

SUBJECT: Trusts

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INTRODUCTION

This release applies to all Wisconsin credit unions, state and federal. It explains basic trust concepts, the procedures your credit union should follow when opening accounts for trusts, handling transactions on trust accounts, and lending issues.

This release does not address trust accounts in which attorneys, real estate agents and collection agencies can hold clients' pooled funds. For information on those accounts, see *ii Release No. 0176*.

EXECUTIVE SUMMARY

If a credit union will hold accounts for trusts, it needs to be prepared to consult with its attorney if issues should arise.

A *trust* is an agreement under which a trustee holds property for the benefit of a beneficiary.

The *settlor* (also called the *grantor*) is the person who establishes a trust by giving real or personal property "in trust" to a trustee.

A *trustee* is the person who holds legal title to property "in trust" for the benefit of a beneficiary.

The *beneficiary* is the person for whose benefit property is held in trust.

A *living trust* is a trust that is created during the settlor's lifetime. It can be either revocable or irrevocable.

The term *revocable living trust* generally refers to a trust that is created during the settlor's lifetime and can be revoked during the settlor's lifetime.

An *irrevocable trust* is one that the settlor cannot revoke after creating it. A revocable living trust typically becomes irrevocable when the settlor passes away. Another common type of irrevocable trust is a trust created according to the terms in the will of the settlor. These trusts are known as *testamentary trusts* (as in "last will and testament"). If an irrevocable trust is a testamentary trust, its creation can only be authorized by a probate court, which issues what are called "letters of trust."

The Wisconsin Trust Code – a set of statutes that govern how trusts operate – went into effect in 2014. It can be found in *Chapter 701 of the Wisconsin Statutes*.

Previously, most Wisconsin trust law was based on courts' opinions. The Trust Code addresses many issues about how trusts work and how third parties (like credit unions) can be protected when dealing with trusts. The law is based on the Uniform Trust Code, which has been adopted by many other states.

The following are some of the key Trust Code concepts relevant to credit unions:

- Trusts that are created on or after July 1, 2014, are presumed to be revocable unless the terms of the trust expressly state that it is irrevocable. The opposite rule applies to trusts created before July 1, 2014: they are presumed to be irrevocable unless the terms of a trust say otherwise.
- Previously, to verify that a trust was authentic, a credit union would typically ask to examine the trust instrument and keep copies of certain key pages. Under the Trust Code, credit unions can face liability for demanding a copy of the trust. Instead, they may insist on receiving a current "certification of trust" before opening any accounts or otherwise dealing with a trust for the first time. The certification will verify important information, such as the identity of the current trustee and the trustee's powers. Having a certification helps to protect the credit union, which can rely on it in good faith to establish accounts for trusts. The credit union must be careful, however, not to let the trustee exceed the powers that the certification describes. [Exhibit A includes a sample Certification of Trust](#).
- The Trust Code spells out how creditors may (or may not) be able to access trust assets to collect on debts owed by trust settlors, beneficiaries, trustees, and trust parties who pass away.
- The Trust Code sets default rules that define a trustee's powers. It lists 27 basic powers of a trustee, such as the power to deposit trust money in an account in a regulated financial-service institution (like a credit union). The terms of the trust instrument can change these powers.
- Under the Trust Code, trust property can be held in the name of the trustee. For example, a trust account could be titled in the name of "John Smith, trustee for the Smith Family Trust." Such a title automatically includes any successor trustee, whether or not the transfer documents mention a successor trustee. It is also acceptable to title trust property directly in the trust's name, which has the same effect as titling it in the name of the trustee.
- The Trust Code provides important protections to those who deal with trustees. These help protect credit unions from liability if a trustee acts improperly, as long as the credit unions acts in good faith and has no knowledge that the actions are improper.

Credit Unions may refer to The League's *ii Release No. 0161* for detailed, step-by-step instructions on how to open accounts for organizations, including trusts. This release summarizes the relevant steps from *ii Release No. 0161* for trusts.

If a member is putting his/her assets into a trust and has an existing account, credit unions may reduce risks by requiring a *new* account to hold the funds in the trust's name. Some credit unions choose to re-title a member's existing accounts. Whichever method is used, the credit union may want to *suggest* that the member continue to maintain a balance in a personal account, held in his/her own name and not by the trust. That way, the individual will remain eligible for credit union services in their own name.

The most basic rule for handling trust accounts is this: Only the named trustees (or, later, a successor trustee) – who should be identified on the current certification of trust – can transact business on an account owned by a trust.

The involvement of a trust can raise certain issues related to credit union lending – both when a credit union has existing loans and when a trustee applies for a new loan.

LEGAL GUIDANCE MAY BE NEEDED

If a credit union will hold accounts for trusts, it needs to be prepared to consult with its attorney if issues should arise. If the credit union is uncomfortable with the risk or with any aspect of the trust, or if it is reluctant to involve its attorney should the need arise (because of the cost, e.g.), then it might consider referring the trust to a larger financial institution.

BASIC TRUST CONCEPTS

- A *trust* is an agreement under which a trustee holds property for the benefit of a beneficiary. Trusts can differ greatly in how they are created, what terms govern their operations, and so on. For example, a trust may be revocable or irrevocable. A trust can be created during someone's life (often called a "living trust") or after someone's death under the terms of their last will and testament (called a "testamentary trust"). Trusts can have special provisions to protect

assets from a beneficiary's creditors (called a "spendthrift trust.") Sometimes, trusts are created for special business purposes, though this release will not generally deal with those types of trusts.

- The *settlor* (also called the *grantor*) is the person who establishes a trust by giving real or personal property "in trust" to a trustee for the benefit of a beneficiary.
- A *trustee* is the person who holds legal title to property "in trust" for the benefit of a beneficiary.
- The *beneficiary* is the person for whose benefit property is held in trust.
- A *living trust* is a trust that is created during the settlor's lifetime. It can be either revocable or irrevocable.
- The term *revocable living trust* generally refers to a trust that is created during the settlor's lifetime and can be revoked during the settlor's lifetime.
 - Living trusts are most often established to avoid the time delays and costs associated with probate or to provide asset management for the settlor. These are the most common types of trusts credit unions are likely to deal with.
 - Often, the settlor, trustee, and beneficiary of a living trust will be the same person. The living trust generally will provide that the trust's principal and income may be paid to the settlor during his/her lifetime (the life beneficiary of the living trust) and upon the settlor's death, the trust property is to be transferred to the death beneficiaries named in the trust. A husband and wife may form a joint living trust that pays principal and income to the husband and the wife while both are living and then continues for the benefit of the surviving spouse following the death of the first spouse.
 - The State Bar of Wisconsin publishes a pamphlet entitled "*Answering Your Legal Questions About Revocable Living Trusts.*" Members (and credit union staff) can check this pamphlet for basic information and answers to several common questions.
- An *irrevocable trust* is one that the settlor cannot revoke after creating it.
 - A revocable living trust typically becomes irrevocable when the settlor passes away.
 - Another common type of irrevocable trust is a trust created according to the terms in the will of the settlor. These trusts are known as *testamentary trusts* (as in "last will and testament"). If an irrevocable trust is a testamentary trust, its creation can only be authorized by a probate court, which issues what are called "letters of trust."
 - Irrevocable trusts are sometimes created during the settlor's lifetime for tax and estate planning reasons. An example of such an irrevocable trust is an irrevocable life insurance trust that is set up to exclude the proceeds of life insurance on the life of the settlor from the estate of the settlor for estate tax purposes.
 - Credit unions should keep some special issues in mind when asked to open accounts for irrevocable trusts:
 - Typically (but not always), the trustee of an irrevocable trust is not the same person as the beneficiary or settlor. (In many revocable living trusts, the same person(s) may often be the settlor, the trustee and a beneficiary.)
 - A trust with different parties as the trustee and/or beneficiary(ies) presents increased risks for the credit union, because the beneficiary might later claim that the third-party trustee mishandled the funds and that the credit union should have known or should have prevented the misuse.
 - The credit union can normally open the account using the same documentation that it would use for an ordinarily revocable living trust, such as an Business/Organization Account Ownership Agreement. We believe that credit unions can use The League's Trust – Credit Union Agreement form (WCUL form #82021) for an irrevocable trust.
 - The share deposit insurance rules for trusts are found in NCUA Rules and Regulations Part 745. Do not make representations about the amount of share insurance available on a trust's account(s). Instead, give the member the NCUA pamphlet "*Your Insured Funds,*" which explains the rules. You may also direct the member to the NCUA's *E-Calculator, the Electronic Share Insurance Calculator.*

WISCONSIN TRUST CODE

The Wisconsin Trust Code, which is contained in *Chapter 701 of the Wisconsin Statutes*, is a set of statutes that govern how trusts operate.

Previously, most of the law in Wisconsin regarding trusts was based on courts' opinions. The Trust Code addresses many issues about how trusts work and how third parties (like credit unions) can be protected when dealing with trusts. The law is based on the Uniform Trust Code, which has been adopted by many other states.

Effective date and presumption that trusts are revocable

§701.0602 & .1205

The Wisconsin Trust Code went into effect on July 1, 2014. Its provisions apply regardless when a trust was created – with one exception that credit unions should be aware of: The Trust Code says that a trust is presumed to be revocable unless the terms of the trust expressly state that the trust is irrevocable. This rule only applies to trusts that are created on or after July 1, 2014.

This is a change from prior Wisconsin law, which used to say that a trust was irrevocable unless the terms of a trust said otherwise. That old Wisconsin law continues to apply to trusts created before July 1, 2014.

Scope

§701.0102

The Trust Code applies to most of the trusts a credit union is likely to see. It governs "express trusts" (meaning a trust where a settlor transfers property to a trustee). That includes the typical revocable or irrevocable trusts members create during their lifetimes. It also covers "testamentary" trusts, which are created under the terms of a deceased person's last will and testament. And it applies to charitable or non-charitable trusts, as well as trusts that are created under a statute, judgment or court decree that requires the trust to be administered like an express trust.

The Trust Code does not apply to a guardianship or conservatorship, a trust made in connection with a business transaction, an IRA, a Uniform Transfer to Minors account (also called a custodial account), an employee benefit trust, a college savings account or an escrow account.

Default rules

The Trust Code contains default rules that govern a range of topics, like the duties and powers of trustees and the rights and interests of beneficiaries.

For the most part, the terms of a trust can change those default rules. In other words, a trust can be drafted to modify most of the Trust Code's rules. However, some provisions in the Trust Code cannot be changed by the terms of a trust, including:

- The rights of third parties (such as credit unions) when dealing with a trust;
- The power of the court to modify or terminate a trust;
- The effect of a "spendthrift" provision; or
- The requirements for creating a valid trust. For example, under Wis. Stats. §701.0401 & .0402, a settlor must have "capacity" to create a valid trust (the same level of capacity needed to validly sign a will). He/she must indicate an intention to create a trust. The trust must not be a product of fraud or undue influence. The Trust Code provides a variety of methods for trusts to be created. It does not require a written trust instrument, but the creation of an oral trust, and the terms of that trust, can only be established by clear and convincing evidence. (Wis. Stats. §401.0407) Credit unions should not, however, rely on verbal assurances that a trust exists; they may insist on a written certification of trust.

Modification or termination of trust

§701.0410 to .0417

Trusts can be modified or terminated in various ways. For example:

- The settlor can revoke or amend a revocable trust. Wis. Stats. §701.0602 explains how this can be done. (The legal capacity required to create, amend, revoke, or add property to a revocable trust is the same as the legal capacity that is required to make a will. Wis. Stats. §701.0601.)
- A settlor's power to revoke or amend a trust may be exercised by a power of attorney (POA) agent – but only if the POA expressly authorizes the agent to exercise these powers. The general authority of a POA agent to deal with trusts under other provisions of the Wisconsin Statutes (§244.51, concerning estates, trusts and other beneficial interests) as explained in The League's *ii Release No. 0168*, is not specific enough to allow the agent to revoke or amend a trust.
- A settlor's power to revoke or amend a trust may be exercised by the settlor's conservator or guardian, with the approval of the court.
- A trust terminates to the extent the trust is revoked (assuming it is revocable) or expires pursuant to its terms.

- A trustee or a beneficiary may start a court proceeding to approve or disapprove a proposed modification or termination.
- An irrevocable trust can be terminated or modified (with or without a court order) upon consent of the settlor and all the beneficiaries.
- As long as a settlor is alive, a revocable trust remains revocable, even if the settlor is incapacitated. (Wis. Stats. §701.0103 (22).) This means that even if the settlor lacks the legal capacity to revoke a trust on his/her own, the trust could still be revoked via one of the methods listed above, such as by a properly authorized agent.

Creditors & trusts

Wis. Stats. §§701.0501 to 701.0508

Credit unions that are owed debts by trusts, trust beneficiaries or trust settlors may want to consult with an experienced collections attorney to help determine what rights they have and whether/how they can try to collect from trust assets.

Creditors' claims against a beneficiary

§701.0501

Generally, a court may authorize a creditor of a trust beneficiary to reach the beneficiary's present or future interests in the trust. This is done by a court order for "attachment" of a present or future distribution from the trust. However, this rule does not apply to a trust for the benefit of someone with a disability or if the beneficiary's interest is protected by a "spendthrift" provision.

- *Spendthrift trusts (§701.0502).* Trusts may say that a beneficiary's interests are subject to a "spendthrift" provision, which prevents transfers of the beneficiary's interests in the trust's assets (either voluntary and/or involuntary transfers). This means that:
 - A beneficiary may not transfer an interest in a trust, if doing so would violate a valid spendthrift provision.
 - With certain exceptions (related to child support and government benefits), a creditor of a spendthrift trust beneficiary may not reach the trust's assets to collect on that beneficiary's debt. This means the creditor could not attach, garnish, execute on or otherwise reach the trust property – until the beneficiary actually receives it.
- A spendthrift provision is only valid if the beneficiary is someone other than the settlor or if the trust is for someone with a disability.
- *Discretionary Trusts (§701.0504).* If a trustee can distribute trust assets at his/her discretion, a creditor of a beneficiary generally cannot compel the trustee to make distributions. There are exceptions, however, when the beneficiary is acting as sole trustee and has discretion to make distribution to him/herself.

Creditor's claims against a trust settlor

§701.0505

The Trust Code includes laws that help to prevent a trust settlor from hiding assets from creditors by putting them in trust. Generally speaking:

- During a settlor's lifetime, the property of a revocable trust he/she created is subject to claims by his/her creditors. This does not mean that a credit union can automatically collect a debt that a settlor owes by, e.g., setting off against the trust's accounts or enforcing cross-collateral clauses to recover from trust property. Generally, it will need the help of its collections attorney, and possibly a court order, to recover from trust assets.
- If the trust is an irrevocable trust (and if it is not for the benefit of someone with a disability) then a court may order the trustee to pay a creditor some or all of any payments that could be paid to the settlor.
- If a trust was revocable at the time the settlor died, then the trust property is subject to claims by the settlor's creditors. Again, however, consult the credit union's collections attorney, and do not assume the credit union can automatically collect a debt that a settlor owes, e.g., by setoff. A court order may be needed.

These rules apply even to a "spendthrift" trust.

Creditors' claims against a trustee

Trust property is not subject to the personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. (§701.0507.) In other words, even if a trustee owes the credit union a debt, the credit union cannot collect from the trust property. After all, that property does not belong to the trustee; he/she has merely been entrusted to handle it for the benefit of the trust beneficiaries. Thus, the credit union cannot set off against the trust's accounts or enforce cross-collateral clauses to recover from trust property when a trustee defaults on a personal obligation to the credit union. (The

result may be different if the trust guarantees a debt incurred by the trustee. If so, consult with the credit union's collections attorney for guidance.)

A trustee is not personally liable on a contract if he discloses his capacity as a trustee in the contract. (§701.0101.) In other words, if the credit union has a contract (such as a loan agreement) with a trust, it cannot hold the trustee who signed that contract (on behalf of the trust) personally liable for the trust's debt. Thus, the credit union cannot set off against the trustee's accounts or enforce cross-collateral clauses to recover from the trustee's property when a trust defaults on an obligation to the credit union. (The result may be different if the trustee personally guarantees a debt incurred by the trust. If so, consult with the credit union's collections attorney for guidance.)

Debts of decedents

§701.0508

A trustee may have the duty or power to pay the debts of someone who has passed away. For example, revocable living trusts typically require the successor trustee to pay the debts of the deceased settlor/original trustee and then to distribute the trust's remaining assets to various beneficiaries. A trustee who is to pay the debts of a deceased person can publish a claims notice setting a four-month period for which to file claims against the trust. Claims are barred if not filed in that time. This rule does not apply to certain claims, such as tax or government benefit claims. Nor does it apply to a creditor who is known to the trustee and who is not given actual notice of the four-month claims period.

If the claims period notice is not published, a creditor must file a claim against the trust within one year from the decedent's death and within 30 days after the earlier of:

- The date of actual notice of the claims period, or
- The date on which the claimant acquires actual notice of the deadline for filing a claim.

Trustees' duties & powers

Wis. Stats. §§701.0701 to .0710 & 701.0801 to .0819

The Trust Code defines the duties of trustees. For example, trustees have a duty to administer the trust in good faith and solely in the interests of the beneficiaries, and to act prudently.

The Trust Code also sets default rules that define a trustee's powers. It lists 27 basic powers of a trustee. These powers can be changed by the terms of the trust itself. Ultimately, trustees have whatever powers are conferred on them by the terms of the trust, but if the trust is silent, the powers listed in the Trust Code apply.

For the complete list, visit section *701.0816 of the Wisconsin Statutes*. The list includes the following powers that may be of interest to credit unions:

- Deposit trust money in an account in a regulated financial-service institution (like a credit union);
- Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- Insure trust property against damage or loss;
- Abandon or decline to administer property of little or no value;
- Pay taxes, assessments, and other trust expenses;
- Select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee, including the power to select the IRA required minimum distribution method;
- Make loans out of trust property;
- Pledge trust property to guarantee loans made by others to the beneficiary;
- Sign and deliver contracts and other instruments; and
- Create or fund a "529 plan" or other college savings vehicle for a beneficiary's benefit.

Trustee's agents*Wis. Stats. §701.0807*

The Trust Code allows a trustee to delegate powers to agents. The trustee must select the agent carefully, and periodically review the agent's actions.

Ordinarily, fiduciaries (such as a trustee) cannot simply delegate all of their responsibilities to a third party, such as a POA agent. This may be done, however, if the documentation is drafted properly to allow for it. If a POA agent seeks to act for a trustee and make any transactions involving trust property, the credit union should seek guidance from its attorney, who can review the documentation and provide an opinion.

Co-trustees*§701.0703*

The default rules say that:

- If there are co-trustees, they must act by majority decision;
- If a vacancy occurs in a co-trusteeship, a majority of the remaining co-trustees may act for the trust; and
- A trustee may delegate his/her authority to a co-trustee, if the trust terms allow for it.

These rules can be modified by the terms of the trust, which, for example, may say that any co-trustee may act independently.

If a trust has co-trustees, the credit union should insist that the certification of trust spells out their powers. Under Wis. Stats. §701.1013, a certification of trust must address (among other things) the authority of any co-trustee to sign or authenticate and whether all or less than all co-trustees must sign or authenticate in order to exercise powers of the trustee.

Vacancy in trusteeship; appointment of successor*§701.0704*

A vacancy may occur if:

- The designated trustee declines the trusteeship;
- The designated trustee cannot be located;
- A trustee resigns, is disqualified or removed;
- A trustee dies; or
- A guardian or conservator is appointed for the trustee.

A vacancy in a trusteeship does not have to be filled if one or more co-trustees remain in office, as explained previously. But if there is no remaining trustee, the office of trustee must be filled in the following order:

- By a person designated in the terms of the trust, i.e., by the successor trustee named in the trust;
- By a person appointed by unanimous agreement of certain beneficiaries (called "qualified beneficiaries,") unless the trust is for someone with a disability, in which case the persons who may be appointed as trustee are limited; or
- By someone appointed by the court.

Directing parties & trust protectors

The Trust Code introduced two parties to Wisconsin trust law:

- A "directing party" is a person who has the power to direct the Trustee's investment and/or distribution decisions. A directing party can be appointed by the trust settlor, the court, or interested persons in a special settlement agreement. The power to direct investment decisions may be particularly useful in cases where the trust owns a special asset, such as stock in a closely-held business or real estate. (Wis. Stats. §701.0808.)
- A trust can name a "trust protector," who can serve any number of important roles. For example, a trust protector can be given the power to remove and replace the trustee or directing party, to modify the trust, to modify the trust beneficiaries, or to terminate the trust. A trust protector can be appointed by the trust settlor, the court, or interested persons in a special settlement agreement. (Wis. Stats. §701.0818.)

It appears that a directing party or a trust protector would advise or direct the trustee to take certain actions; they would not deal with third parties (like credit unions) directly. If a directing party or trust protector seeks to make transactions

involving trust property held at the credit union, instead of the actual trustee, you should consult your credit union's attorney for guidance.

Title to trust property

§701.0710

When a settlor, or someone else, transfers property to a trust, how should that property be titled? Under the Trust Code, property may be transferred to a trust by placing legal title to the property in the name of the trustee. For example, trust property could be titled in the name of "John Smith, trustee for the Smith Family Trust." Such a title automatically includes any successor trustee, whether or not the transfer documents mention a successor trustee. Thus, even if the original trustee, "John Smith" in our example, passes away, the property still belongs to the trust and the successor trustee still has the power to manage that property for the trust.

It is also acceptable to title trust property directly in the trust's name, which has the same effect as titling it in the name of the trustee. ("A transfer that places legal title in the name of the trust itself places legal title in the name of the trustee." Wis. Stats. §701.0710.)

Title companies may prefer to see trust property appear in the name of the trustee, since this helps them track who the trustees are/were.

Protections for credit unions dealing with trustees

§701.1012

The Trust Code provides a number of important protections to those who deal with trustees. These provisions help protect credit unions from liability if the trustee acts improperly or exceeds his/her powers, as long as the credit union acts in good faith and it has no knowledge of the problem. These rules cannot be changed by the terms of a trust itself.

- A person who deals with a trustee in good faith and for value, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the powers.
- A person who deals with a trustee in good faith is not required to ask about the extent of the trustee's powers or whether those powers are being exercised properly.
- A person who delivers assets to a trustee in good faith does not need to ensure they are being used properly.
- A person who deals with a former trustee in good faith and for value, without knowledge that the trusteeship has ended, is protected from liability as if that person was still a trustee.

When does a credit union have "knowledge" of a fact? Under Wis. Stats. §701.0104, an organization that conducts activities through employees (like a credit union):

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

Certification of trust

§701.1013

Previously, to verify that a trust was authentic, a credit union would typically ask to examine the document that created the trust and keep copies of certain pages from the trust instrument, such as the title page, signature page, and pages naming the trustee and successor trustee. They did not copy the entire trust, to avoid claims that the credit union knew what the trust authorized the trustee to do and was therefore liable if it allowed the trustee to exceed his/her authority.

The Wisconsin Trust Code addresses all of these concerns, and it helps to protect the privacy of trusts. Instead of giving third parties a complete copy of the trust instrument, the trustee may give them a "certification of trust" that includes the following information:

- Confirmation that the trust exists and the date the trust instrument was executed.
- Identity of the settlor.
- Identity and address of the current trustee.

- Powers of the trustee.
- Whether the trust is revocable or irrevocable and the identity of the person who has the power to revoke.
- The authority of any co-trustee to sign or authenticate and whether all or less than all co-trustees must sign or authenticate in order to exercise powers of the trustee.
- The manner to which title to trust property may be taken.

The certification may be signed or authenticated by any trustee.

Notice that the certification does not have to include the Taxpayer ID Number (TIN) that should be used for tax reporting involving the trust. The credit union should ask for instructions from the trustee – or preferably from the trust’s attorney – as to exactly how the trust’s accounts should be titled and which TIN to use. (In addition, the trustee will have to sign a W-9 or substitute TIN certification and provide the appropriate TIN.)

[See Exhibit A for a sample Certification of Trust. The certification may be completed and signed by the current trustee\(s\) to certify the facts about the trust.](#)

Demanding copies of trusts

These provisions are meant to reduce third party requests for complete copies of the trust instrument when verifying a trustee’s authority to engage in a particular transaction. In fact, demanding a copy of the trust instrument exposes the credit union to potential damages. The Trust Code says that a person who demands the trust instrument in addition to the certification of trust is liable for costs, expenses, reasonable attorney fees and damages if a court determines the person did not act in good faith.

However, the Trust Code allows a credit union to ask for portions of trust material, even after getting a certification of trust. It says that a recipient of a certification may require the trustee to furnish copies of excerpts from the original trust instrument and amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction. For example, if a credit union wants to verify that a trustee is authorized to borrow funds in the trust’s name, it could ask for portions of the trust that address the trustee’s powers.

Protections for credit unions

Credit unions may insist on receiving a valid – and current – certification of trust before opening any accounts or otherwise dealing with a trust for the first time, or whenever someone indicates that there is a change to the trust or to the current trustee. Trustees should be asked to contact the trust’s attorney for help to complete a proper certification that complies with the requirements of the Trust Code.

Having the certification helps to protect the credit union. The Trust Code says:

- A person who relies on the certification of trust without knowledge that the representations it contains are incorrect is not liable to any person for so acting. (Also, knowledge of the trust’s terms cannot be inferred simply from the fact that the credit union relying on the certification has the trust instrument.)
- A person who in good faith enters into a transaction in reliance on the certification may enforce the transaction as if the representations in the certification were correct.

However, the certification creates a degree of risk for the credit union, as well. The Trust Code requires the certification to list the trustee’s powers. Thus, once the credit union receives the certification, it will know what the trustee is authorized to do. As explained earlier, a credit union is only protected from liability under the Trust Code if it acts in good faith and without knowledge that the trustee is exceeding or improperly exercising his/her powers. As a result, it’s important that the credit union not simply file away the certification. Staff must read it and understand the trustee’s listed powers. Do not allow the trustee to take actions that seem to exceed those powers or to exercise them improperly. If there is any uncertainty, the credit union must be prepared to have its attorney review the certification and the proposed transaction and provide guidance.

ISSUES TO CONSIDER WHEN OPENING TRUST ACCOUNTS

Trusts raise several unique issues at account opening, which the credit union should consider. Your procedures should address how your credit union should address each of these concerns.

The importance of a current certification of trust

Previously, to verify that a trust was authentic, a credit union would typically ask to examine the document that created the trust (the trust instrument) and keep copies of certain pages, such as the title page, signature page, and pages naming

the trustee and successor trustee. They did not copy the entire trust, to avoid claims that the credit union knew what the trust authorized the trustee to do and was therefore liable if it allowed the trustee to exceed his/her authority.

The Wisconsin Trust Code addresses all of these concerns, and it helps to protect the privacy of trusts. Instead of giving third parties a complete copy of the trust instrument, the trustee may give them a "certification of trust," which is described earlier in this release.

The credit union may insist on receiving a current "certification of trust" before opening any accounts or otherwise dealing with a trust for the first time. The certification will verify important information, such as the identity of the trustee and the powers he/she has. Having a certification helps to protect the credit union, which can rely on what it says in good faith to establish accounts for trusts.

However, the credit union must read and understand what the certification says about the trustee's powers. Do not allow the trustee to take actions that seem to exceed those powers or to exercise them improperly. If there is any uncertainty, the credit union must be prepared to have its attorney review the certification and the proposed transaction and provide guidance.

Re-Title Accounts or Open New Accounts?

Often members who have created trusts (especially the typical revocable living trust) ask the credit union to re-title all of their personal accounts, to reflect that the trust will be the account holder.

If a member is putting his/her assets into a trust and has an existing account, credit unions may reduce risks by requiring the opening of a *new* account to hold the funds in the trust's name. There are risks in merely re-titling an existing account, since it seems to blur the concept of ownership. For example, if the member wanted to give an account to a different person, the credit union would not simply re-title the account; it would require the member to withdraw the funds, close the account, and turn over the funds to the other party, who could then open a new account. Similar thinking should apply when it comes to putting accounts into a trust. Trustees should be encouraged to think of trusts as separate entities.

However, members often balk at the suggestion that they close existing personal accounts and open new accounts in the trust's name. This may involve considerable inconvenience for them. For example if the member has preauthorized recurring transfers into or out of his/her accounts, those arrangements would have to be changed. For that reason, some credit unions choose to assume the risk and simply re-title a member's existing accounts and put them in the trust's name, in order to reflect that the funds are held in trust.

Whichever method is used, the credit union may want to *suggest* that the member continue to maintain a balance in a personal account, held in his/her own name and not by the trust. By maintaining a personal membership and account, the member can choose whether to apply for future services in his/her own name. Examples include safe deposit box rentals, debit cards, credit cards, and other services the member may not want in the trust's name. If the individual does not maintain a membership, he/she will be ineligible for these credit union services in his/her own name.

To the extent the member chooses to close out existing accounts, make sure that the correct *current* owner(s) signs the withdrawal slip(s). Only the member in his/her individual capacity or the individual's attorney-in-fact who is properly authorized under a durable power of attorney is authorized to close the member's individual account.

Individual Retirement Accounts

Individual Retirement Accounts (IRAs) must be held in an individual's name and cannot be transferred to a trust. However, a trust can be a beneficiary of an IRA.

Trusts as POD beneficiaries

When a member requests to title funds in the name of the trust, do *not* suggest instead merely naming the trust as a payable on death (POD) beneficiary on the existing account. That could sometimes defeat a major purpose of the trust and expose the credit union to liability. For example, the member may want a successor trustee to have access to the funds if the member/trustee becomes incapacitated. If the trust is merely a POD beneficiary, however, this will not be possible, since the trust will not have any rights to the funds until the member's death.

If the member requests that a trust be named as a POD beneficiary – especially after consulting with his/her attorney – it certainly can be done. However, it could be risky for the credit union to recommend that approach.

Saver's Sweepstakes accounts

Saver's Sweepstakes is The League's prize-linked savings program. Only individuals may hold Saver's Sweepstakes accounts, either as primary account holders or joint account holders. As a result, trusts (along with any other organization, business or non-consumer) are not eligible to participate in Saver's Sweepstakes. This limitation is spelled out in the Saver's Sweepstakes Account Agreement. This means that individual members' existing Saver's Sweepstakes accounts cannot be transferred to their trusts, and that trusts cannot open new Saver's Sweepstakes accounts. For details, see The League's *ii Release No. 0184 – "Saver's Sweepstakes™ Compliance FAQs."*

DOCUMENTATION FOR OPENING TRUST ACCOUNTS

The League's *ii Release No. 0161, "Organization Accounts,"* has checklists that credit unions should use whenever they open an account for an organization – including a trust – and whenever someone asks to make transactions on an organization's account. Please refer to that release for detailed, step-by-step guidance on the necessary documentation and steps that should be taken to open an account for a trust.

The following material summarizes the account-opening steps listed in *ii Release No. 0161*.

Step One: Ask for a certification of trust, find out if the trust is eligible to join the credit union & complete a Membership Application Card

When opening an account for a trust, the credit union must take some preliminary steps to help verify that the trust was created, who the parties are, and whether it's eligible to join the credit union.

Previously, to verify that a trust was authentic, a credit union would typically ask to examine the trust instrument and keep copies of least certain key pages. Under the Trust Code, credit unions can face liability for demanding a copy of the trust. Instead, they may insist on receiving a current "certification of trust" before opening any accounts or otherwise dealing with a trust for the first time. The certification will verify important information, such as the identity of the current trustee and the trustee's powers. Having a certification helps to protect the credit union, which can rely on it in good faith to establish accounts for trusts. The credit union must be careful, however, not to let the trustee exceed the powers that the certification describes.

A credit union does not need trust powers to open an account for a trust. (The credit union, after all, cannot act as the trustee for the funds.) However, the credit union's bylaws typically permit the credit union to accept organizations or associations as members. See Wis. Stats. § 186.02(2)(d).

The credit union can establish accounts for an organization only after a Membership Application Card (WCUL form #81056) is completed and the credit union has determined that the organization may become a member.

For federal credit unions, the NCUA has taken the position that all parties to the trust (settlor, trustee, and beneficiaries) must be within the credit union's field of membership. Beneficiaries include contingent beneficiaries. This makes it difficult for some trusts to qualify for membership in a federal credit union.

Under the 2017 Model Bylaws (as well as the 2005 version) for state-chartered credit unions, "any trust may become a member of the Credit Union if a majority of the persons who are settlor(s), trustee(s) and beneficiary(ies) are eligible for membership in the Credit Union." It is unclear under Wisconsin law whether successor trustees and contingent trust beneficiaries must be counted.

Remember, however, that members of the immediate family of all qualified persons are eligible for membership. Your bylaws will define who is considered an immediate family member. The Wisconsin Statutes no longer define that term. For details, see The League's *ii Release No. 0001 – "Membership."*

Step Two: Get a completed Trust-Credit Union Agreement

The League's Trust – Credit Union Agreement (WCUL form #82021) identifies the trustee(s) authorized to transact business on the trust's accounts.

Review the instructions carefully. Complete WCUL Form #82021 in a manner that is consistent with the membership card and account card(s). Have the member provide you with the names of the trustee(s), successor trustee(s), and beneficiary(ies). The names of the beneficiaries are requested to verify eligibility for membership. State law no longer requires the credit union to obtain the names of the beneficiaries. If the member does not have the information, ask the member to have the member's lawyer complete the form and return it to the credit union. Do not establish an account relationship with the trust until the form has been completed and signed.

Sometimes, an organization, such as a trust company, is designated as the trustee or successor trustee. This is acceptable, but special precautions need to be taken. The credit union needs to know who specifically, from that organization should be allowed to access the trust's accounts. Ask the organization for a corporate resolution or similar document, designating the individuals who can act for the organization and providing their specimen signatures. Otherwise, for example, any employee might ask to withdraw money from the trust's account, and the credit union could not verify if that person was really authorized to do so.

Step Three: Comply with Customer Identification Program rules & conduct Customer Due Diligence

Every credit union must have a Customer Identification Program (CIP). The CIP rules require you to collect certain information from anyone who wants to open a credit union account, including trusts. You must also take steps to verify the new member's identity. The League's Customer Identification Card (WCUL form #81080) is designed to simplify the CIP process.

Besides applying CIP procedures to the trust itself, as required, the credit union should apply them to the trustee as well.

FinCEN's Bank Secrecy Act / Anti-Money Laundering regulations require credit unions and other covered institutions (including banks) to have written, risk-based Customer Due Diligence (CDD) procedures as part of their BSA/AML compliance programs. Compliance is mandatory as of May 11, 2018.

There are two aspects to the FinCEN's CDD requirements:

- One aspect of the CDD rules requires risk-based procedures for conducting ongoing CDD 1) to understand the nature and purpose of member/customer relationships to develop a member/customer risk profile; and 2) to conduct ongoing monitoring for suspicious transactions and, on a risk adjusted basis, maintain and update member/customer information. This applied to trust accounts, as any other accounts, and so credit unions should apply their CDD procedures to trusts.
- Another aspect of the CDD rules requires credit unions to have written procedures to identify "beneficial owners" – the people who own and control "legal entity customers" – organizations opening credit union accounts. Credit unions then must verify the identities of those beneficial owners. A trust may or may not be subject to the CDD beneficial owner rules, depending on the type of trust it is and how it was formed. If the trust was created by a filing with a state office (such as a business trust), then the trust is a "legal entity" and subject to the CDD beneficial ownership rules. However, forming the kind of revocable or irrevocable trust members commonly create does not generally require any action by the state – so these trusts do not meet the definition of "legal entity," and they are not subject to the rules.

For details on CDD, see The League's *ii Release No. 0159*.

Step Four: Complete a Business/Organization Account Ownership Agreement

The Business/Organization Account Ownership Agreement (WCUL form #81057) designates the trust as the owner of the account and certifies the Taxpayer Identification Number (TIN) to be used for the trust. (A later section in this release explains the IRS rules on TINs for trusts.)

The Business/Organization Account Ownership Agreement also records the various disclosures given to the trustee when the account is opened. A separate agreement is needed for each sub-account.

The account can be titled in two ways:

- Under the Trust Code, property may be transferred to a trust by placing legal title to the property in the name of the trustee. For example, trust property could be titled in the name of "John Smith, trustee for the Smith Family Trust." Such a title automatically includes any successor trustee, whether or not the transfer documents mention a successor trustee. Thus, even if the original trustee, "John Smith" in our example, passes away, the property still belongs to the trust and the successor trustee still has the power to manage that property for the trust.
- It is also acceptable to title trust property directly in the trust's name, which has the same effect as titling it in the name of the trustee. ("A transfer that places legal title in the name of the trust itself places legal title in the name of the trustee." Wis. Stats. §701.0710.)

Step Five: Provide the Account Agreement Brochure and Disclosures

Certain disclosures must be given to trusts when they open credit union accounts. Before the Business/Organization Account Ownership Agreement card is signed (even for a sub-account), a credit union should provide one of the League's

account agreement brochures, which serves as the contract for all types of accounts. The League offers credit unions the choice of *Your Account Agreement, with Arbitration Agreement* (#83005) or *Your Account Agreement* (#83006, replacing #82004). A Funds Availability Disclosure is generally required for demand deposit, share draft, checking or NOW accounts. The League provides a Funds Transfer Agreement & Notice (WCUL form #81043), which covers transfers of funds by wire transfers, automated clearinghouse transactions, etc. Finally, the credit union's schedule of rates and fees should be provided.

Other disclosures may be provided at the credit union's option. For example, accounts held by trusts are not subject to Truth in Savings, so its account disclosure rules do not apply, though the credit union can choose to give Truth in Savings disclosures on trust accounts. See NCUA Rules and Regs. Part 707.

OFAC

Trust accounts are subject to OFAC programs, as explained in The League's *ii Release No. 0148*. It is prudent to check names of the trust, trustees, and beneficiaries at account opening, and to include the name in the credit union's periodic "scrubs" of its database for OFAC matches.

Taxpayer Identification Numbers (TIN)

A trust must have a TIN. This may either be the SSN of a grantor/trustee or an EIN. IRS rules govern which is correct.

The credit union should not advise the trustee about whether an SSN or EIN can or should be used. The account holder is responsible for certifying the correct number. If there is confusion, advise the trustee to ask the attorney who drafted the trust. Preferably, the attorney can provide written instructions, including the proper TIN to use for the account. Though not required, the TIN may be shown on the certification of trust.

The TIN can be the grantor's SSN where the settlor is the sole trustee or co-trustee, or where a husband and wife are the sole grantors, one or both are trustees (even if a co-trustee with another person) and they file a joint tax return. If one spouse dies, the credit union may continue to use the surviving spouse's SSN, provided the surviving spouse is also a trustee of the trust. If this is not the case, dividends through the date of the spouse's death should be reported under the decedent's SSN and thereafter under the trust's EIN.

In most other cases, a trust's TIN will be an EIN. However, it appears that if a grantor still has power over the trust, such as the power to revoke it or to change beneficiaries, then that person's SSN might still be used, even if he/she is no longer acting as trustee.

Share Deposit Insurance

The share deposit insurance rules for trusts are found in NCUA Rules and Regulations Part 745. Do not make representations about the amount of share insurance available on a trust's account(s). Instead, give the member the NCUA pamphlet "*Your Insured Funds*," which explains the rules. You may also direct the member to the NCUA's *E-Calculator, the Electronic Share Insurance Calculator*.

Effective Dec. 1, 2026, §745.4 of the *NCUA's Rules & Regulations* covers share insurance coverage for all "trust accounts" – a category that includes both revocable and irrevocable trusts, as well as payable on death (POD) accounts. The rule uses a simplified formula to calculate coverage for those accounts. For details, please see *this 2024 Compliance Courier*, which was published when the §745.4 was amended. Credit unions should not make representations to members about how much share insurance coverage they have. Instead, it is best to help members navigate the NCUA resources that are designed to explain the rules and help them make that calculation. The Courier includes links to those resources.

Share Draft Accounts

A trust can hold a share draft account. No regulation requires checks to bear the actual name of the account holder – the trust itself – in the upper left corner. If the credit union's account agreement forms reserve the credit union's right to approve the checks that a member uses, then the credit union could choose to insist that the trust's name appear on the checks. This may inconvenience members, but on the other hand, it may simplify things for credit union staff, who may be confused if they try to look up an account by searching for the name on the credit union's system.

Life Savings Insurance

It is advisable to obtain the opinion of TruStage on all issues related to their life savings insurance coverage. If you have any questions on life savings insurance for trusts, contact TruStage's Credit Insurance Issuance and Servicing Department, P.O. Box 391, Madison, Wisconsin 53701-0391.

TRANSACTIONS ON TRUST ACCOUNTS

The most basic rule for handling trust accounts is this: Only the named trustees (or a successor trustee) – who should be identified on the current certification of trust – can transact business on an account owned by a trust. For that reason, credit unions must be careful about how trust accounts are accessed. Credit unions may want to flag trust accounts (revocable or irrevocable) or use other safeguards, such as supervisor lockouts, to help ensure that only the authorized trustee can make transactions on the account.

As explained earlier in this release, a credit union acting in good faith may presume that the trustee is acting within his/her authority – as long as it has no knowledge that the trustee is exceeding or improperly exercising the trustee’s powers. Wis. Stats. §701.1012. If the credit union has obtained a certification of trust, it should not allow the trustee to exceed the powers listed.

For general guidance on handling transactions for organization accounts, including trusts, please see The League’s *ii Release No. 0161*.

Successor Trustee

Most trusts will name an individual or trust company to take over if the original trustee dies, resigns or becomes incapacitated. This person or trust company is referred to as the “successor” trustee. Typically the successor trustee has the same authority and power as the original trustee.

If the original trustee dies, resigns, or becomes incapacitated, a new certification of trust may be obtained, which (under the Trust Code) must identify the current trustee. The credit union may also verify the original trustee’s death (by obtaining a certified copy of a death certificate), resignation (by obtaining the resignation in writing), or incapacity (a letter from one or more attending physicians). WCUL Form #82021 permits the credit union, when determining whether a trustee is unable or unwilling to serve, “to rely on any of the following, within the discretion of the credit union: (a) a certified death certificate of the trustee; or (b) a writing signed by the trustee or his or her attorney-in-fact, conservator, or guardian stating that the trustee is unable or unwilling to act as trustee; or (c) a writing signed by a licensed physician stating that the trustee is unable to act as trustee.” The form also requires that the identity of the successor trustee be provided at the time the account is opened.

A successor trustee should be asked to sign a new Business/Organization Account Ownership Agreement card (#81057) and Trust – Credit Union Agreement (#82021) when the successor succeeds to the position of trustee.

Although the terms of the agreement will control, if there are co-trustees of the trust (such as a husband and wife who serve as co-trustees of a joint living trust), upon the death, resignation or incapacity of one co-trustee, the other co-trustee becomes the sole trustee. Upon the death of the second co-trustee, the successor trustee named in the trust will become the trustee. Under the Trust Code’s default rules (§701.0703) if a vacancy occurs in a co-trusteeship, a majority of the remaining co-trustees may act for the trust

LENDING AND TRUST ACCOUNTS

The involvement of a trust can raise certain issues related to credit union lending – both when a credit union has existing loans and when a trustee applies for a new loan.

Existing Loans

When establishing a trust, the trustee will often want to retitle assets (personal, property, vehicles, real estate, credit union accounts, etc.) in the trust’s name. The credit union should be concerned not only with maintaining a security interest it may have in any of the titled assets, but also in maintaining its priority position.

Where the credit union has taken a security interest in personal property and filed a UCC financing statement when the loan was made, it should amend its financing statement to change the name of the debtor to the trust. Wis. Stats. § 409.503(1)(c). If the credit union’s security interest covers after-acquired property, the amended financing statement should be filed within four months after the assets have been transferred to the trust. Wis. Stats. § 409.507(3). It also is advisable to have a new security or pledge agreement executed by the trustee and the individual debtor.

Generally, it is not necessary to record a new mortgage or rewrite the note in a real estate loan where the real estate is later transferred to a trust.

If the credit union is concerned about protecting its setoff rights in an unsecured loan situation, it should have the individual debtor and the trustee sign a new note. If the credit union fails to do so, it should consult with competent legal counsel before setting off the individual's debt against any accounts held by a trust the individual created.

If the credit union is concerned about the continued creditworthiness of the individual debtor following the transfer of the debtor's assets to a trust, the credit union should consider having the trustee and individual debtor execute a new note or having the trustee guaranty the loan.

New Loans

As explained previously in this release, the Trust Code also sets default rules that define a trustee's powers (§701.0816). These powers can be changed by the terms of the trust itself. Ultimately, trustees have whatever powers are conferred on them by the terms of the trust, but if the trust is silent, the powers listed in the Trust Code apply. Those default powers in the Trust Code include the authority to borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust; to make loans out of trust property; to pledge trust property to guarantee loans made by others to the beneficiary; and to sign and deliver contracts and other instruments.

A credit union acting in good faith may presume that the trustee is acting within his/her authority – as long as it has no knowledge that the trustee is exceeding or improperly exercising the trustee's powers. Wis. Stats. §701.1012.

If a credit union wants to verify that a trustee is authorized to borrow funds in the trust's name, it may ask a certification of trust. As explained earlier, the Trust Code also lets a credit union ask for trust excerpts, even after it gets a certification. It says that a recipient of a certification may require the trustee to furnish copies of those excerpts from the original trust instrument and amendments that designate the trustee and confer on him/her the power to act in the pending transaction.

Signatures

When a loan involves a trust, or property held by a trust, the credit union must determine who will sign the security agreement or mortgage. It must also determine who will sign the loan agreement or note. Sometimes, the two sets of documents will not have the same signers.

If the loan is secured by collateral, and if the trust is the titled owner of that property, then the trust will have to grant the credit union a lien. That means the mortgage or security agreement should name the trust as the owner, and the trustee should sign *in his/her capacity as the trustee*.

Who signs the loan agreement or note? That depends on whether the loan will be to the trust itself or to the trustee(s) individually. The application should show whether the individual(s) or the trust is the applicant. If the credit union is lending to the individuals, write the note in their name(s) and have them sign as individuals. If the credit union is lending to the trust, write the note in its name as the borrower and have the trustee(s) sign *in his/her capacity as the trustee*.

Whichever party is the borrower (individual(s) or trust), the credit union should also consider requiring the other party to guarantee the loan. That way, if there is a default, the credit union should be able to collect from either one. For example, if the individuals are the borrowers, the trust could guarantee the loan (assume that the trustee has to power to guaranty loans). Conversely, individuals could guaranty a loan to a trust (as you might when making a loan to a small business).

Reg. Z & loans to trusts

Federal Truth in Lending regulations – called Reg. Z – do not apply when the borrower is not a “natural person.” For example, loans to corporations, partnerships, associations, churches, unions, and fraternal organizations are exempt from Reg. Z. The exemption applies regardless of the purpose of the loan and regardless whether an actual person may guarantee or provide security for the credit.

However, if the loan is for a consumer purpose, it is clear that as of Aug. 1, 2015, Reg. Z applies even if the borrower is a trust created for tax or estate planning purposes – such as the revocable living trusts that credit union members often create. The CFPB's Comment 3(a)-10 to Reg. Z explains:

Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is

primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.

Real estate loans

Credit unions should determine what additional requirements may be imposed on their real estate lending programs by title insurers, loan guaranty programs, loan participation partners, or secondary market standards.

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local; or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

KH/jb

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EXHIBITS

[Exhibit A. Sample Wisconsin Certification of Trust](#)

EXHIBIT A: SAMPLE WISCONSIN CERTIFICATION OF TRUST

Certification of Trust

FULL LEGAL NAME OF TRUST

DATE OF TRUST

This Certification of Trust is made pursuant to Wis. Stat. § 701.1013(1) for the [full legal name of trust] (the “Trust”) which was created by a trust instrument executed on [date of original trust].

The undersigned Trustee of the Trust hereby certifies the following:

1. Existence of Trust. The Trust is currently in existence.
2. Identity of Settlers. The Settlers of the Trust are [individual or individuals who established the trust].
3. Identity of Trustee. The names and address of the currently acting Trustee(s) of the Trust are: [name(s) of current trustee(s), address(es) of current trustee(s)].

The name(s) and address(es) of the successor trustee(s) of the Trust is/are: [name(s) of successor trustee(s), address(es) of successor trustee(s)]

Copies of pages XX designating the current Trustees and the signature page from the original trust instrument are attached.

4. Powers of Trustee. The Trustee(s) have all of the powers described in the original trust instrument.
5. Revocability. (choose one)
☐ The Trust is revocable by either of the Settlers.
☐ The Trust is irrevocable.
☐ The Trust was revocable but has become irrevocable as a result of the death of all settlers.
6. The taxpayer identification number of the Trust is [consult your tax advisor or attorney for guidance on the correct taxpayer identification number to use].

7. Authority of a Co-Trustee. (choose one)
☐ Any one co-trustee has the authority to sign on behalf of the Trust and to confirm the exercise of the powers of the Trustees. A person shall be entitled to rely on the signature of any one Co-Trustee to bind the Trust and all of the Trustees.
☐ All co-trustees must act jointly.

8. Title. Title to Trust property may be taken as [name of trustee(s)], or their successors, as Trustees of the [full name and date of trust]. Similar language which complies with Wis. Stat. § 701.0710 may also be used.
9. Status of Trust. The Trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this Certification of Trust to be incorrect.

Pursuant to Wis. Stat. § 701.1013(2), this Certification of Trust may be signed by any Trustee.

10. Reliance upon Certification. Pursuant to Wis. Stat. § 701.1013(6), a person who acts in reliance upon this Certification of Trust without knowledge that the representations contained herein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained herein. Pursuant to Wis.

Stat. § 701.1013(7), a person who in good faith enters into a transaction in reliance upon this Certification of Trust may enforce the transaction against the Trust property as if the representations contained herein are correct.

Dated _____, 20__.

[Trustee(s) of the XXXX Trust
(Signed by the *current* trustee or co-trustees, if
co-trustees have to act together)

State of Wisconsin

County of _____

This document was acknowledged before me on _____ (date) by

(name(s) of individual(s)) as Trustee(s) of
(name of Trust).

(Signature of notary)

[Stamp]

My commission expires: _____

This sample document is not intended and should not be construed as legal advice. Trustees should consult an attorney or estate planning professional to ensure that this document is appropriate for their specific circumstances and complies with all applicable laws.