

Sec. 25. APPLICATION.

Sections 1 to 24 are effective the day following final enactment. Sections 4 to 24 apply in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 10:55 p.m.

CHAPTER 340—H.F.No. 306

An act relating to trusts; providing for their creation, validity, administration, and supervision; providing for the sale of real property; relating to legal estates in real and personal property; relating to estates; amending Minnesota Statutes 1988, sections 315.365, subdivision 3; 500.17, subdivision 2; 501A.05; 501A.06; 502.73; 524.1-404; 525.56, subdivision 4; and 525.831; Laws 1987, chapter 60, section 10, as amended; proposing coding for new law as Minnesota Statutes, chapter 501B; proposing coding for new law in Minnesota Statutes, chapter 525; repealing Minnesota Statutes 1988, sections 500.13; 501.01; 501.02; 501.03; 501.04; 501.05; 501.06; 501.07; 501.08; 501.09; 501.10; 501.11; 501.115; 501.12; 501.125; 501.13; 501.14; 501.15; 501.155; 501.16; 501.17; 501.18; 501.19; 501.195; 501.20; 501.21; 501.211; 501.22; 501.23; 501.24; 501.25; 501.26; 501.27; 501.28; 501.29; 501.30; 501.31; 501.32; 501.33; 501.34; 501.35; 501.351; 501.36; 501.37; 501.38; 501.39; 501.40; 501.41; 501.42; 501.43; 501.44; 501.45; 501.46; 501.461; 501.48; 501.49; 501.50; 501.51; 501.52; 501.53; 501.54; 501.55; 501.56; 501.57; 501.58; 501.59; 501.60; 501.61; 501.62; 501.63; 501.64; 501.65; 501.66; 501.67; 501.71; 501.72; 501.73; 501.74; 501.75; 501.76; 501.77; 501.78; 501.79; 501.80; 501.805; and 501.81.

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

ARTICLE 1

TRUSTS

Section 1. **[501B.01] PURPOSES FOR WHICH EXPRESS TRUSTS MAY BE CREATED.**

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

Sec. 2. **[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.

Sec. 3. **[501B.03] TERMINATION OF TRUST PURPOSES.**

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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.

Sec. 4. [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.

Sec. 5. [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.

Sec. 6. [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.

Sec. 7. [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.

Sec. 8. [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.

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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.

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

Sec. 9. [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 38 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. 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.

Sec. 10. [501B.10] KINDS OF PROPERTY A TRUSTEE MAY ACQUIRE.

Subdivision 1. GENERAL PROPERTIES AND INVESTMENTS. (a) A trustee may invest in every kind of real or personal property and every kind of investment that a prudent person would invest in having in mind the preservation of the trust estate and the amount and regularity of the income derived. This permission includes, but is not limited to, bonds, debentures, and other individual or corporate obligations, mutual funds, and corporate stocks. In

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considering an investment, a trustee shall exercise the care, skill, and judgment under the circumstances then prevailing that a person of ordinary prudence would exercise in the management of the person's own property and shall consider the role that the investment plays within the trust's overall portfolio of assets. If the trustee has greater skills than a person of ordinary prudence, the trustee is under a duty to use those skills.

(b) Among the factors to be considered by a trustee in determining the prudence of a particular investment are the following:

(1) the probable income of the trust and the probable safety of the capital of the trust;

(2) the composition of the portfolio of the trust with regard to diversification;

(3) the length of the term of investments of the trust;

(4) the duration of the trust;

(5) the liquidity and current return of the trust's portfolio relative to the anticipated cash requirements of the trust;

(6) other assets of the beneficiary or beneficiaries known to the trustees, including earning capacity;

(7) the relative interests of income and remainder beneficiaries; and

(8) the tax consequences.

(c) If a trustee is a national banking association or national trust company or holds a certificate under section 48.37 or if a trustee retains or employs an investment advisor registered under the Investment Advisors Act of 1940, an investment that is otherwise prudent is not imprudent solely because it is in new, unproven, untried, or other enterprises with a potential for significant growth, or in a limited partnership or commingled fund investing in these enterprises.

Subd. 2. 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. 3. ALTERATION OF TERMS OF WILL. This section does not authorize any departure from or variation of express terms or limitations in a will, agreement, court order, or other instrument creating or defining the trustee's duties and powers, but the terms "authorized securities," "authorized investments," or "legal investments," or words of similar import, as used in a will,

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agreement, court order, or instrument or in the statutes of this state in relation to the investment of trust funds by corporate or individual trustees, mean every kind of property, real, personal, or mixed, and every kind of investment, that a trustee is authorized to acquire under the terms of subdivision 1.

Subd. 4. 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. 5. 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 the effective date of this section or made at a later time.

Subd. 6. INVESTMENT COMPANIES. (a) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940.

(b) This subdivision does not alter the degree of care and judgment required of trustees by subdivision 1.

Sec. 11. [501B.11] EMPLOYEES AND AGENTS OF TRUSTEE.

Unless prohibited by the terms of the trust instrument, a 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 or, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. If the terms of the trust instrument do not address the authority of the trustee to delegate:

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

Sec. 12. [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.

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COURT PROCEEDINGS

Sec. 13. **[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 23;
- (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;
- (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 20;
- (13) to remove a trust from continuing court supervision under section 20;
- (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 75 and to order further action authorized in that section;
- (16) to secure compliance with the provisions of sections 25 to 37, in accordance with section 33;
- (17) to determine the validity of a disclaimer filed under section 70;
- (18) to change the situs of a trust;

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(19) to redress a breach of trust;

(20) to terminate a trust; or

(21) 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.

Sec. 14. [501B.17] VENUE.

A petition under section 13 or 19 may be filed:

(1) in the case of a trust created by will, in the district court for the county where the will was probated, or in the district court for the county where a trustee having custody of part or all of the trust assets resides or has a main place of business;

(2) in the case of a nontestamentary trust, in the district court for the county where a trustee having custody of part or all of the trust assets resides or has a main place of business; 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.

In the case of a trust with respect to which there have been prior court proceedings in this state, a petition under section 13 or 19 must be filed in the court in which the prior proceedings were held.

Sec. 15. [501B.18] ORDER FOR HEARING.

Upon the filing of a petition under section 13, 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 525.54 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.

Sec. 16. [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 525.54 and has no guardian or conservator within the state, or if an

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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.

Sec. 17. [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 the act for beneficiaries to the extent that their interests as objects, takers in default, or otherwise are subject to the power.

Sec. 18. [501B.21] ORDER AND APPEAL.

Upon hearing a petition filed under section 13, 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, except that appeal may be taken under the rules of appellate procedure.

Sec. 19. [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 20.

Sec. 20. [501B.23] INVENTORY; ANNUAL ACCOUNT; CONTINUING COURT SUPERVISION.

A trustee whose appointment has been confirmed by court order under section 19 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.

Sec. 21. [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.

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Sec. 22. **[501B.25] APPLICATION.**

Sections 13 to 20 do not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. Sections 13 to 20 apply, however, unless otherwise provided in the trust instrument, to trusts established in connection with bonds issued under chapter 474. As used in sections 13 to 20, "person" includes an artificial as well as a natural person, and "beneficiary" includes a bondholder.

CHARITABLE TRUSTS AND THEIR SUPERVISION

Sec. 23. **[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 13, 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.

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(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 13 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 15. The attorney general shall represent the beneficial interests in those cases and shall enforce affected trusts.

Sec. 24. [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.

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(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.

Sec. 25. [501B.33] CITATION.

Sections 25 to 37 may be cited as the "supervision of charitable trusts and trustees act."

Sec. 26. [501B.34] CHARITABLE TRUSTS; SUPERVISION BY ATTORNEY GENERAL.

Sections 25 to 37 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 25 to 37, and common law and statutory rights, duties, and powers.

Sec. 27. [501B.35] DEFINITIONS.

Subdivision 1. SCOPE. The definitions in this section apply to sections 23 to 37 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 23 to 37.

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.

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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.

Sec. 28. [501B.36] REGISTRATION AND REPORTING.

The registration and reporting provisions of sections 29 and 30 apply to a charitable trust, or an organization with a charitable purpose, that has gross assets of \$25,000 or more, 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 317;

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

(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 subject to sections 309.50 to 309.61;

(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 29 and 30.

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Sec. 29. **[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 25 to 37.

Subd. 2. FILING OF INSTRUMENTS. A charitable trust subject to sections 25 to 37 must register and file with the attorney general a copy of 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.

Sec. 30. **[501B.38] FILING OF ANNUAL REPORTS.**

Subdivision 1. REPORTS REQUIRED; DEADLINES; EXTENSIONS. A charitable trust subject to sections 25 to 37 must file with the attorney general written reports containing any information the trust is required to report under sections 6056(b), 6033, 6034, and 6056 of the Internal Revenue Code of 1986. The reports 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, but no extension may be for more than six months. 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 annual reports are not required for proper supervision by the attorney general's office.

Sec. 31. **[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.

Sec. 32. **[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 25 to 37; 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,

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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 25 to 37.

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 25 to 37 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.

Sec. 33. [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 25 to 37 and the proper administration of a charitable trust. The powers and duties of

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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;

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(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 29, to file annual reports under section 30, 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 25 to 37. 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.

Sec. 34. [501B.42] CONTRARY PROVISIONS OF INSTRUMENT INVALID.

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Sections 25 to 37 apply regardless of contrary provisions of an instrument.

Sec. 35. [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 25 to 37, 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.

Sec. 36. [501B.44] IMMUNITY OF CHARITABLE TRUSTS.

A charitable trust is an "organization" for purposes of section 317.201, and that section applies to charitable trusts.

Sec. 37. [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 25 to 37, 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

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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.

SALES AND LEASES OF REAL PROPERTY

Sec. 38. [501B.46] PETITION FOR COURT ORDER TO SELL, MORTGAGE, OR LEASE REAL PROPERTY HELD IN TRUST.

(a) 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 20 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 any of the real property.

(b) 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 20 is not applicable to the trust, the trustee or a beneficiary of the trust may petition an appropriate district court under section 13 for an order directing the trustee to sell, mortgage, or lease the real property or a part of the real property.

Sec. 39. [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 525.54, the petition may be made on behalf of the owner by a custodian, conservator, or guardian.

Sec. 40. [501B.48] WHEN PETITION MAY BE GRANTED.

Subdivision 1. PETITION UNDER SECTION 38. The court to which a petition to sell, mortgage, or lease has been made under section 38 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

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(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 38 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 39. The court to which a petition to sell or mortgage has been made under section 39 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 39 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.

Sec. 41. **[501B.49] NOTICE OF HEARING.**

Subdivision 1. HEARING REQUIRED. On the filing of a petition under section 38 or 39, 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 38, each beneficiary of the trust then in being must join in the waiver. In the case of a petition under section 39, 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

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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 38, 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 525.54, 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 39, 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 525.54, 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.

Sec. 42. [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 525.54 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.

Sec. 43. [501B.51] ORDER UPON PETITION; EXECUTION OF TRANSACTION.

Subdivision 1. FORM OF ORDER; CONCLUSIVENESS. At a hearing under section 41, 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 525.54, 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 38, all transactions required by the order must be executed by the trustee.

(b) In the case of a petition under section 39, 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.

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Sec. 44. [501B.52] REPORT OF AGREEMENT FOR CONFIRMATION.

Before a sale, mortgage, or lease is made under an order described in section 43, 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 41 and to any interested party who did not receive notice but appeared at the hearing on the petition.

Sec. 45. [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 44 is found by the court to conform to the order described in section 43, 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 43, 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 43, 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 43 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, incapacitated as defined in section 525.54, unascertained, or not in being, except that appeal may be taken in the manner provided in the rules of appellate procedure.

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Subd. 5. COMBINED PROCEEDINGS. In appropriate circumstances, proceedings under this section and section 44 may be combined with proceedings under sections 38 to 43.

Sec. 46. [501B.54] LEGAL EFFECT OF DEED, MORTGAGE, OR LEASE MADE UNDER SECTION 45.

A deed, mortgage, or lease executed and delivered in accordance with an order of confirmation under section 45 binds the interests of the applicant for the order and of all other persons interested in the real property sold, mortgaged, or leased.

Sec. 47. [501B.55] DATE OF CREATION OF INTERESTS AFFECTED BY THE PROCEDURES IN SECTIONS 38 TO 46.

The procedures in sections 38 to 46 apply to proceedings initiated after January 1, 1990, with respect to interests created before, on, or after January 1, 1990.

UNIFORM PRINCIPAL AND INCOME ACT

Sec. 48. [501B.59] DEFINITIONS.

Subdivision 1. SCOPE. The definitions in this section apply to sections 48 to 65.

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.

Sec. 49. [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:

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(1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of sections 48 to 65;

(2) in the absence of contrary terms of the trust instrument, in accordance with sections 48 to 65;

(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 48 to 65.

Sec. 50. [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 54 on bond premium and bond discount;

(3) income earned during administration of a decedent's estate as provided in section 52;

(4) corporate distributions as provided in section 50;

(5) accrued increment on bonds or other obligations issued at discount as provided in section 54;

(6) receipts from business and farming operations as provided in section 55;

(7) receipts from disposition of natural resources as provided in sections 56 and 57;

(8) receipts from other principal subject to depletion as provided in section 58; and

(9) receipts from disposition of underproductive property as provided in section 59.

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

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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 53;

(5) receipts from the disposition of corporate securities as provided in section 54;

(6) royalties and other receipts from disposition of natural resources as provided in sections 56 and 57;

(7) receipts from other principal subject to depletion as provided in section 58;

(8) profit resulting from a change in the form of principal, except as provided in section 59 on underproductive property;

(9) receipts from disposition of underproductive property as provided in section 59; and

(10) allowances for depreciation established under sections 55 and 60, subdivision 1, clause (2).

Subd. 3. CHARGES. After determining income and principal in accordance with the terms of the trust instrument or of sections 48 to 65, the trustee shall charge to income or principal expenses and other charges as provided in section 60.

Sec. 51. [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 a will, it becomes subject to the trust as of the date of the death of the testator or date of receipt in the estate if acquired after death, even though there is an intervening period of administration of the testator's estate during which the beneficiary may have no right to a distribution of the income.

Subd. 2. 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:

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(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.

Sec. 52. [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 provides otherwise, income from the assets of a decedent's estate after the death of the testator and before distribution, 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, the income from the property devised 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;

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(2) to all other devisees, except devisees of pecuniary devises not in trust, the balance of the income, less the balance of property taxes, ordinary repairs, interest, and other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

Subd. 3. INCOME RECEIVED BY TRUSTEE. Income received by a trustee under subdivision 2 must be treated as income of the trust.

Sec. 53. [501B.64] CORPORATE DISTRIBUTIONS.

Subdivision 1. SHARES; STOCK SPLITS; STOCK DIVIDENDS; SUBSCRIPTION RIGHTS. Distributions of shares of a distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A shareholder's right to subscribe to shares or other securities of the distributing corporation and the proceeds of any sale of that right are principal.

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

(1) a call of shares;

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

(3) a total or partial liquidation of the corporation, including a distribution the corporation 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 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. OTHER DISTRIBUTIONS. Except as provided in subdivisions 1, 2, and 3, all corporate distributions are income. "Corporate distributions" includes cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subdivisions 2 and 3, if the distributing corporation gives a stockholder an

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option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

Subd. 5. RELIANCE ON STATEMENTS. The trustee may rely on a statement of the distributing corporation as to a fact relevant under a provision of sections 48 to 65 concerning the source or character of dividends or distributions of corporate assets.

Sec. 54. [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 of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued, is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal must be reimbursed for the increment when realized.

Sec. 55. [501B.66] BUSINESS AND FARMING OPERATIONS.

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

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

Sec. 56. [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.

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(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 not 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.

Sec. 57. [501B.68] TIMBER.

If a part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land 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 not less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986.

Sec. 58. [501B.69] OTHER PROPERTY SUBJECT TO DEPLETION.

Except as provided in sections 56 and 57, if part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, 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 amount allocated to principal is presumed to be reasonable and equitable if it is not less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986.

Sec. 59. [501B.70] UNDERPRODUCTIVE PROPERTY.

Subdivision 1. PORTION OF PROCEEDS AS INCOME. Except as other-

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wise provided in this section, a portion of the net proceeds of a sale of a part of the principal that has not produced an average net income of at least one percent per year of its inventory value for more than a year, including as income the value of any beneficial use of the property by the income beneficiary, must be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in the disposition and less any carrying charges paid while the property was underproductive.

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

Subd. 3. ACCRUAL OF DELAYED INCOME. An income beneficiary or the income beneficiary's estate is entitled to delayed income under this section as if accrued from day to day.

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

Sec. 60. [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;

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(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 48 to 65 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 52;

(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 51.

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Sec. 61. **[501B.72] NONTRUST ESTATES.**

Subdivision 1. LIMITATIONS. Sections 48 to 65 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 48 to 65 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 48 to 65 to nontrust estates, the rules in paragraphs (a) to (c) 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.

Sec. 62. **[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.

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Except as specifically provided in the governing instrument, sections 48 to 65 apply to a receipt or expense received or incurred after December 31, 1989, by a trust or decedent's estate whether established before, on, or after January 1, 1990, and whether the asset involved or legal estate was acquired by the trustee, personal representative, legal life tenant, or remainderperson before, on, or after January 1, 1990.

Sec. 63. [501B.74] ASCERTAINMENT OF INCOME OR PRINCIPAL.

Sections 48 to 65 do not govern the ascertainment of what constitutes the receipt of income or principal by the estate or trust for income tax purposes.

Sec. 64. [501B.75] UNIFORMITY OF INTERPRETATION.

Sections 48 to 65 must be so construed as to effectuate their general purpose to make uniform the law of those states that enact them.

Sec. 65. [501B.76] SHORT TITLE.

Sections 48 to 65 may be cited as the uniform principal and income act.

MINNESOTA TRUSTEES' POWERS ACT

Sec. 66. [501B.79] TRUSTEE DEFINED.

As used in sections 66 to 69, "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.

Sec. 67. [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 68, 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.

Sec. 68. [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

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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 and loan 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

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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.

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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

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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.

Sec. 69. [501B.82] CITATION.

Sections 66 to 69 may be cited or referred to as the "Minnesota trustees' powers act."

MISCELLANEOUS

Sec. 70. [501B.86] **DISCLAIMER OF INTERESTS PASSING BY DEED, ASSIGNMENT, UNDER CERTAIN NONTESTAMENTARY INSTRUMENTS, OR UNDER CERTAIN POWERS OF APPOINTMENT.**

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

(a) "beneficiary" means a person entitled, but for the person's disclaimer, to take an interest:

(1) as grantee;

(2) as donee;

(3) under an assignment or instrument of conveyance or transfer;

(4) by succession to a disclaimed interest, other than by will, intestate succession, or through the exercise or nonexercise of a testamentary power of appointment;

(5) as beneficiary of an inter vivos trust or insurance contract;

(6) pursuant to the exercise or nonexercise of a nontestamentary power of appointment;

(7) as donee of a power of appointment created by a nontestamentary instrument; or

(8) otherwise under a nontestamentary instrument;

(b) "interest" means:

(1) the whole of any property, real or personal, legal or equitable;

(2) a fractional part, share, particular portion, or specific assets of property;

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(3) an estate in property;

(4) a power to appoint, consume, apply, or expend property; or

(5) any other right, power, privilege, or immunity relating to property; and

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

Subd. 2. WHO MAY DISCLAIM. A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares, portions, or assets, by filing a disclaimer in court in the manner provided in this section. A guardian or conservator of the estate of a minor or an incapacitated person under section 525.54, or the personal representative of the estate of a deceased beneficiary may execute and file a disclaimer on behalf of the beneficiary if that representative considers it not detrimental to the best interests of the beneficiary and in the best interests of those interested in the beneficiary's estate and of those who take the beneficiary's interest by virtue of the disclaimer. The representative may file the disclaimer with or without a court order within the time specified in subdivision 3. A beneficiary may file a disclaimer by an attorney or attorney-in-fact.

Subd. 3. FILING DEADLINE. A disclaimer under subdivision 2 may be filed at any time after the creation of the interest, but it must be filed within nine months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or the disclaimant's interest has not then become indefeasibly fixed both in quality and in quantity, the disclaimer must be filed not later than nine months after the event that would cause the disclaimant to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. EFFECTIVE DATE. (a) A disclaimer under subdivision 2 is effective on being filed in a district court of the state of Minnesota. A copy of the disclaimer must be delivered or mailed to the trustee of a trust in which the interest disclaimed exists or to any other person who has legal title to, or possession of, the property in which the interest disclaimed exists. The trustee or person is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer.

(b) If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the court administrator of the district court where the disclaimer has been filed, must also be filed with the county recorder or with the registrar of titles, as appropriate, in the county or counties where the real estate is situated. The filed disclaimer is notice to all persons after the time of filing. If title to the real estate has not been registered under chapter 508, the disclaimer or certified copy must be filed with the county recorder. If title to the real estate has been registered

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under chapter 508, the disclaimer or certified copy must be filed with the registrar of titles.

Subd. 5. DISTRIBUTION OF DISCLAIMED PROPERTY. Unless otherwise provided in the nontestamentary instrument creating the interest with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed must be distributed or otherwise disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity. The disclaimer relates for all purposes to that date, whether filed before or after the death or other event. Unless the disclaimer provides otherwise, a person disclaiming an interest in a nonresiduary gift under a trust instrument or otherwise is not excluded from sharing in a gift of the residue even though, through lapse, the residue includes the assets disclaimed.

Subd. 6. BARS TO RIGHT TO DISCLAIM. The right to disclaim is barred if the beneficiary: (1) is insolvent; (2) assigns or transfers, or contracts to assign or transfer, an interest in the property to be disclaimed; (3) in writing, waives the right to disclaim the succession to an interest in the property; or (4) sells or otherwise disposes of an interest in the property.

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

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

Subd. 9. INTERESTS IN EXISTENCE ON MAY 22, 1965. If an interest existed on May 22, 1965, it may be disclaimed under this section if it had not then become indefeasibly fixed both in quality and quantity or if its taker had not then become finally ascertained.

Subd. 10. BANK DEPOSITS. The survivor or survivors of a bank deposit held in the names of the decedent and the survivor or survivors may at any time disclaim that interest by authorizing the inclusion of the proceeds of the bank

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deposit in the inventory and appraisal required by law to be filed by the representative or executor of the estate of the decedent. For purposes of this subdivision, "bank deposit" includes a checking or savings account or time deposit in any financial institution authorized to accept deposits.

Sec. 71. [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.

Sec. 72. [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.

Sec. 73. Minnesota Statutes 1988, section 500.17, subdivision 2, is amended to read:

Subd. 2. **ACCUMULATION.** Where the controlling will or other written instrument permits accumulation, either expressly or by necessary implication, rents and profits from real estate may be accumulated to the same extent and for the same period permitted by law for the accumulation of income from personal property income from personal property and rents and profits from real estate may be accumulated for the period during which the power of alienation may be suspended by future interests in real or personal property not held in trust under section 9, subdivision 3. Where any will or other instrument authorizes accumulation beyond the period permissible under this section, such authorization shall be void only as to the excess period.

Reasonable sums set aside for depreciation and depletion shall not be deemed an accumulation within the meaning of this section.

Sec. 74. Minnesota Statutes 1988, section 502.73, is amended to read:

502.73 RIGHT OF ALIENATION SUSPENDED, WHEN.

The period during which the absolute right power of alienation, within the meaning of section 9, may be suspended by any instrument in execution of a power is to be computed from the time of the creation of the power and not from the date of the instrument, except that in the case of a general power presently exercisable, the period is to be computed from the date of the instrument.

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Sec. 75. [525.95] FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE.

Subdivision 1. DEFINITIONS. The definitions in this subdivision apply to this section.

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

(1) active membership in the military forces of the United States or any of its allies;

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

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

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

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

(b) "Fiduciary" refers to a trustee of a testamentary trust or of an express trust, a guardian or conservator of the person or estate of a person, an executor of a will, an administrator of the estate of the decedent, a custodian under the Minnesota uniform transfers to minors act, or an advisor or consultant in a testamentary or express trust.

Subd. 2. POWERS OF FIDUCIARY MAY BE SUSPENDED; PETITION. A fiduciary who contemplates entering war service, a fiduciary who is engaged in war service, a cofiduciary, or an interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of war service and until the further order of the court, and may petition for the reinstatement of the fiduciary upon the fiduciary's return.

Subd. 3. NOTICE OF HEARING. Notice of the hearing on a petition under subdivision 2 must be given to persons and in the manner the court directs.

Subd. 4. HEARING; ORDER. After a hearing on a petition under subdivision 2 or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(1) order the suspension of the powers and duties of the fiduciary who is in

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war service for the period of the war service and until the further order of the court;

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

(3) decree that the ownership and title to the trust property vests in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers, and discretions, or those of the powers and discretions that are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary;

(4) make other orders the court considers advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary; or

(5) reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

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

Subd. 5. RESPONSIBILITY OF FIDUCIARY. The fiduciary has no responsibility for the acts and doings of the cofiduciary or successor fiduciary during the period of the suspension of the fiduciary's powers and duties, but is not relieved of responsibility for the fiduciary's own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed under this section is not responsible for the acts of the predecessor fiduciary.

Sec. 76. EFFECTIVE DATE.

Except as required by section 645.35 or as otherwise provided in sections 47, 60, 62, 70, subdivision 9, and 72, this article is effective January 1, 1990, and applies to trusts, property interests, and powers of appointment whenever created to the extent permitted under the United States Constitution and the Minnesota Constitution.

Sec. 77. REPEALER.

Minnesota Statutes 1988, sections 500.13; 501.01; 501.02; 501.03; 501.04; 501.05; 501.06; 501.07; 501.08; 501.09; 501.10; 501.11; 501.115; 501.12; 501.125; 501.13; 501.14; 501.15; 501.155; 501.16; 501.17; 501.18; 501.19; 501.195; 501.20; 501.21; 501.211; 501.22; 501.23; 501.24; 501.25; 501.26; 501.27; 501.28; 501.29; 501.30; 501.31; 501.32; 501.33; 501.34; 501.35; 501.351; 501.36; 501.37; 501.38; 501.39; 501.40; 501.41; 501.42; 501.43; 501.44; 501.45; 501.46; 501.461; 501.48; 501.49; 501.50; 501.51; 501.52; 501.53; 501.54; 501.55; 501.56; 501.57;

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501.58; 501.59; 501.60; 501.61; 501.62; 501.63; 501.64; 501.65; 501.66; 501.67; 501.71; 501.72; 501.73; 501.74; 501.75; 501.76; 501.77; 501.78; 501.79; 501.80; 501.805; and 501.81, are repealed.

ARTICLE 2

MISCELLANEOUS SECTIONS

Section 1. Minnesota Statutes 1988, section 315.365, subdivision 3, is amended to read:

Subd. 3. **CONTINUATION OF CORPORATE IDENTITIES.** When a merger and consolidation takes effect, the corporate identity of each party to it continues in the surviving corporation. The legal title to assets held or owned by any property corporation that is a party to the merger and consolidation vests in the surviving corporation. The surviving corporation is entitled to receive gifts, devises, bequests, legacies, or other transfers or assignments of money or property, real, personal, or mixed, made after the merger directly or in trust to or intended for any of the constituent property corporations. Except as provided in ~~section 501.12~~ article 1, section 23, no properties or assets and no income of properties or assets held or received by a party to the merger and consolidation or by the surviving corporation shall be diverted from the uses and purposes for which they were received and held by the property corporations or from the uses and purposes for which they were expressed and intended.

Sec. 2. Minnesota Statutes 1988, section 501A.06, is amended to read:

501A.06 SUPERSESSION; REPEAL.

Sections 501A.01 to 501A.07 supersede the rule of the common law known as the rule against perpetuities and ~~repeals Minnesota Statutes, section 500.13.~~

Sec. 3. Minnesota Statutes 1988, section 524.1-404, is amended to read:

524.1-404 NOTICE TO CHARITABLE BENEFICIARIES.

If a will includes a gift, devise or bequest to a named charitable beneficiary, the initial written notice of the probate proceedings given to the beneficiary shall state that the beneficiary may request notice of the probate proceedings be given to the attorney general pursuant to ~~section 501.79~~ article 1, section 33, subdivision 5.

Sec. 4. Minnesota Statutes 1988, section 525.56, subdivision 4, is amended to read:

Subd. 4. **DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE.** The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the

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needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to the ward's or conservatee's station in life and the value of estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of ~~sections~~ section 48.84 and ~~501.125~~ article 1, section 10, subdivision 1, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

Sec. 5. Minnesota Statutes 1988, section 525.831, is amended to read:

525.831 NOTICE TO ATTORNEY GENERAL OF DEVICES FOR CHARITABLE PURPOSES.

Whenever a will provides for a devise for a charitable purpose, as defined in

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~~section 501.73~~ article 1, section 27, subdivision 2, the personal representative shall provide the attorney general with the notices or documents, if any, required by ~~section 501.79~~ article 1, section 33, subdivision 5.

Sec. 6. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, article 1, section 28, is amended to read:

Sec. 28. [501B.36] REGISTRATION AND REPORTING.

The registration and reporting provisions of sections 29 and 30 apply to a charitable trust, or an organization with a charitable purpose, that has gross assets of \$25,000 or more, 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 ~~317~~ 317A;

(3) a charitable trust organized and operated exclusively for religious purposes and administered by a religious association organized under chapter 315 or chapter ~~317~~ 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 subject to sections 309.50 to 309.61;

(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 29 and 30.

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Sec. 7. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, article 1, section 36, is amended to read:

Sec. 36. [501B.44] IMMUNITY OF CHARITABLE TRUSTS.

A charitable trust is an "organization" for purposes of section ~~317.201-317A.257~~, and that section applies to charitable trusts.

Sec. 8. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, 1989 H.F. No. 1203, section 22, subdivision 24, is amended to read:

Subd. 24. **MAY INVEST TRUST PROPERTY.** Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with ~~section 501.125~~ article 1, section 10.

Sec. 9. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, 1989 H.F. No. 1203, section 93, is amended to read:

Sec. 93. [317A.671] CERTAIN ASSETS NOT TO BE DIVERTED.

Except as provided in ~~section 501.12~~ article 1, section 23, when a corporation dissolves, merges or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

Sec. 10. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, 1989 H.F. No. 1203, section 104, subdivision 4, is amended to read:

Subd. 4. **REMAINDER.** The distribution of assets held for or devoted to a charitable or public use or purpose is subject to ~~section 501.12~~ article 1, section 23.

Sec. 11. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, 1989 H.F. No. 1203, section 119, is amended to read:

Sec. 119. [317A.813] REMEDIAL POWERS OF ATTORNEY GENERAL.

The attorney general has the powers in ~~sections section 8.31; 501.78; and 501.79~~ article 1, sections 32 and 33, to supervise and investigate corporations under this chapter and to bring proceedings to secure compliance.

Sec. 12. If 1989 H.F. No. 1203 is enacted in the 1989 legislative session, 1989 H.F. No. 1203, section 123, subdivision 2, is amended to read:

Subd. 2. **ATTORNEY GENERAL POWERS CONTINUED.** A corporation dissolved under this section continues for three years after the dissolution date for the sole purpose of supervision, investigation, and other actions by the

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attorney general under ~~sections~~ section 8.31, ~~501.78,~~ and ~~501.79~~ article 1, sections 32 and 33.

Sec. 13. **EFFECTIVE DATE.**

This article is effective January 1, 1990.

ARTICLE 3

RULE AGAINST PERPETUITIES

Section 1. Minnesota Statutes 1988, section 501A.05, is amended to read:

501A.05 PROSPECTIVE APPLICATION.

(a) Except as extended by subsection (b), sections 501A.01 to 501A.07 apply to a nonvested property interest or a power of appointment that is created after December 31, ~~1989~~ 1990. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before January 1, ~~1990~~ 1991, and is determined in a judicial proceeding, commenced after December 31, ~~1989~~ 1990, to violate this state's rule against perpetuities as that rule existed before January 1, ~~1990~~ 1991, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Sec. 2. Laws 1987, chapter 60, section 10, as amended by Laws 1988, chapter 482, section 2, is amended to read:

Sec. 10. **TIME OF TAKING EFFECT.**

This act takes effect January 1, ~~1990~~ 1991.

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 11:00 p.m.

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