there is no conflict of interest between them or among persons represented:

(1) orders and agreements binding a conservator of the property bind the protected person;

(2) orders and agreements binding a guardian bind the ward if no conservator of the estate has been appointed; and

(3) orders imposed upon and agreements entered into by an agent having authority to represent and act on behalf of the principal with respect to a particular question or dispute bind the principal.

(d) An unborn or unascertained person, a person whose identity or location is unknown and not reasonably ascertainable, a minor, or any other person under a legal disability who is not otherwise represented is bound by an order or nonjudicial settlement agreement to the extent that the person's interest is represented by another party having a substantially identical interest, but only to the extent there is no conflict of interest between them or among persons represented. A person's identity or location is not reasonably ascertainable if the identity or location is unable to be determined or ascertained after a diligent search is made.

Subd. 4. **Required notice.** In judicial proceedings involving trusts, notice is required as follows:

(1) notice as prescribed by section 501B.18 must be given to every interested person or to one who can bind an interested person as described in subdivision 3, paragraph (c), clause (1), (2), or (3), and may be given both to a person and to another who may bind the person;

(2) notice is given to unborn or unascertained persons, who are not represented under subdivision 3, paragraph (c), clause (1), (2), or (3), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

**History:** 2004 c 146 art 1 s 5

## COURT PROCEEDINGS

### 501B.16 PETITION FOR COURT ORDER.

A trustee of an express trust by will or other written instrument or a person interested in the trust may petition the district court for an order:

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

(2) upon filing of an account, to settle and allow the account;

(3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;

(4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31;

(5) to approve payment of the trustee's fees, attorneys' fees, accountants' fees, or any other fees to be charged against the trust;

(6) to confirm the appointment of a trustee;

- (7) to accept a trustee's resignation and discharge the trustee from the trust;
- (8) to require a trustee to account;
- (9) to remove a trustee for cause; or if the court finds that removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and one or more of the following elements is found:
  - (i) the trustee has committed a serious breach of trust;
  - (ii) lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (iii) the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively;
  - (iv) there has been a substantial change of circumstances; or
  - (v) removal is requested by all of the beneficiaries not under disability who, on the date the petition is signed, either are current permissible distributees of trust income or principal, or would be permissible distributees of trust income or principal if the trust terminated on that date;
- (10) to appoint a successor trustee when required by the terms of the trust instrument or when by reason of death, resignation, removal, or other cause there is no acting trustee;
- (11) to confirm an act performed in execution of the trust by a person while there was no acting trustee;
- (12) to subject a trust to continuing court supervision under section 501B.23;
- (13) to remove a trust from continuing court supervision under section 501B.23;
- (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee notwithstanding any contrary provision of the trust instrument;
- (15) to suspend the powers and duties of a trustee in military service or war service in accordance with section 525.95 and to order further action authorized in that section;
- (16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in accordance with section 501B.41;
- (17) to determine the validity of a disclaimer delivered or filed under section 524.2-1114;
- (18) to change the situs of a trust;
- (19) to redress a breach of trust;
- (20) to terminate a trust;
- (21) to divide a trust under section 501B.15;
- (22) to merge two or more trusts under section 501B.15; or
- (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties.

**History:** 1989 c 340 art 1 s 13; 1995 c 130 s 3; 2004 c 146 art 1 s 6; 2011 c 76 art 1 s 57

#### **501B.17 VENUE.**

Subdivision 1. **Filing of petition.** A petition under section 501B.16 or 501B.22 may be filed:

(1) in the case of a trust created by will, in the district court for (i) the county where the will was probated, (ii) the county where a trustee having custody of part or all of the trust assets resides or has a trust office, or (iii) the county in which the trust is administered;

(2) in the case of a nontestamentary trust, in the district court for (i) the county where a trustee having custody of part or all of the trust assets resides or has a trust office or (ii) the county in which the trust is administered; or

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

Subd. 2. **Prior court proceedings.** In the case of a trust with respect to which there have been prior court proceedings in this state, a petition under section 501B.16 or 501B.22 must be filed in the court in which the prior proceedings were held.

**History:** 1989 c 340 art 1 s 14; 2005 c 26 s 1

#### **501B.18 ORDER FOR HEARING.**

Upon the filing of a petition under section 501B.16, the court shall, by order, fix a time and place for a hearing, unless notice and hearing have been waived in writing by the beneficiaries of the trust then in being. Unless waived, notice of the hearing must be given as follows: (1) by publishing, at least 20 days before the date of the hearing, a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed; and (2) by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing to those beneficiaries of the trust who are known to or reasonably ascertainable by the petitioner. In the case of a beneficiary who is a minor or an incapacitated person as defined in section 524.5-102 and for whom a conservator, guardian, or guardian ad litem known to the petitioner has been appointed, notice must be mailed to that fiduciary. Notice may be given in any other manner the court orders.

**History:** 1989 c 340 art 1 s 15; 2005 c 10 art 4 s 21

#### **501B.19 REPRESENTATION OF PERSONS WHO ARE UNBORN, UNASCERTAINED, UNKNOWN, OR MINORS OR INCAPACITATED PERSONS.**

If an interested person is a minor or an incapacitated person as defined in section 524.5-102 and has no guardian or conservator within the state, or if an interested person is unborn, unascertained, or a person whose identity or address is unknown to the petitioner, the court shall represent that person, unless the court, upon the application of the trustee or any other interested person, appoints a guardian ad litem to represent the person.

**History:** 1989 c 340 art 1 s 16; 2005 c 10 art 4 s 22

#### **501B.20 HOLDER OF A GENERAL POWER.**

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

**History:** 1989 c 340 art 1 s 17; 1Sp1989 c 2 s 1

**501B.21 ORDER AND APPEAL.**

Upon hearing a petition filed under section 501B.16, the court shall make an order it considers appropriate. The order is final as to all matters determined by it and binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, even though unascertained or not in being. An appeal from the order may be taken by any party after service by any party of written notice of its filing under the Rules of Appellate Procedure or, if no notice is served, within six months after the filing of the order.

**History:** 1989 c 340 art 1 s 18; 2000 c 362 s 1

**501B.22 CONFIRMATION OF APPOINTMENT OF TRUSTEE.**

A person appointed as trustee of an express trust by a will or other written instrument or any interested person may file in the district court an ex parte petition to confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Upon consideration of the petition, the court shall make an order it considers appropriate. A trustee whose appointment is confirmed under this section is subject to section 501B.23.

**History:** 1989 c 340 art 1 s 19

**501B.23 INVENTORY; ANNUAL ACCOUNT; CONTINUING COURT SUPERVISION.**

A trustee whose appointment has been confirmed by court order under section 501B.22 or a trustee otherwise subject to continuing court supervision by court order shall file with the court administrator of the district court an inventory containing a list of all property then belonging to the trust. The trustee shall then render to the court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts. This section does not apply to trusts established in connection with bonds issued under chapter 474.

**History:** 1989 c 340 art 1 s 20

**501B.24 JURISDICTION.**

Once a district court has assumed jurisdiction of a trust, the district court has jurisdiction as a proceeding in rem, until jurisdiction is transferred to another court or terminated by court order. This chapter does not limit or abridge the power or jurisdiction of the district court over trusts and trustees.

**History:** 1989 c 340 art 1 s 21

**501B.25 APPLICATION.**

Sections 501B.16 to 501B.23 do not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. Sections 501B.16 to 501B.23 apply, however, unless otherwise provided in the trust instrument, to trusts established in connection with bonds issued under chapter 469, and, at the sole election of the issuer of bonds issued under chapter 469, without a trust indenture, to the pledges and other bond covenants made by the issuer in one or more resolutions with respect to the bonds. If the issuer so elects to apply sections 501B.16 to 501B.23, for such purposes only, the pledges and other bond covenants shall be deemed the "trust," the resolution or resolutions shall be deemed the "trust instrument," and the issuer shall be deemed the "trustee" notwithstanding the absence of any fiduciary responsibility owed by the "issuer" toward the bondholders. Nothing in this section shall preclude the issuer from seeking approval under sections 501B.16 to 501B.23 of the creation of any express trust under a trust indenture and the appointment of a trustee thereunder to act as a fiduciary for the benefit of the bondholders.

As used in sections 501B.16 to 501B.23, "person" includes an artificial as well as a natural person, and "beneficiary" includes a bondholder.

**History:** 1989 c 340 art 1 s 22; 1993 c 271 s 8

## CHARITABLE TRUSTS AND THEIR SUPERVISION

### 501B.31 CHARITABLE TRUSTS.

Subdivision 1. **Validity and construction.** No charitable trust is invalid because of indefiniteness or uncertainty of the object of the trust or of its beneficiaries designated in the instrument creating the trust or because the trust violates a statute or rule against perpetuities. No charitable trust may 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. 2. **Liberal interpretation; administration.** A charitable trust must be liberally construed by the courts so that the intentions of the donor are carried out when possible, and the trust must not fail solely because the donor has imperfectly outlined the purpose and object of the charity or the method of administration. If the district court of the proper county determines that the purpose and object of the donor's charity are imperfectly expressed, the method of administration is incomplete or imperfect, or circumstances have so changed since the execution of the instrument creating the trust as to render impracticable, inexpedient, or impossible a literal compliance with the terms of the instrument, the court may, upon the petition of the trustee under section 501B.16, make an order directing that the trust must be administered or expended in a manner the court determines will, as nearly as possible, accomplish the general purposes of the instrument and the object and intention of the donor without regard to, and free from any specific restriction, limitation, or direction it contains.

Subd. 3. **Laws not affected.** Nothing in this section impairs, limits, or abridges the operation and efficacy of the whole or any part of a statute that authorizes the creation of a corporation for charitable purposes or that permits a municipal corporation to act as trustee for a public or charitable purpose. Nothing in subdivisions 1 to 3 of this section applies to a gift, bequest, devise, or trust made, created, or arising by or under the provisions of the will of a person who died before April 15, 1927.

Subd. 4. **Determination of trust, gift, bequest, devise.** (a) This subdivision applies to a gift or trust made or created by a living person before April 15, 1927, or a gift, bequest, devise, or trust made or created by or under the will of a person who died before April 15, 1927.

(b) If a gift, trust, or devise has been made for a charitable, benevolent, educational, religious, or other public use or trust, or upon a condition, limitation, or restriction of any kind, the property given, entrusted, or devised may be used only for that use or trust and in accordance with the condition, limitation, or restriction. The grantee, devisee, trustee, or other holder of property may petition the court under section 501B.16 for determination of the legal rights and relationship of the holder, the public, the grantor, and the grantor's heirs, representatives, or assigns in and to the property.

(c) If the court determines that circumstances have so changed since the execution of the instrument as to render impracticable, inexpedient, or impossible a literal compliance with the terms or conditions of the instrument, but the terms and purposes of the instrument may be substantially performed, the court may order that the terms of the instrument be performed and

the property be administered or expended in a manner that will, in the judgment of the court, as nearly as possible, accomplish the general purposes of the instrument and the intention of the grantor without regard to, and free from any, specific restriction, limitation, condition, or direction contained in the instrument.

Subd. 5. **Attorney general.** In cases arising under this section, the attorney general must be given notice of any court proceedings pursuant to section 501B.18. The attorney general shall represent the beneficial interests in those cases and shall enforce affected trusts.

**History:** 1989 c 340 art 1 s 23

### **501B.32 PRIVATE FOUNDATIONS; CHARITABLE TRUSTS; SPLIT-INTEREST TRUSTS.**

Subdivision 1. **Incorporated provisions.** A will or trust instrument that creates a trust that is: (1) a "private foundation," as defined in section 501(a) of the Internal Revenue Code of 1986; or (2) a "charitable trust," as defined in section 4947(a)(1) of the Internal Revenue Code of 1986; or (3) a "split-interest trust," as defined in section 4947(a)(2) of the Internal Revenue Code of 1986, and any other instrument governing the trustee of one of those trusts or the use, retention, or disposition of any of the income or property of one of those trusts, must be considered to have incorporated within it the provisions in paragraphs (a) to (e) with respect to the trust and its trustee. Except as provided in subdivision 2, paragraphs (a) to (e) govern the administration and distribution of the trust notwithstanding provisions of the 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 1986.

(b) The trustee shall not engage in an act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code of 1986, which would give rise to liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1986.

(c) The trustee shall not keep "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code of 1986, that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986.

(d) The trustee shall not make investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1986, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986.

(e) The trustee shall not make a "taxable expenditure," as defined in section 4945(d) of the Internal Revenue Code of 1986, that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986.

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

Subd. 3. **Rights and powers of courts, attorney general.** Nothing in this section impairs the rights and powers of the attorney general or the courts of this state with respect to a trust.

**History:** 1989 c 340 art 1 s 24

## SUPERVISION OF CHARITABLE TRUSTS AND TRUSTEES ACT

### 501B.33 CITATION.

Sections 501B.33 to 501B.45 may be cited as the "Supervision of Charitable Trusts and Trustees Act."

**History:** 1989 c 340 art 1 s 25

### 501B.34 CHARITABLE TRUSTS; SUPERVISION BY ATTORNEY GENERAL.

Sections 501B.33 to 501B.45 apply to trustees holding property for charitable purposes. In connection with the supervision, administration, and enforcement of charitable trusts, the attorney general has the rights, duties, and powers in sections 501B.33 to 501B.45, and common law and statutory rights, duties, and powers.

**History:** 1989 c 340 art 1 s 26

### 501B.35 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 501B.31 to 501B.45 and do not modify or abridge any law or rule respecting the nature of a charitable trust or the nature and extent of the duties of a trustee except duties imposed by sections 501B.31 to 501B.45.

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

Subd. 3. **Charitable trust.** "Charitable trust" means a fiduciary relationship with respect to property that arises as a result of a manifestation of an intention to create it, and that subjects the person by whom the property is held to equitable duties to deal with the property for a charitable purpose. As used in this definition, property includes all income derived from fees for services.

Subd. 4. **Trustee.** "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 a charitable purpose.

**History:** 1989 c 340 art 1 s 27; 1997 c 222 s 57

### 501B.36 REGISTRATION AND REPORTING.

The registration and reporting provisions of sections 501B.37 and 501B.38 apply to a charitable trust, including an organization with a charitable purpose, that has gross assets of \$25,000 or more at any time during the year, except that the provisions do not apply to:

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

(2) a religious association organized under chapter 315 or chapter 317A;

(3) a charitable trust organized and operated exclusively for religious purposes and administered by a religious association organized under chapter 315 or 317A;

(4) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 and operated, supervised, or controlled by or in connection with one or more organizations described in clauses (2) to (5); a pooled income fund as defined in section 642(c)(5) of the Internal Revenue



Code of 1986 maintained by an organization described in clauses (2) to (5); or a charitable remainder annuity trust or unitrust, as defined in section 664 of the Internal Revenue Code of 1986;

(5) 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 or a trust in which not all of the unexpired interests 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;

(6) an organization registered with the attorney general pursuant to sections 309.52 and 309.53;

(7) a trust for individual and charitable beneficiaries that is described in section 4947(a)(2) of the Internal Revenue Code of 1986, also known as a split-interest trust; or

(8) 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 501B.37 and 501B.38.

**History:** 1989 c 340 art 1 s 28; art 2 s 6; 1995 c 235 s 12

#### **501B.37 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 sections 501B.33 to 501B.45.

Subd. 2. **Filing of instruments.** Except as otherwise provided in section 501B.36, a charitable trust shall register and file with the attorney general a copy of its articles of incorporation or the instrument that created the charitable trust, including any amendments, within three months after the charitable trust first receives possession or control of property authorized or required to be applied, either at present or in the future, for charitable purposes.

Subd. 3. **Registration fee.** A \$25 registration fee shall be paid by every charitable trust filing the information required by this section.

**History:** 1989 c 340 art 1 s 29; 1995 c 235 s 13,14

#### **501B.38 INFORMATION FILING.**

Subdivision 1. **Deadlines; extensions.** A charitable trust subject to sections 501B.33 to 501B.45 must file with the attorney general a copy of its federal tax or information return, including all schedules and amendments, submitted by the charitable trust to the Internal Revenue Service for the period covered in the trust's accounting year last completed. If the charitable trust does not file a federal tax or information return, it shall file a balance sheet and a statement of income and expenses for the accounting year last completed.

Subd. 1a. **Extensions.** The information required by this section must be filed annually on or before the 15th 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, for up to six months, provided the applicant has requested an extension to file its federal tax return under section 6081 of the Internal Revenue Code of 1986. A charitable trust that 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 requirements under subdivision 1 for a particular charitable trust for a reasonable, specifically designated time on written application of the trustee filed with the attorney general. If the filing requirements are suspended, the attorney general shall file in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced by the suspension and that the information required by this section is not required for proper supervision by the attorney general's office.

Subd. 3. **Filing fee.** A \$25 filing fee shall be paid by every charitable trust filing the information required by this section.

**History:** 1989 c 340 art 1 s 30; 1995 c 235 s 15; 1996 c 471 art 13 s 22

### **501B.39 PUBLIC INSPECTION OF RECORDS.**

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

**History:** 1989 c 340 art 1 s 31

### **501B.40 INVESTIGATORY POWERS OF THE ATTORNEY GENERAL; CUSTODIANS TO FURNISH COPIES OF RECORDS.**

Subdivision 1. **Discovery.** The attorney general may conduct investigations that are reasonably necessary for: (1) the administration of sections 501B.33 to 501B.45; or (2) determining whether property held for charitable purposes is properly administered. In connection with an investigation under this section, the attorney general may obtain discovery from an agent, trustee, fiduciary, beneficiary, institution, association, corporation, or other person regarding a matter, fact, or circumstance, not privileged, that is relevant to the subject matter involved in the investigation. The discovery may be obtained without commencement of a civil action and without leave of court, except as expressly required by subdivision 2. The applicable protective provisions of rules 26.02, 30.02, and 30.04, of the Rules of Civil Procedure for the District Court apply to discovery procedures instituted under this section. The attorney general or a 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:

(1) serve written interrogatories on a person. Within 20 days after service of interrogatories, separate written answers and objections to each interrogatory must be mailed to the attorney general;

(2) upon reasonable written notice of no less than 15 days, require a person to produce for inspection and copying documents, papers, books, accounts, letters, photographs, objects, or tangible things in the person's possession, custody, or control; and

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

Subd. 2. **Order by court.** If a person fails or refuses to answer interrogatories, produce materials, or be examined under oath, the attorney general may, upon notice to the person, apply to the district court in the county where the person resides or is found, for an order to compel compliance. On a showing of cause by the attorney general, the court may issue an order to compel compliance with the discovery procedures authorized by this section.

Subd. 3. **Public records.** A custodian of records of a court having jurisdiction of probate matters or of charitable trusts, and a custodian of records of a department, agency, or political subdivision of this state shall, upon request, furnish to the attorney general, free of charge, copies of records relating to the subject of sections 501B.33 to 501B.45.

Subd. 4. **Report of applications for tax exemption.** Every officer, agency, board, or commission of this state that receives an application for exemption from taxation from a charitable trust subject to sections 501B.33 to 501B.45 shall annually file with the attorney general a list of all applications received during the year and shall notify the attorney general of the suspension or revocation of a tax-exempt status previously granted.

**History:** 1989 c 340 art 1 s 32

#### **501B.41 BREACH OF TRUST; PROCEEDINGS TO SECURE COMPLIANCE.**

Subdivision 1. **Enforcement powers.** The attorney general may institute appropriate proceedings to obtain compliance with sections 501B.33 to 501B.45 and the proper administration of a charitable trust. The powers and duties of the attorney general in this section are in addition to all other powers and duties.

Subd. 2. **Participation by attorney general.** The attorney general must be notified of, and has the right to participate as a party in, all court proceedings:

- (1) to terminate a charitable trust or to liquidate or distribute its assets;
- (2) to modify or depart from the objects or purposes of a charitable trust as contained in the instrument governing the trust, including a proceeding for the application of the doctrine of cy pres;
- (3) to construe the provisions of an instrument with respect to a charitable trust;
- (4) to review an accounting of a charitable trust submitted by a trustee; or
- (5) involving a charitable trust when the interests of the uncertain or indefinite charitable beneficiaries may be affected.

Subd. 3. **Exemption from notice requirement.** The attorney general need not be provided with notice under subdivision 2 of a charitable gift, devise, or bequest (1) for which the donor or testator has named as a charitable beneficiary an organization that is then in existence; or (2) that is not held and continued by a private express trust or corporation, whether or not the gift, devise, or bequest creates a fiduciary relationship.

This subdivision does not affect any other notice to the attorney general required by this chapter.

Subd. 4. **Failure to give notice.** If proceedings are commenced without service of process and service of the pleadings upon the attorney general, a judgment or order rendered in the proceedings is voidable, unenforceable, and, upon the attorney general's motion seeking relief, may be set aside. With respect to the 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 a charitable trust is valid unless the attorney general was made a party to the proceedings and joined any agreement or the attorney general, in writing, waived the right to participate. The attorney general may enter into a compromise, settlement agreement, contract, or judgment that the attorney general believes is in the best interests of the people of the state and the uncertain or indefinite beneficiaries.

Subd. 5. **Wills.** The personal representative shall send to the attorney general a copy of the petition or application for probate together with a copy of the will and any codicils that are being offered for probate:

(1) when a will provides for a bequest or devise for a charitable purpose for which there is no named charitable beneficiary or for which there is then in existence no named charitable beneficiary;

(2) when a will provides for bequests or devises for charitable purposes in excess of \$150,000;

(3) when a will provides for a bequest or devise to a named charitable beneficiary that is in receivership; or

(4) upon a written request served on the personal representative by a 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 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 according to clause (4), the requesting party shall file with the court a copy of the request and the affidavit of service on the personal representative.

If objections are filed to a will or codicil containing any bequest or devise to a charitable trust, the person filing the objections, at least 14 days before the hearing, shall send to the attorney general a copy of the objections, a copy of the petition or application for probate, a copy of the will, and any codicil that has been offered for probate.

Any service upon the attorney general under this section must be made personally or by registered or certified mail, return receipt requested. The attorney general may become a party in the estate proceedings.

Subd. 6. **Breach of trust.** The failure of a trustee to register under section 501B.37, to file annual reports under section 501B.38, 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. **Civil actions.** The attorney general may begin 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 sections 501B.33 to 501B.45. If it appears to the attorney general that a breach of trust has been committed, the attorney general may sue for and obtain:

- (1) injunctive relief against the breach of trust or threatened breach of trust;
- (2) the removal of a trustee who has committed or is committing a breach of trust;
- (3) the recovery of damages; and
- (4) another appropriate remedy.

**History:** 1989 c 340 art 1 s 33

#### **501B.42 CONTRARY PROVISIONS OF INSTRUMENT INVALID.**

Sections 501B.33 to 501B.45 apply regardless of contrary provisions of an instrument.

**History:** 1989 c 340 art 1 s 34

**501B.43 COST OF INVESTIGATIONS AND PROCEEDINGS; REGISTRATION AND FILING FEES.**

Subdivision 1. **Expenses payable.** In a proceeding brought by the attorney general or in which the attorney general intervenes under sections 501B.33 to 501B.45, the judgment or order may provide that the trustee must pay the reasonable expenses necessarily incurred by the attorney general in the investigation and prosecution of the action, including attorneys' fees, if it is determined in the proceeding that the trustee has been guilty of an intentional or grossly negligent breach of trust.

Subd. 2. **Disposition of money.** All money received by the attorney general under this section must be deposited in the state treasury and credited to the general fund.

**History:** 1989 c 340 art 1 s 35

**501B.44 IMMUNITY OF CHARITABLE TRUSTS.**

A charitable trust is an "organization" for purposes of section 317A.257, and that section applies to charitable trusts.

**History:** 1989 c 340 art 1 s 36; art 2 s 7

**501B.45 SALE OF BANKS OWNED BY CHARITABLE TRUSTS.**

Subdivision 1. **Definitions.** For the purpose of this section, "charitable trust" means a charitable trust subject to supervision by the attorney general under the Supervision of Charitable Trusts and Trustees Act, sections 501B.33 to 501B.45, that is required to divest excess business holdings by section 4943 of the Internal Revenue Code of 1986 and that owned 100 percent of a bank holding company on May 26, 1969, the date of enactment of section 4943 of the Internal Revenue Code of 1954.

Subd. 2. **Authorization.** The stock or assets of one or more banks or a bank holding company owned directly or indirectly by a charitable trust may be sold, assigned, merged, or transferred by the charitable trust under the procedures in section 48.93 to a bank holding company, bank, or other qualified entity as permitted by applicable banking laws without regard to whether the entity acquiring the stock or assets is located in a reciprocating state.

Subd. 3. **Legislative intent.** It is the express intention of the Minnesota legislature to act pursuant to United States Code, title 12, section 1842(d), to permit certain charitable trusts to sell, assign, or transfer certain financial institutions' assets without regard to whether the entity acquiring the assets of the charitable trust is located outside of this state.

Subd. 4. **Additional acquisitions.** A bank holding company, other than a reciprocating state bank holding company as defined in section 48.92, subdivision 8, that directly or indirectly acquires control of a bank located in this state under the provisions of this section may acquire additional bank assets through the expenditure of an annual amount not to exceed five percent of the Minnesota assets of the acquired bank holding company as of December 31 of the preceding year. The restrictions within this subdivision apply only until the bank holding company making an acquisition under this section becomes a reciprocating state bank holding company. This section does not prohibit the bank holding company from being granted a charter for a de novo bank or from establishing de novo detached facilities pursuant to Minnesota law.

**History:** 1989 c 340 art 1 s 37

## SALES AND LEASES OF REAL PROPERTY

### **501B.46 PETITION FOR COURT ORDER TO SELL, MORTGAGE, OR LEASE REAL PROPERTY HELD IN TRUST.**

(a) Except as provided in paragraph (c), if the assets of an express trust by will or other written instrument include real property in this state that the trustee is not, under the terms of the trust, then permitted to sell, mortgage, or lease, and if section 501B.23 is applicable to the trust, the trustee or a beneficiary of the trust may petition the court then having jurisdiction of the trust for an order directing the trustee to sell, mortgage, or lease the real property or a part of the real property.

(b) Except as provided in paragraph (c), if the assets of an express trust by will or other written instrument include real property in this state that the trustee is not, under the terms of the trust, then permitted to sell, mortgage, or lease, and if section 501B.23 is not applicable to the trust, the trustee or a beneficiary of the trust may petition an appropriate district court under section 501B.16 for an order directing the trustee to sell, mortgage, or lease the real property or a part of the real property.

(c) If a trust is of the kind described in section 501B.09, subdivision 2a, no order described in paragraph (a) or (b) may be entered upon a petition filed by a person other than the trustee.

**History:** 1989 c 340 art 1 s 38; 1990 c 581 s 3

### **501B.47 PETITION BY OWNER OF PRESENT OR FUTURE INTEREST FOR COURT ORDER TO SELL, MORTGAGE, OR LEASE INTERESTS IN REAL PROPERTY.**

Notwithstanding a contrary provision in the instrument creating the interests, when the ownership of real property situated in this state is divided into one or more possessory interests and one or more future interests, the owner of an interest may petition the district court for the county in which any of the real property is situated for an order directing that the real property or part of the real property be sold, mortgaged, or leased. If an owner is a minor or incapacitated person as defined in section 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, the petition may be made on behalf of the owner by a custodian, conservator, or guardian.

**History:** 1989 c 340 art 1 s 39; 2004 c 146 art 3 s 33

### **501B.48 WHEN PETITION MAY BE GRANTED.**

Subdivision 1. **Petition under section 501B.46.** The court to which a petition to sell, mortgage, or lease has been made under section 501B.46 may grant the petition, on terms it considers appropriate, if the court determines that:

(1) if the interest in real property were owned in fee simple or absolute ownership by a single individual, a sale or mortgage of the interest would be desirable because total investment returns, including appreciation and the value of any use of the real property by trust beneficiaries, were inadequate; or

(2) an order directing a sale or mortgage would be economically advantageous to the trust beneficiaries to whom trust income is distributable or may be distributed and would not be seriously disadvantageous to any trust beneficiary.

The court to which a petition to lease has been made under section 501B.46 may grant the petition on terms it considers appropriate, even though the term of the lease may extend beyond the term of the trust, if the court determines that an order directing a lease would be economically

advantageous to the trust beneficiaries to whom trust income is distributable or may be distributed and would not be seriously disadvantageous to any trust beneficiary.

Subd. 2. **Petition under section 501B.47.** The court to which a petition to sell or mortgage has been made under section 501B.47 may grant the petition on terms it considers appropriate if the court determines that:

(1) were the real property held in trust for the owners of the possessory and future interests in the property, retention of the real property by the trustee without the sale or mortgage would be inconsistent with a trustee's common law duty to administer the trust impartially as between the holders of successive interests in income and principal;

(2) if the interest in real property were owned in fee simple or absolute ownership by a single individual, a sale or mortgage of the interest would be desirable because total investment returns, including appreciation and the value of any use of the real property by possessory owners, were inadequate; or

(3) an order directing a sale or mortgage would be economically advantageous to the owners of possessory interests in the real property and would not be seriously disadvantageous to the owner of any interest in the property.

The court to which a petition to lease has been made under section 501B.47 may grant the petition on terms it considers appropriate, even though the term of the lease may extend beyond the duration of the possessory interests in the real property, if the court determines that an order directing a lease would be economically advantageous to the owners of possessory interests in the real property and would not be seriously disadvantageous to the owner of any interest in the property.

**History:** 1989 c 340 art 1 s 40

## **501B.49 NOTICE OF HEARING.**

Subdivision 1. **Hearing required.** On the filing of a petition under section 501B.46 or 501B.47, the court shall, by order, fix a time and place for a hearing on the petition unless a hearing has been waived in writing. In the case of a petition under section 501B.46, each beneficiary of the trust then in being must join in the waiver. In the case of a petition under section 501B.47, each person in being who owns an interest in the real property must join in the waiver.

Subd. 2. **Notice.** Notice of hearing must be given by publishing a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed at least 20 days before the date of the hearing, and by mailing copies of the order for hearing in the manner specified in this subdivision or in another manner ordered by the court. In the case of a petition under section 501B.46, mailed notice must be given by mailing a copy of the order for hearing to those beneficiaries of the trust then in being who are known to or reasonably ascertainable by the petitioner and, in the case of a beneficiary who is a minor or an incapacitated person as defined in section 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, to the conservator or guardian, or if none is acting within the state, to the guardian ad litem of the beneficiary, at least 15 days before the date of the hearing. In the case of a petition under section 501B.47, mailed notice must be given by mailing a copy of the order for hearing to those persons owning an interest in the real property then in being who are known to or reasonably ascertainable by the petitioner and, in the case of a person who is a minor or an incapacitated person as defined in section 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, to the conservator or

guardian, or if none is acting within the state, to the guardian ad litem of the person, at least 15 days before the date of the hearing.

**History:** 1989 c 340 art 1 s 41; 2004 c 146 art 3 s 34

#### **501B.50 REPRESENTATION OF PERSONS WHO ARE UNBORN, UNASCERTAINED, UNKNOWN, OR MINORS OR INCAPACITATED PERSONS.**

If an interested person is a minor or an incapacitated person as defined in section 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, and does not have a guardian or conservator within the state, the court shall appoint a guardian ad litem for the person. If an interested person is unborn, unascertained, or a person whose identity or address is unknown to the petitioner, the court shall represent the person, but the court may, upon the application of the petitioner or another interested person or on its own motion, appoint a guardian ad litem to represent the person.

**History:** 1989 c 340 art 1 s 42; 2004 c 146 art 3 s 35

#### **501B.51 ORDER UPON PETITION; EXECUTION OF TRANSACTION.**

Subdivision 1. **Form of order; conclusiveness.** At a hearing under section 501B.49, the court shall make an order it considers appropriate. If the petition is granted in whole or in part, the order must specify the real property to be sold, mortgaged, or leased and the terms and conditions on which the transaction is to be consummated. The order is final and conclusive as to all matters determined by it and binding in rem on all persons interested in the real property, whether their interests are vested or contingent, even though the person is a minor, incapacitated as defined in section 524.5-102, subdivision 6 or 10, or otherwise subject to conservatorship, unascertained, or not in being, except that appeal may be taken in the manner provided in the Rules of Appellate Procedure.

Subd. 2. **Execution of order.** (a) In the case of a petition under section 501B.46, all transactions required by the order must be executed by the trustee.

(b) In the case of a petition under section 501B.47, the court shall appoint a suitable person as receiver to act for the court in executing each transaction required by the order. Each required transaction must be executed by the receiver.

**History:** 1989 c 340 art 1 s 43; 2004 c 146 art 3 s 36

#### **501B.52 REPORT OF AGREEMENT FOR CONFIRMATION.**

Before a sale, mortgage, or lease is made under an order described in section 501B.51, the trustee or receiver shall enter into an agreement for the sale, mortgage, or lease, subject to the approval of the court, and must report the agreement to the court under oath. At least 15 days before the hearing on the confirmation of the agreement, the trustee or receiver shall mail a copy of the agreement to each interested party to whom mailed notice was given under section 501B.49 and to any interested party who did not receive notice but appeared at the hearing on the petition.

**History:** 1989 c 340 art 1 s 44

#### **501B.53 ORDER OF CONFIRMATION; CONTENTS AND SUBSEQUENT PROCEDURES; DISTRIBUTION OF ASSETS.**

Subdivision 1. **Order to execute agreement.** If an agreement reported to the court under section 501B.52 is found by the court to conform to the order described in section 501B.51, the court shall make an order approving and confirming the agreement and directing the trustee or



receiver to execute and deliver the deed, mortgage, or lease of real property required by the agreement.

Subd. 2. **Costs; allowances.** The order of confirmation may direct that each participant in the proceeding be paid reasonable costs of the proceeding incurred by the participant. The order of confirmation may make appropriate allowances to persons who have served in the proceeding as receiver, guardian ad litem, or counsel, and may direct the manner of payment of these allowances.

Subd. 3. **Safekeeping, management, and distribution of assets.** The order of confirmation must include appropriate provisions for the safekeeping, management, and distribution of assets derived from the ordered transaction. In the case of assets derived from a transaction executed by a trustee under section 501B.51, subdivision 2, paragraph (a), distribution must be made to the trustee for administration as trust assets. In the case of assets derived from a transaction executed by a receiver under section 501B.51, subdivision 2, paragraph (b), distribution must be made to the owners, at the time of the sale or mortgage, of present possessory interests in the real property that was sold or mortgaged, and to the owners of leased real property who would be entitled to possession on the present termination of the lease. Notwithstanding any contrary provision in the terms of the instrument creating the interests in real property sold, mortgaged, or leased under this subdivision, the same possessory and future interests exist in the assets distributed as existed in the real property, and any provision in the creating instrument for forfeiture of an interest in real property upon a sale or other assignment must be disregarded by the court in directing distribution or other assignment of interests in the proceeds of a sale.

Subd. 4. **Hearing on confirmation order.** The trustee or receiver shall obtain from the court a time and place for the court's hearing on the confirmation of the agreement and shall give mailed notice of the time and place of the hearing to the interested parties described in section 501B.51 at least 15 days before the date of that hearing. The order of confirmation is final and conclusive as to all matters determined by it and binding in rem on all persons interested in the real property, whether their interests are vested or contingent, even though a person is a minor or incapacitated, as defined in section 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, unascertained, or not in being, except that appeal may be taken in the manner provided in the Rules of Appellate Procedure.

Subd. 5. **Combined proceedings.** In appropriate circumstances, proceedings under this section and section 501B.52 may be combined with proceedings under sections 501B.46 to 501B.51.

**History:** 1989 c 340 art 1 s 45; 2004 c 146 art 3 s 37

#### **501B.54 LEGAL EFFECT OF DEED, MORTGAGE, OR LEASE MADE UNDER SECTION 501B.53.**

A deed, mortgage, or lease executed and delivered in accordance with an order of confirmation under section 501B.53 binds the interests of the applicant for the order and of all other persons interested in the real property sold, mortgaged, or leased.

**History:** 1989 c 340 art 1 s 46

**501B.55 DATE OF CREATION OF INTERESTS AFFECTED BY THE PROCEDURES IN SECTIONS 501B.46 TO 501B.54.**

The procedures in sections 501B.46 to 501B.54 apply to proceedings initiated after January 1, 1990, with respect to interests created before, on, or after January 1, 1990.

**History:** 1989 c 340 art 1 s 47

**501B.56 CERTIFICATE OF TRUST.**

Subdivision 1. **Contents of certificate.** The grantor or a trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of trust must include:

- (1) the name of the trust, if one is given;
- (2) the date of the trust instrument;
- (3) the name of each grantor;
- (4) the name of each original trustee;
- (5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;
- (6) the following statement: "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) any other trust provisions the grantors or trustees include; and
- (8) a statement as to whether the trust instrument has terminated or been revoked.

The certificate of trust must be upon the representation of the grantors or trustees that the statements contained in the certificate of trust are true and correct and that there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths.

Subd. 2. **Effect.** A certificate of trust executed under subdivision 1 may be recorded in the office of the county recorder for any county or filed with the office of the registrar of titles with respect to registered land described in the certificate of trust or any attachment to it. When it is recorded or filed in a county where real property is situated, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters the certificate of trust sets out, as though the full trust instrument had been recorded, filed, or presented. Until amended or revoked under subdivision 3, or until the full trust instrument is recorded, filed, or presented, a certificate of trust is prima facie proof as to the matters contained in it and any party may rely upon the continued effectiveness of the certificate.

Subd. 3. **Amendment or revocation.** Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the grantor or a trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation.

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

Subd. 4. **Application.** Subdivisions 1 to 3 are effective August 1, 1992, but apply to trust instruments whenever created or executed.

**History:** 1992 c 548 s 2

### **501B.561 CERTIFICATE OF CUSTODIANSHIP.**

Subdivision 1. **Contents of certificate.** (a) A custodian or the owner of property held in a custodianship, at any time after execution or creation of a custodianship instrument, may execute a certificate of custodianship that sets forth less than all of the provisions of the custodial instrument and any amendments to the instrument. The certificate of custodianship may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of custodianship must include:

- (1) the name of the custodianship, if one is given;
- (2) the date of the custodianship instrument;
- (3) the name of each owner of property held in the custodianship;
- (4) the name of each original custodian;
- (5) the name and address of each custodian empowered to act under the custodianship instrument at the time of execution of the certificate;
- (6) the following statement: "The custodians are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) any other custodianship provisions the custodians or owners of property held in the custodianship include; and
- (8) a statement as to whether the custodianship instrument has terminated or been revoked.

(b) The certificate of custodianship must be upon the representation of the custodians or the owners of property held in the custodianship that the statements contained in the certificate of custodianship are true and correct and that there are no other provisions in the custodianship instrument or amendments to it that limit the powers of the custodianship to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property. The signature of the custodians or the owners of property held in the custodianship must be under oath before a notary public or other official authorized to administer oaths.

Subd. 2. **Effect.** A certificate of custodianship executed under subdivision 1 may be recorded in the office of the county recorder for any county, or filed with the office of the registrar of titles with respect to registered land described in the certificate of custodianship or any attachment to it. When it is recorded or filed in a county where real property is situated, or in the case of personal property, when it is presented to a third party, the certificate of custodianship serves to document the existence of the custodianship, the identity of the custodians, the powers of the custodians and any limitations on those powers, and other matters the certificate of custodianship sets out, as though the full custodianship instrument had been recorded, filed, or presented. Until amended

or revoked under subdivision 3, or until the full custodianship instrument is recorded, filed, or presented, a certificate of custodianship is prima facie proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate.

Subd. 3. **Amendment or revocation.** (a) Amendment or revocation of a certificate of custodianship may be made only by a written instrument executed by a custodian or an owner of property held in the custodianship. Amendment or revocation of a certificate of custodianship is not effective as to a party unless that party has actual notice of the amendment or revocation.

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

Subd. 4. **Application.** (a) Subdivisions 1 to 3 are effective August 1, 2006, but apply to custodianship instruments whenever created or executed.

(b) Subdivisions 1 to 3 apply only to custodianships established under a federal law or under a statute of this or any other state. Subdivisions 1 to 3 do not apply to custodianships governed by chapter 527 or by the similar laws of another state.

**History:** 2006 c 221 s 4

#### **501B.57 AFFIDAVIT OF TRUSTEE IN REAL PROPERTY TRANSACTIONS.**

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

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

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

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

filed for record ....., ....., as Document No. .... (or in Book .... of ....., Page .....) in the Office of the (County Recorder/Registrar of Titles) of ..... County, Minnesota,

OR

to which this Affidavit is attached,

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

.....  
 .....  
 .....

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

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

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

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

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

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

- OR -

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

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

6. The trust is not supervised by any court.

- OR -

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

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

.....  
 , Affiant

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

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

Notary Stamp or Seal

This instrument was drafted by:

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

STATE OF MINNESOTA )

## AFFIDAVIT OF TRUSTEE

) ss.

COUNTY OF )

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

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

.....  
 .....  
 .....  
 .....

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

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

.....  
 .....  
 .....

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

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

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

4. The Trust has not terminated and has not been revoked.

- OR -

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

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

6. The Trust is not supervised by any court.

- OR -

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

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

.....  
 , Affiant

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

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

Notary Stamp or Seal

This instrument was drafted by:

.....  
 .....

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

- (i) the trust described in the affidavit is a valid trust;
- (ii) either the trust has not terminated or been revoked or, if the trust has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the trust;
- (iii) the powers granted the trustee or trustees extend to the real property described in the affidavit or attachment to the affidavit;
- (iv) no amendment to the trust has been made limiting the power of the trustee or trustees to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;
- (v) the requisite number of trustees have executed and delivered the instrument of conveyance described in the affidavit; and
- (vi) any necessary court approval of the transaction has been obtained.

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

Subd. 3. **Recording or filing.** An Affidavit of Trustee or Trustees under subdivisions 1 and 1a may be recorded in the office of the county recorder for any county, or filed with the office of the registrar of titles for any county with respect to registered land described in the affidavit, or in the Certificate of Trust or Trust Instrument referred to in the affidavit, and may be recorded or filed as a separate document or combined with or attached to an original or certified copy of a Certificate of Trust or Trust Instrument, and recorded or filed as one document.

**History:** 1992 c 548 s 3; 1996 c 338 art 2 s 1; 1998 c 254 art 1 s 107; 1998 c 262 s 5,6

### **501B.571 AFFIDAVIT OF CUSTODIAN IN REAL PROPERTY TRANSACTIONS.**

Subdivision 1. **Form of affidavit for custodianship.** An affidavit of a custodian or of custodians of a custodianship in support of a real property transaction may be substantially in the following form:

STATE OF MINNESOTA     )

AFFIDAVIT OF CUSTODIAN

) ss.

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn on oath says that:

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

filed for record \_\_\_\_\_, \_\_\_\_\_, as Document No. \_\_\_\_\_ (or in Book \_\_\_\_\_ of \_\_\_\_\_, Page \_\_\_\_\_) in the Office of the (County Recorder/Registrar of Titles) of \_\_\_\_\_ County, Minnesota,

OR

to which this Affidavit is attached,

executed by Affiant or another custodian or by the owner of the property that is held in the custodianship described in the Certificate of Custodianship (or set forth in the Custodianship Instrument), and which relates to real property in \_\_\_\_\_ County, Minnesota, legally described as follows:

\_\_\_\_\_

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

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

\_\_\_\_\_

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

(i) are empowered by the provisions of the custodianship to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in custodianship; and

(ii) are the requisite number of custodians required by the provisions of the custodianship to execute and deliver such an instrument.

4. The custodianship has not terminated and has not been revoked.

- OR -

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

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

6. The custodianship is not supervised by any court.

- OR -

6. The custodianship is supervised by the \_\_\_\_\_ Court of \_\_\_\_\_ County, \_\_\_\_\_. All necessary approval has been obtained from the court for the custodian(s) to execute and deliver the instrument described in paragraph 3.

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



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

, Affiant

Signature of Notary Public or Other Official

Notary Stamp or Seal

This instrument was drafted by:

.....  
 .....

Subd. 2. **Effect.** An affidavit by the custodian or custodians under subdivision 1 is proof that:

- (1) the custodianship described in the affidavit is a valid custodianship;
- (2) either the custodianship has not terminated or been revoked or, if the custodianship has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the custodianship;
- (3) the powers granted the custodian or custodians extend to the real property described in the affidavit or attachment to the affidavit;
- (4) no amendment to the custodianship has been made limiting the power of the custodian or custodians to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;
- (5) the requisite number of custodians have executed and delivered the instrument of conveyance described in the affidavit; and
- (6) any necessary court approval of the transaction has been obtained.

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

Subd. 3. **Recording or filing.** An Affidavit of Custodian or Custodians under subdivision 1 may be recorded in the office of the county recorder for any county, or filed with the office of the registrar of titles for any county with respect to registered land described in the affidavit, or in the Certificate of Custodianship or Custodianship Instrument referred to in the affidavit, and may be recorded or filed as a separate document or combined with or attached to an original or certified copy of a Certificate of Custodianship or Custodianship Instrument, and recorded or filed as one document.

Subd. 4. **Application.** (a) Subdivisions 1 to 3 are effective August 1, 2006, but apply to custodianship instruments whenever created or executed.

(b) Subdivisions 1 to 3 apply only to custodianships established under a federal law or under a statute of this or any other state. Subdivisions 1 to 3 do not apply to custodianships governed by chapter 527 or by the similar laws of another state.

**History:** 2006 c 221 s 5

## UNIFORM PRINCIPAL AND INCOME ACT

### 501B.59 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 501B.59 to 501B.76.

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

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

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

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

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

**History:** 1989 c 340 art 1 s 48; 2001 c 15 s 2

### 501B.60 DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURE.

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

(1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of sections 501B.59 to 501B.76;

(2) in the absence of contrary terms of the trust instrument, in accordance with sections 501B.59 to 501B.76;

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

Subd. 2. **Trustee's discretion.** If a trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to sections 501B.59 to 501B.76.

Subd. 3. **Standards for exercise.** In exercising a power to adjust under section 501B.705 or a discretionary power of administration regarding a matter within the scope of sections 501B.59 to 501B.76, a fiduciary shall administer the trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 501B.59 to 501B.76 is presumed to be fair and reasonable to all of the beneficiaries.

**History:** 1989 c 340 art 1 s 49; 2001 c 15 s 3; 2002 c 379 art 1 s 97

**501B.61 INCOME; PRINCIPAL; CHARGES.**

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

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

(2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal, except as provided in section 501B.65 on bond premium and bond discount;

(3) income earned during administration of a decedent's estate as provided in section 501B.63;

(4) corporate distributions as provided in section 501B.64;

(5) accrued increment on bonds or other obligations issued at discount as provided in section 501B.65;

(6) receipts from business and farming operations as provided in section 501B.665;

(7) receipts from disposition of natural resources as provided in sections 501B.67 and 501B.68; and

(8) receipts from other principal subject to depletion as provided in section 501B.69.

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

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

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

(3) proceeds of insurance on property forming part of the principal, except proceeds of insurance on a separate interest of an income beneficiary;

(4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in section 501B.64;

(5) receipts from the disposition of corporate securities as provided in section 501B.65;

(6) royalties and other receipts from disposition of natural resources as provided in sections 501B.67 and 501B.68;

(7) receipts from other principal subject to depletion as provided in section 501B.69;

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

(9) allowances for depreciation established under sections 501B.665 and 501B.71, subdivision 1, clause (2); and

(10) gain or loss, including the purchase premium, if any, from the grant of an option to buy or sell property of the trust, whether or not the trust owns the property when the option is granted.

Subd. 3. **Charges.** After determining income and principal in accordance with the terms of the trust instrument or of sections 501B.59 to 501B.76, the trustee shall charge to income or principal expenses and other charges as provided in section 501B.71.

**History:** 1989 c 340 art 1 s 50; 1990 c 426 art 1 s 52; 2001 c 15 s 4; 2002 c 379 art 1 s 98

**501B.62 WHEN RIGHT TO INCOME ARISES; APPORTIONMENT OF INCOME.**

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

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

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

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

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

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

(1) income undistributed on the date of termination;

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

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

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

**History:** 1989 c 340 art 1 s 51; 2001 c 15 s 5

**501B.63 INCOME EARNED DURING ADMINISTRATION OF A DECEDENT'S ESTATE.**

Subdivision 1. **Expenses.** Unless a will provides otherwise and subject to subdivision 2, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs must be charged against the principal of the estate.

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

(1) to specific devisees or to any beneficiary who is to receive specific property from a trust, the income from the property devised or distributed to them respectively, less property taxes,

ordinary repairs, interest, and other expenses of management and operation of the property, and less an appropriate portion of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration or after an income interest in a trust terminates;

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

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

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

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

**History:** 1989 c 340 art 1 s 52; 2001 c 15 s 6

## **501B.64 ENTITY DISTRIBUTIONS.**

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

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

- (1) redemption of the ownership interest or a call of shares;
- (2) a merger, consolidation, reorganization, or other plan by which assets of the entity are acquired by another entity; or
- (3) a total or partial liquidation of the entity, including a distribution the entity indicates is a distribution in total or partial liquidation or distribution of assets, other than cash, pursuant

to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

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

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

- (1) characterization of income, distributions, and transactions in financial or other information received from the entity, including financial statements and tax information;
- (2) whether the entity completed a significant capital transaction outside of the ordinary course of business that the trustee believes has resulted in a distribution to the owners of the entity in the nature of a partial liquidating distribution;
- (3) the extent to which the burden for income tax with respect to the income of the entity is to be paid by the trustee out of trust assets or by the beneficiaries of the trust;
- (4) the net amount of distributions from the entity available to the trustee after estimating or accounting for tax payments by the trustee or distributions to beneficiaries for the purpose of paying taxes on income earned by the entity;
- (5) whether distributions appear to be made out of or contributed to by income earned by the entity and subjected to income taxes in a prior accounting period which may include accounting periods prior to the date the trustee acquired the related ownership interest;
- (6) whether the entity is consistently a pass-through entity during multiple accounting periods or a change to or from being a pass-through entity has or will occur in accounting periods preceding or subsequent to the current accounting period;
- (7) if the trust owns a controlling interest or total interest in an entity, the trustee may reasonably allocate distributions between income and principal and not necessarily as if that business interest were owned by the trust as a proprietorship; and
- (8) other facts and circumstances as the trustee reasonably considers relevant to its determination.

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

Subd. 6. **Reliance on statements.** The trustee may rely on a statement of the distributing entity as to a fact relevant under a provision of sections 501B.59 to 501B.76 concerning the source or character of dividends or distributions of corporate assets.

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

(a) **Entity.** "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common or collective trust fund, or any other organization in which a trustee has an interest other than a trust or estate governed by any other provision of sections 501B.59 to 501B.76.

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

**History:** 1989 c 340 art 1 s 53; 2001 c 15 s 7; 2010 c 334 s 4

#### **501B.65 BOND PREMIUM AND DISCOUNT.**

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

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

**History:** 1989 c 340 art 1 s 54; 1990 c 581 s 4

#### **501B.66 [Repealed, 2001 c 15 s 14]**

#### **501B.665 SOLE PROPRIETORSHIPS.**

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

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

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

(b) A trustee may not account separately for a traditional securities portfolio to avoid the provisions of sections 501B.59 to 501B.76 that otherwise apply to securities.

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

**History:** 2001 c 15 s 8

### 501B.67 DISPOSITION OF NATURAL RESOURCES.

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

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

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

(c) If received as a royalty, overriding or limited royalty, or bonus or from a working, net profit, or other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) must be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts from these properties must be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal. The amount allocated to principal must be presumed to be reasonable and equitable if it is neither substantially more nor less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986. Any allocated amount must be added to principal as an allowance for depletion of the asset. The balance of the gross receipts, after payment from the receipts of all direct and indirect expenses, is income.

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

**History:** 1989 c 340 art 1 s 56; 1990 c 581 s 5

### 501B.68 TIMBER.

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



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

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

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

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

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

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

**History:** 1989 c 340 art 1 s 57; 1990 c 581 s 6; 2001 c 15 s 9

#### **501B.69 ANNUITIES, QUALIFIED AND NONQUALIFIED EMPLOYEE COMPENSATION, RETIREMENT PLANS AND OTHER PROPERTY SUBJECT TO DEPLETION.**

Except as provided in sections 501B.67 and 501B.68, if part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, rights to receive payments on a contract for deferred compensation, qualified and nonqualified employer retirement plans, individual retirement accounts, and annuities, the receipts from the property must be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal. The trustee may determine the allocation based on a fixed percentage of each payment, an amortization of the inventory value of the series of payments, or, if the individual retirement account, pension, profit-sharing, stock-bonus, or stock-ownership plan consists of segregated and identifiable assets, the trustee may apply the provisions of sections 501B.59 to 501B.76 to the receipts in the account or plan in order to characterize the payments received during a trust accounting period. To the extent that a payment is characterized by the payer as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The amount allocated to principal is presumed to be reasonable and equitable if it is neither substantially more nor less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986.

**History:** 1989 c 340 art 1 s 58; 1990 c 581 s 7; 2001 c 15 s 10

#### **501B.70 [Repealed, 2001 c 15 s 14]**

#### **501B.705 TRUSTEE'S POWER TO ADJUST.**

Subdivision 1. **Power to adjust.** A trustee may adjust between principal and income to the extent the trustee considers necessary to comply with section 501B.60, subdivision 3, after applying section 501B.60, subdivisions 1 and 2, if the trustee invests and manages the trust assets as a prudent investor and the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.

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

- (1) the nature, purpose, and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other provisions of sections 501B.59 to 501B.76 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;
- (9) the anticipated tax consequences of an adjustment; and
- (10) the investment return under current economic conditions from other portfolios meeting fiduciary requirements.

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

- (1) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (2) that changes the amount payable to a beneficiary as fixed annuity or a fixed fraction of the value of the trust assets;
- (3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; provided, however, that this limitation does not apply to any trust created prior to August 1, 2001, to the extent the trustee receives amounts during the accounting period which would, under the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August 1, 2001, have been allocated to income;
- (4) if possessing or exercising the power to make an adjustment causes an individual to be treated as owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make adjustment;
- (5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove or appoint the trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;
- (6) if the trustee is a beneficiary of the trust; or

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

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

Subd. 5. **Release of power.** A trustee may release the entire power conferred by subdivision 1 or may release only the power to adjust from income to principal or to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5), or (7), or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.

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

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

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

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

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

- (1) the name and mailing address of the trustee;
- (2) the name and telephone number of a person who may be contacted for additional information;
- (3) a description of the action proposed to be taken and an explanation of the reasons for the action;
- (4) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and
- (5) the date on or after which the proposed action may be taken or is effective.

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

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

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

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

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

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

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

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

(f) Nothing in this subdivision limits the right of a trustee or beneficiary to petition the court pursuant to section 501B.16 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subdivision. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

**History:** 2001 c 15 s 11; 2005 c 26 s 2-5

## **501B.71 CHARGES AGAINST INCOME AND PRINCIPAL.**

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

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

(2) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation of that portion of real property used by a beneficiary as a residence or for depreciation of property

held by the trustee on January 1, 1970, for which the trustee is not then making an allowance for depreciation;

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

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

(5) one-half of the trustee's regular compensation for services performed for the income beneficiary or in the production of income whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income; and

(6) any tax levied on receipts defined as income under sections 501B.59 to 501B.76 or the trust instrument and payable by the trustee.

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

Subd. 3. **Principal.** The following charges must be made against principal:

(1) trustee's compensation not chargeable to income under subdivision 1, clause (5), special compensation of the trustee, expenses reasonably incurred in connection with principal, court costs and attorneys' fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(2) charges not provided for in subdivision 1, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(3) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by subdivision 1, clause (2), and by section 501B.63;

(4) any tax levied on profit, gain, or other receipts allocated to principal, even if the taxing authority calls the tax an income tax;

(5) any amount apportioned to a trust, including interest and penalties, if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderperson have an interest.

Subd. 4. **Regular charges payable from income.** Regularly recurring charges payable from income must be apportioned to the same extent and in the same manner that income is apportioned under section 501B.62.

Subd. 5. **Exceptions.** Paragraphs (a) to (c) are exceptions to the requirements of subdivisions 1 to 4.

(a) With respect to a revocable living trust, during the lifetime of the grantor, all of the trustee's regular compensation for services performed must be charged against income, unless directed otherwise by the grantor.

(b) If charging a part or all of the trustee's regular compensation to principal, in the judgment of the trustee, is impracticable, because of the lack of sufficient cash and readily marketable

assets, or inadvisable, because of the nature of the principal assets, the trustee may determine to pay part or all of the compensation out of income. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of income is conclusive, and the income of the trust is not entitled to reimbursement from principal at any subsequent time or times.

(c) If charging a part or all of the trustee's regular compensation to income, in the judgment of the trustee, is impracticable, because of the lack of sufficient income, or inadvisable, because of a desire to provide maximum income to the beneficiary, the trustee may determine to pay part or all of such compensation out of principal. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of the principal is conclusive.

**History:** 1989 c 340 art 1 s 60; 1995 c 130 s 4

#### **501B.72 NONTRUST ESTATES.**

Subdivision 1. **Limitations.** Sections 501B.59 to 501B.76 apply to nontrust estates, subject to:

- (1) agreement of the parties;
- (2) specific direction in the instrument creating the nontrust estates;
- (3) subdivision 2; and
- (4) other applicable statutes.

References in sections 501B.59 to 501B.76 to trusts and trustees must be read as applying to nontrust estates and to tenants and remainderpersons as the context requires.

Subd. 2. **Application.** In applying sections 501B.59 to 501B.76 to nontrust estates, the rules in paragraphs (a) to (d) must be followed.

(a) A legal life tenant or a remainderperson who has incurred a charge for the tenant's or remainderperson's benefit without the consent or agreement of the other, shall pay the charge in full.

(b) Costs of an improvement, including special taxes or assessments representing an addition to value of property forming part of the principal that cannot reasonably be expected to outlast the legal life estate, must be paid by the legal life tenant.

(c) If the improvement can reasonably be expected to outlast the legal life estate, only a portion of the costs must be paid by the legal life tenant and the balance by the remainderperson.

(1) The portion payable by the legal life tenant is that fraction of the total found by dividing the present value of the legal life estate by the present value of an estate of the same form as that of the legal life estate but limited to a period corresponding to the reasonably expected duration of the improvement.

(2) The present value of the legal life estate must be computed by applying the federal estate tax regulations for the calculation of the value of life estates under section 2031 of the Internal Revenue Code of 1986. The federal estate tax regulations applied must be those in force on the date when the costs of the improvement are initially determined by assessment, agreement, or otherwise. No other evidence of duration or expectancy may be considered.

(d) No allowance may be made for depreciation of property held by a legal life tenant on January 1, 1990, if the life tenant was not making the allowance with respect to the property prior to January 1, 1990.

**History:** 1989 c 340 art 1 s 61; 1990 c 581 s 8

**501B.73 APPLICATION.**

Except as specifically provided in the governing instrument, Minnesota Statutes 1988, sections 501.48 to 501.63, apply to a receipt or expense received or incurred after January 1, 1970, and before January 1, 1990, by any trust or decedent's estate whether established before or after January 1, 1970, and whether the asset involved was acquired by the trustee before or after January 1, 1970.

Except as specifically provided in the governing instrument, sections 501B.59 to 501B.76 apply to a receipt or expense received or incurred after December 31, 1989, by a trust or decedent's estate whether established before, on, or after January 1, 1990, and whether the asset involved or legal estate was acquired by the trustee, personal representative, legal life tenant, or remainderperson before, on, or after January 1, 1990.

**History:** 1989 c 340 art 1 s 62

**501B.74 ASCERTAINMENT OF INCOME OR PRINCIPAL.**

Sections 501B.59 to 501B.76 do not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

**History:** 1989 c 340 art 1 s 63

**501B.75 UNIFORMITY OF INTERPRETATION.**

Sections 501B.59 to 501B.76 must be so construed as to effectuate their general purpose to make uniform the law of those states that enact them.

**History:** 1989 c 340 art 1 s 64

**501B.76 SHORT TITLE.**

Sections 501B.59 to 501B.76 may be cited as the Uniform Principal and Income Act.

**History:** 1989 c 340 art 1 s 65

**MINNESOTA TRUSTEES' POWERS ACT****501B.79 TRUSTEE DEFINED.**

As used in sections 501B.79 to 501B.82, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a trust created under a written instrument, whichever in a particular case is appropriate.

**History:** 1989 c 340 art 1 s 66

**501B.80 INCORPORATION BY REFERENCE.**

By a clear expression in a written instrument of the intention of the grantor, one or more of the powers in section 501B.81, as they exist at the time of the signing of the written instrument, may be incorporated by reference as though that language were set forth verbatim in the instrument.

**History:** 1989 c 340 art 1 s 67

**501B.81 ENUMERATED POWERS OF TRUSTEE.**

Subdivision 1. **Trust assets.** The trustee may retain trust assets until, in the judgment of the trustee, disposition of the assets should be made, without regard to any effect retention may

have on the diversification of the assets of the trust. The property may be retained even though it includes an asset in which the trustee is personally interested.

Subd. 2. **Additions to trust assets.** The trustee may receive from any source additions to the assets of the trust.

Subd. 3. **Business or enterprise.** The trustee may continue or participate in the operation of a business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

Subd. 4. **Undivided interest in trust asset.** The trustee may acquire an undivided interest in a trust asset in which the trustee, in a trust capacity, holds an undivided interest.

Subd. 5. **Investment of trust assets.** The trustee may invest and reinvest trust assets in any property or any undivided interest in the property. These investments include but are not limited to bonds, debentures, secured or unsecured notes, preferred or common stocks of corporations, mutual funds, real estate or real estate improvements or interests, wherever located, oil and mineral leases, royalty or similar interests, and interests in trusts, including investment trusts and common trust funds maintained by a corporate trustee, and insurance upon the life of a person who is or may become a trust beneficiary. These investments may be made without regard to diversification.

Subd. 6. **Deposits.** The trustee may deposit trust funds in a bank, including a bank operated by the trustee, or in a state or federal savings association.

Subd. 7. **Purchase and sale.** The trustee may acquire, sell, or otherwise dispose of an asset, at public or private sale, for cash or on credit, with or without security as the trustee deems advisable, and manage, develop, exchange, partition, change the character of, or abandon a trust asset or any interest in it.

Subd. 8. **Options.** The trustee may grant an option for the sale or other disposition of a trust asset, or take an option for the acquisition of an asset.

Subd. 9. **Leases.** The trustee may enter into a lease as lessor or lessee, with or without option to purchase or renew, though the term of the lease, renewal, or option extends beyond the terms of the trust.

Subd. 10. **Repairs; improvements; alterations.** The trustee may make ordinary or extraordinary repairs, improvements, or alterations in buildings or other structures or in other trust assets, and remove or demolish improvements.

Subd. 11. **Buildings; party walls.** The trustee may raze existing or erect new party walls or buildings, alone or jointly with owners of adjacent property.

Subd. 12. **Subdivision; development; dedication to public use.** The trustee may subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; on exchange or partition, adjust differences in valuation by giving or receiving consideration; and dedicate easements to public use without consideration.

Subd. 13. **Exploration and removal of natural resources.** The trustee may enter into a lease or arrangement for exploration for and removal of oil, gas, and other minerals or natural resources, and may enter into pooling and unitization agreements.

Subd. 14. **Insurance.** The trustee may insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons.



Subd. 15. **Voting stock or securities.** The trustee may vote shares of stock or other securities held by the trustee, in person or by general or limited proxy, and enter into voting trust agreements on terms and for periods the trustee considers advisable.

Subd. 16. **Securities calls, assessments, and charges.** The trustee may pay calls, assessments, and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures, or other corporate securities in the hands of the trustee.

Subd. 17. **Stock rights.** The trustee may sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, or liquidations, and consent, directly or through a committee or other agent, to corporate sales, leases, and encumbrances. In the exercise of these powers the trustee may, if the trustee considers it expedient, deposit stocks, bonds, or other securities with a protective or other similar committee, on terms and conditions respecting the deposit that the trustee approves.

Subd. 18. **Ownership in other name.** The trustee may hold any asset in the name of a nominee or nominees, without disclosure of a fiduciary relationship, but the trustee is liable for acts and omissions of the nominee relating to those assets.

Subd. 19. **Borrowing; mortgages.** The trustee may borrow money and mortgage or otherwise encumber or pledge trust assets for a term within or extending beyond the term of the trust, in connection with the exercise of a power vested in the trustee.

Subd. 20. **Contracts.** The trustee may enter into contracts binding on the trust that are reasonably incident to the administration of the trust and that the trustee believes to be for the best interests of the trust.

Subd. 21. **Settlement of claims.** The trustee may pay, compromise, contest, submit to arbitration, or otherwise settle claims in favor of or against the trust or the trustee.

Subd. 22. **Release of claims.** The trustee may release, in whole or in part, a claim or lien belonging to the trust.

Subd. 23. **Trust expenses.** The trustee may pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

Subd. 24. **Reserves.** The trustee may create reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.

Subd. 25. **Payments to minors and those under legal disability.** The trustee may pay a sum distributable to a minor or other beneficiary under legal disability, without liability to the trustee, in one or more of the following ways:

- (1) directly to the beneficiary;
- (2) to the legal guardian or conservator of the beneficiary;
- (3) directly for the maintenance, education, and general welfare of the beneficiary;
- (4) to a parent of the beneficiary;
- (5) to a person who has custody and care of the person of the beneficiary; or
- (6) to a custodian under a uniform transfers to minors statute.

Subd. 26. **Distribution of interests.** The trustee may distribute property and money in divided or undivided interests and adjust resulting differences in valuation.

Subd. 27. **Employment of advisors, assistants.** The trustee may employ attorneys, accountants, investment advisors, agents, or other persons, even if they are associated with the trustee, to advise or assist the trustee in the performance of duties. The trustee may act without independent investigation upon their recommendations, and instead of acting personally, may employ one or more agents to perform any act of administration whether or not discretionary.

Subd. 28. **Legal actions.** The trustee may prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of duties.

Subd. 29. **Advances to beneficiaries.** The trustee may advance income to or for the use of a beneficiary, for which advance the trustee has a lien on the future benefits of that beneficiary.

Subd. 30. **Advances by trustee; repayment.** The trustee may advance money for the protection of the trust or its assets, for all expenses and liabilities sustained or incurred in or about the administration or protection of the trust, or because of the holding or ownership of any trust assets, for which advances the trustee has a lien on the trust assets, and may be reimbursed out of the trust assets with interest.

Subd. 31. **Execution and delivery of instruments.** The trustee may execute and deliver instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

Subd. 32. **Multiple trusts.** The trustee may hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation between the trusts or parts of trusts, if the separate trusts or parts of trusts have undivided interests and if no holding defers the vesting of an estate in possession or otherwise.

**History:** 1989 c 340 art 1 s 68; 1995 c 202 art 1 s 25

## **501B.82 CITATION.**

Sections 501B.79 to 501B.82 may be cited or referred to as the "Minnesota Trustees' Powers Act."

**History:** 1989 c 340 art 1 s 69

## **MISCELLANEOUS**

**501B.86** [Repealed, 2009 c 67 s 17]

## **501B.87 TRUSTS FORMING PART OF RETIREMENT PLANS FOR PARTICIPATING MEMBERS.**

If a trust forms part of a retirement plan created by and for the benefit of self-employed persons for the purpose of receiving their contributions and investing, accumulating, and distributing to the persons or their beneficiaries the corpus, profits, and earnings of the trust in accordance with the plan, the power of a person beneficially interested in the trust to sell, assign, or transfer that beneficial interest, to anticipate payments under the plan, or to terminate the trust, may be limited or withheld in accordance with the provisions of the plan, whether or not the person furnished consideration for the creation of the trust.

**History:** 1989 c 340 art 1 s 71

**501B.88 TRUSTS NOT AFFECTED.**

Notwithstanding other law to the contrary, a trust created before June 1, 1973, relating to one's "minority" or "majority" or other related terms is governed by the definitions of those terms existing at the time of the creation of the trust.

**History:** 1989 c 340 art 1 s 72

**501B.89 TRUST PROVISIONS LINKED TO PUBLIC ASSISTANCE ELIGIBILITY; SUPPLEMENTAL NEEDS TRUSTS.**

Subdivision 1. **Trusts containing limitations linked to eligibility for public assistance.**

(a) Except as allowed by subdivision 2 or 3, a provision in a trust that provides for the suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

(b) This subdivision applies to trust provisions created after July 1, 1992. For purposes of this section, a trust provision is created on the date of execution of the first instrument that contains the provision, even though the trust provision is later amended or reformed or the trust is not funded until a later date.

Subd. 2. **Supplemental trusts for persons with disabilities.** (a) It is the public policy of this state to enforce supplemental needs trusts as provided in this subdivision.

(b) For purposes of this subdivision, a "supplemental needs trust" is a trust created for the benefit of a person with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

(c) For purposes of this subdivision, a "person with a disability" means a person who, prior to creation of a trust which otherwise qualifies as a supplemental needs trust for the person's benefit:

(1) is considered to be a person with a disability under the disability criteria specified in Title II or Title XVI of the Social Security Act; or

(2) has a physical or mental illness or condition which, in the expected natural course of the illness or condition, either prior to or following creation of the trust, to a reasonable degree of medical certainty, is expected to:

(i) last for a continuous period of 12 months or more; and

(ii) substantially impair the person's ability to provide for the person's care or custody.

Disability may be established conclusively for purposes of this subdivision by the written opinion of a licensed professional who is qualified to diagnose the illness or condition, confirmed by the written opinion of a second licensed professional who is qualified to diagnose the illness or condition.

(d) The general purpose of a supplemental needs trust must be to provide for the reasonable living expenses and other basic needs of a person with a disability when benefits from publicly funded benefit programs are not sufficient to provide adequately for those needs. Subject to the restrictions contained in this paragraph, a supplemental needs trust may authorize distributions to provide for all or any portion of the reasonable living expenses of the beneficiary. A supplemental needs trust may allow or require distributions only in ways and for purposes that supplement or

complement the benefits available under medical assistance, Minnesota supplemental aid, and other publicly funded benefit programs for disabled persons. A supplemental needs trust must contain provisions that prohibit disbursements that would have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to the beneficiary or rendering the beneficiary ineligible for publicly funded benefits.

(e) A supplemental needs trust is not enforceable if the trust beneficiary becomes a patient or resident after age 64 in a state institution or nursing facility for six months or more and, due to the beneficiary's medical need for care in an institutional setting, there is no reasonable expectation that the beneficiary will ever be discharged from the institution or facility. For purposes of this paragraph "reasonable expectation" means that the beneficiary's attending physician has certified that the expectation is reasonable. For purposes of this paragraph, a beneficiary participating in a group residential program is not deemed to be a patient or resident in a state institution or nursing facility.

(f) The trust income and assets of a supplemental needs trust are considered available to the beneficiary for medical assistance purposes to the extent they are considered available to the beneficiary under medical assistance, supplemental security income, or Minnesota family investment program methodology, whichever is used to determine the beneficiary's eligibility for medical assistance. For other public assistance programs established or administered under state law, assets and income will be considered available to the beneficiary in accordance with the methodology applicable to the program.

(g) Nothing in this subdivision requires submission of a supplemental needs trust to a court for interpretation or enforcement.

(h) Paragraphs (a) to (g) apply to supplemental needs trusts whenever created, but the limitations and restrictions in paragraphs (c) to (g) apply only to trusts created after June 30, 1993.

**Subd. 3. Supplemental needs trusts under federal law.** A trust created on or after August 11, 1993, which qualifies as a supplemental needs trust for a person with a disability under United States Code, title 42, section 1396p(c)(2)(B)(iv) or 1396p(d), as amended by section 13611(b) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, commonly known as OBRA 1993, is enforceable, and the courts of this state may authorize creation and funding of a trust which so qualifies.

**Subd. 4. Annual filing requirement for supplemental needs trusts.** (a) A trustee of a trust under subdivision 3 and United States Code, title 42, section 1396p(d)(4)(A) or (C), shall submit to the commissioner of human services, at the time of a beneficiary's request for medical assistance, the following information about the trust:

- (1) a copy of the trust instrument; and
- (2) an inventory of the beneficiary's trust account assets and the value of those assets.

(b) A trustee of a trust under subdivision 3 and United States Code, title 42, section 1396p(d)(4)(A) or (C), shall submit an accounting of the beneficiary's trust account to the commissioner of human services at least annually until the trust, or the beneficiary's interest in the trust, terminates. Accountings are due on the anniversary of the execution date of the trust unless another annual date is established by the terms of the trust. The accounting must include the following information for the accounting period:

- (1) an inventory of trust assets and the value of those assets at the beginning of the accounting period;

- (2) additions to the trust during the accounting period and the source of those additions;
  - (3) itemized distributions from the trust during the accounting period, including the purpose of the distributions and to whom the distributions were made;
  - (4) an inventory of trust assets and the value of those assets at the end of the accounting period; and
  - (5) changes to the trust instrument during the accounting period.
- (c) For the purpose of paragraph (b), an accounting period is 12 months unless an accounting period of a different length is permitted by the commissioner.

**History:** 1992 c 513 art 7 s 129; 1993 c 108 s 1; 1995 c 207 art 6 s 108,109; 1999 c 159 s 134; 2009 c 79 art 5 s 72

### **501B.895 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.**

- (a) It is the public policy of this state that individuals use all available resources to pay for the cost of long-term care services, as defined in section 256B.0595, before turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual or an individual's spouse from such use.
- (b) When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination. For purposes of this section, any inter-vivos trust and any legal instrument, device, or arrangement similar to an inter-vivos trust:
- (1) shall be deemed to be located in and subject to the laws of this state; and
  - (2) is created as of the date it is fully executed by or on behalf of all of the settlors or others.
- (c) For purposes of this section, a legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust means any instrument, device, or arrangement which involves a grantor who transfers or whose property is transferred by another including, but not limited to, any court, administrative body, or anyone else with authority to act on their behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal obligations to the grantor or others to be held, managed, or administered by the individual or entity for the benefit of the grantor or others. These legal instruments, devices, or other arrangements are irrevocable inter-vivos trusts for purposes of this section.
- (d) In the event of a conflict between this section and the provisions of an irrevocable trust created on or after July 1, 2005, this section shall control.
- (e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501B.89 or to trusts meeting the criteria of United States Code, title 42, section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

(f) This section applies to all trusts first created on or after July 1, 2005, as permitted under United States Code, title 42, section 1396p, and to all interests in real or personal property regardless of the date on which the interest was created, reserved, or acquired.

**History:** 2005 c 155 art 3 s 7; 1Sp2005 c 3 art 11 s 6; 1Sp2005 c 4 art 5 s 19

#### **501B.90 EFFECT OF DISSOLUTION OF MARRIAGE.**

Subdivision 1. **Revocation of certain trust provisions.** If after execution of a trust instrument in which a sole grantor reserves a power to alter, amend, revoke, or terminate the provisions of the trust, the grantor's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition, provision for beneficial enjoyment or appointment of property made by the trust instrument to a grantor's former spouse, any provisions conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee, unless the trust instrument expressly provides otherwise.

Subd. 2. **Passing of property.** Property prevented from passing to a former spouse because of revocation by dissolution or annulment of marriage passes as if the former spouse died on the date of the entry of the judgment and decree dissolving or annulling the grantor's marriage and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse died on the date of the entry of the judgment and decree dissolving or annulling the grantor's marriage.

Subd. 3. **Revival of revoked provisions.** If provisions are revoked solely by this section, they are revived by the grantor's remarriage to the former spouse. For purposes of this chapter, dissolution of marriage includes divorce. A decree of separation which does not terminate the status of husband and wife is not a dissolution of marriage for purposes of this section. No change of circumstances other than as described in this section revokes a trust instrument.

**History:** 1997 c 9 s 2