

CHAPTER 853

WILLS

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853.01 Capacity to make or revoke a will. Any person of sound mind 18 years of age or older may make and revoke a will.

The clause "in equal shares to the then living issue of donor's three daughter-beneficiaries in this trust, and/or the then living issue of any deceased issue of donor's three daughter-beneficiaries, by right of representation" requires distribution per capita among his grandchildren and by representation among their children. In re Bowler Trust, 56 W (2d) 171, 201 NW (2d) 573.

Under a will leaving "my homestead which I occupy at the time of my death" to a son, the home in which testator lived when the will is executed should be awarded to the son even though testator became ill and was confined to a nursing home for a year prior to his death and the home was rented. Estate of Gotthart, 56 W (2d) 563, 202 NW (2d) 397.

"Disposition to influence" element of 4-factor test of undue influence means willingness to do something wrong or unfair to obtain a share of estate. Mere fact that will benefits alleged influencer does not prove "coveted-result" element of test. Elements of testamentary capacity discussed. In Matter of Estate of Becker, 76 W (2d) 336, 251 NW (2d) 431.

Two methods of proving undue influence discussed. In re Estate of Kamesar, 81 W (2d) 151, 259 NW (2d) 733.

Undue influence discussed. In re Estate of Taylor, 81 W (2d) 687, 260 NW (2d) 803.

Insane delusion as ground for objection to probate of will discussed. In re Estate of Evans, 83 W (2d) 259, 265 NW (2d) 529 (1978).

Legal guardianship in and of itself does not prove lack of testamentary capacity. In Matter of Estate of Sorensen, 87 W (2d) 339, 274 NW (2d) 694 (1979).

Parent-child relationships as "confidential relationship" discussed. In Matter of Estate of Sensenbrenner, 89 W (2d) 677, 278 NW (2d) 887 (1979).

853.03 Execution of wills. Every will in order to be validly executed must be in writing and executed with the following formalities:

(1) It must be signed (a) by the testator, or (b) in the testator's name by one of the witnesses or some other person at the testator's express direction and in his presence, such a proxy signing either to take place or to be acknowledged by the testator in the presence of the witnesses; and

(2) It must be signed by 2 or more witnesses in the presence of the testator and in the presence of each other.

The alternate requisite in sub. (1) that if not signed by the testator it be signed by some person in his presence and by his express direction, is not met by simply taking the testator's hand as an inanimate object and making his mark or signature where the testator fails or is unable to in any manner expressly authorize another to sign for him. (Will of Wilcox, 215 W 341, overruled.) Estate of Komarr, 46 W (2d) 230, 175 NW (2d) 473.

See note to 895.045, citing Auric v. Continental Cas. Co. 111 W (2d) 507, 331 NW (2d) 325 (1983).

853.05 Execution of wills outside the state or by nonresidents within this state. A will is validly executed if it is in writing, executed according to s. 853.03 or if it is in writing and executed in accordance with either of the following: (a) the law of the place where the will is executed; or (b) the law of the place where the testator is domiciled at the time of

execution of the will. Any such will has the same effect as if executed in this state in compliance with s. 853.03.

853.07 Witnesses. (1) Any person who, at the time of execution of the will, would be competent to testify as a witness in court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(2) A will is not invalidated because it is signed by an interested witness; but, unless the will is also signed by 2 disinterested witnesses, any beneficial provisions of the will for a witness or the spouse of the witness are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's death.

(3) An attesting witness is interested only if the will gives to the witness or spouse some personal and beneficial interest. The following are not interests which are personal and beneficial:

(a) A provision for employment as executor or trustee or in some other capacity after death of the testator and a provision for compensation at a rate or in an amount not greater than that usual for the services to be performed;

(b) A provision which would have conferred no benefit if the testator had died immediately following execution of the will.

History: 1987 a. 403.

853.09 Deposit of will in circuit court during testator's lifetime. (1) DEPOSIT OF WILL. Unless provided otherwise by county ordinance, any testator may deposit his or her will with the register in probate of the court of the county where he or she resides. The will shall be sealed in an envelope with the name and address of the testator, and the date of deposit noted thereon. If the will is deposited by a person other than the testator, that fact also shall be noted on the envelope. The size of the envelope may be regulated by the register in probate to provide uniformity and ease of filing. A county board may, by ordinance, provide that wills may not be deposited with the register in probate for the county. Wills deposited with the register in probate prior to the effective date of that ordinance shall be retained by the register in probate as provided under sub. (2).

(2) **DUTY OF REGISTER IN PROBATE.** The register in probate shall issue a receipt for the deposit of the will and shall maintain a registry of all wills deposited. The original will, unless withdrawn under sub. (3) or opened in accordance with s. 856.03 after death of the testator, shall be kept on file for the period provided in SCR chapter 72; thereafter the register may either retain the original will or open the envelope, copy or reproduce the will for confidential record storage purposes by microfilm or other method of comparable retrievability and destroy the original. If satisfactorily identified, the reproduction is admissible in court for probate or any other purpose the same as the original document. Wills deposited with the county judge under s. 238.15, 1967 stats., shall be transferred to the register in probate and become subject to this section.

(3) **WITHDRAWAL.** A testator may withdraw his will during his lifetime, but the register in probate shall deliver the will only to the testator personally or to a person duly authorized to withdraw it for the testator, by a writing signed by the testator and 2 witnesses other than the person authorized.

History: 1977 c. 449; 1981 c. 146; Sup. Ct. Order, 136 W (2d) xx

The practice of attorneys retaining wills for safekeeping is disapproved. *State v. Gulbankian*, 54 W (2d) 605, 196 NW (2d) 733.

Where will was not withdrawn fraudulently, non-compliance with witnessing requirement of (3) did not invalidate revocation of will. *Re Estate of Haugk*, 91 W (2d) 196, 280 NW (2d) 684 (1979).

853.11 Revocation. (1) SUBSEQUENT WRITING OR PHYSICAL ACT. A will is revoked in whole or in part by:

(a) A subsequent will, codicil or other instrument which is executed in compliance with s. 853.03 or 853.05 and which revokes the prior will or a part thereof expressly or by inconsistency; or

(b) Burning, tearing, canceling or obliterating the will or part, with the intent to revoke, by the testator or by some person in the testator's presence and by his direction.

(2) **SUBSEQUENT MARRIAGE.** A will is revoked by the subsequent marriage of the testator if the testator is survived by his spouse, unless:

(a) The will indicates an intent that it not be revoked by subsequent marriage or was drafted under circumstances indicating that it was in contemplation of the marriage or makes provision for issue of the decedent; or

(b) Testator and the spouse have entered into a contract before or after marriage, which complies with ch. 766 and which makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator.

(3) **ANNULMENT OR DIVORCE.** Any provision in a will in favor of the testator's spouse is revoked by an annulment of the marriage to such spouse or by an absolute divorce.

(3m) **INTENTIONAL KILLING OF DECEDENT BY BENEFICIARY.**

(a) Except as provided under par. (am), if any beneficiary under a will has unlawfully and intentionally killed the decedent, the property that the killer would have taken passes as if the killer had predeceased the decedent unless a court decides that, under the factual situation created by the killing, the decedent's wishes would best be carried out by means of another disposition of the decedent's property.

(am) A testator may provide in the will, by a specific provision which includes reference to par. (a), that par. (a) does not apply with respect to a beneficiary of the will.

(b) Section 852.01 (2m) (b) to (c) applies to this subsection.

(4) **OTHER METHODS OF REVOCATION.** A will is revoked only as provided in this section.

(5) **DEPENDENT RELATIVE REVOCATION.** Except as modified by sub. (6) this section is not intended to change in any manner the doctrine of dependent relative revocation.

(6) **REVIVAL.** When a will, codicil or part thereof has been revoked by a subsequent will, codicil or other instrument

under sub. (1) (a), the later revocation of the revoking instrument by act under sub. (1) (b) revives the prior will or codicil or part thereof: (a) if there is clear and convincing evidence that the testator intended to revive the prior will, codicil or part; or (b) if the revoking instrument is a codicil which revoked only a part of the will by inconsistency and not expressly, and the evidence is insufficient to prove that the testator intended no revival. Proof of testator's statements at or after the act of revocation is admissible to establish intent. A will, codicil or part cannot be revived under this subsection unless the original will or codicil is produced in court.

History: 1981 c. 228; 1983 a. 186; 1987 a. 222.

Where a 16 year old will cannot be found, revocation by destruction is presumed despite an expression of satisfaction with it 6 years before death. *Estate of Fonk*, 51 W (2d) 339, 187 NW (2d) 147.

Will executed 39 days prior to decedent's marriage which devised entire estate to brother, making no mention of decedent's wife-to-be or for issue of decedent, was revoked by subsequent marriage. *In re Estate of Jones*, 74 W (2d) 607, 247 NW (2d) 168.

Will burned in basement while testator was in kitchen, 13 steps away, was not burned in "testator's presence" under (1) (b) and was not revoked. Court recommends that testators personally revoke wills by defacing and initialing each page. *Re Estate of Haugk*, 91 W (2d) 196, 280 NW (2d) 684 (1979).

Disposition of estate of decedent killed by beneficiary discussed. *In Matter of Estate of Safran*, 102 W (2d) 79, 306 NW (2d) 27 (1981).

Under facts of case, property which was prevented by (3) from passing to divorced spouse passes as if divorced spouse failed to survive testator. *In Matter of Estate of Graef*, 124 W (2d) 25, 368 NW (2d) 633 (1985).

Lost wills: The Wisconsin law. *Burrell and Porter*, 60 MLR 351.

853.13 When will is contractual. (1) A contract not to revoke a will can be established only by: (a) provisions of the will itself sufficiently stating the contract; (b) an express reference in the will to such a contract and evidence proving the terms of the contract; or (c) if the will makes no reference to a contract, clear and convincing evidence apart from the will.

(2) This section applies to a joint will (except if one of the testators has died prior to April 1, 1971) as well as to any other will; there is no presumption that the testators of a joint will have contracted not to revoke it.

After the death of one party, the other party to a will based on contract cannot in effect avoid the will by giving away property. *Estate of Chayka*, 47 W (2d) 102, 176 NW (2d) 561.

The existence of an irrevocable contract does not prevent the making of a later will and its admission to probate; the remedy is an action in equity to enforce the contract. *Estate of Schultz*, 53 W (2d) 643, 193 NW (2d) 655.

See note to 72.12, citing *In Matter of Estate of Jacobs*, 92 W (2d) 266, 284 NW (2d) 638 (1979).

Joint and mutual wills. *Kroncke*, 43 WBB, No. 5.

Contracts to make joint or mutual wills. *O'Donnell*, 55 MLR 103.

853.15 Equitable election if will attempts to dispose of property belonging to beneficiary. (1) NECESSITY FOR ELECTION. Unless the will provides otherwise, if a will gives a bequest or devise to one beneficiary and also clearly purports to give to another beneficiary a property interest which does not pass under the will but belongs to the first beneficiary by right of ownership, survivorship, beneficiary designation, election under s. 861.02 (1) or otherwise, the first beneficiary must elect either to take under the will and transfer his or her property interest in accordance with the will, or to retain his or her property interest and not take under the will. If the beneficiary elects not to take under the will, unless the will provides otherwise the bequest or devise given him or her under the will is to be assigned by the court to the other beneficiary in lieu of the property interest which does not pass under the will. This section does not require an election if the property interest belongs to the first beneficiary by reason of transfer or beneficiary designation made by the decedent after the execution of the will.

(2) **PROCEDURE FOR ELECTION.** If an election is required under sub. (1), the following provisions apply:

(a) The court may by order set a time within which the beneficiary is required to file with the court a written election either to take under the will and forego, waive or transfer his

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property interest in favor of the other person to whom it is given by the will, or to retain such property interest and not take under the will. The time set shall be not earlier than one month after the necessity for such an election and the nature of the interest given to the beneficiary under the will have been determined.

(b) If a written election by the beneficiary to take under the will and transfer his property interest in accordance with the will has not been filed with the court within the time set by order, or if no order setting a time has been entered, then prior to the final judgment, the beneficiary is deemed to have elected not to take under the will.

(c) Except as provided above, participation in the administration by the beneficiary does not constitute an election to take under the will.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393 s. 53.

853.17 Effect of will provision changing beneficiary of life insurance or annuity. (1) Any provision in a will which purports to name a different beneficiary of a life insurance or annuity contract than the beneficiary properly designated in accordance with the contract with the issuing company, or its bylaws, is ineffective to change the contract beneficiary unless the contract or the company's bylaws authorizes such a change by will.

(2) This section does not prevent the court from requiring the contract beneficiary to elect under s. 853.15 in order to take property under the will; nor does it apply to naming a testamentary trustee as designated by a life insurance policy under s. 701.09.

853.18 Designation of beneficiary, payee or owner. (1) Except as otherwise provided in ch. 766, no written designation in accordance with the terms of any insurance, annuity or endowment contract, or in any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and no written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit-sharing or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing, is subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift or intestacy, even though that designation or assignment is revocable or the rights of that beneficiary, payee, owner or assignee are otherwise subject to defeasance.

(2) This section applies to such designations or assignments made either before or after June 25, 1969, by persons who die on or after that date. This section creates no implication of invalidity as to any designation or assignment, of the nature described in sub. (1), made by any person who dies before that date or as to any declaration, agreement or contract for the payment of money or other transfer of property at death not specified under sub. (1).

History: 1983 a. 186.

853.19 Advancement in testate estate. (1) **WHEN GIFT DURING LIFE IS DEDUCTED FROM WILL.** If a testator by his will makes a provision for a beneficiary and later makes a gift during lifetime to that beneficiary, the gift is not to be deducted from the provision in the will as an advance unless: (a) the testator by his will provides for deduction of the gift, or (b) the testator by writing clearly states that the gift is an advance, whether or not such writing is contemporaneous

with the gift, or (c) the beneficiary states by writing or in court that the gift was an advance.

(2) **ADVANCE WHEN GIFT LAPSES.** If the provision in the will fails because of the death of the beneficiary, and issue of that beneficiary take by the terms of a substitutional gift in the will or by reason of s. 853.27, the provision in the will to which the issue become entitled shall be reduced by the amount of the advance unless the contrary intent is apparent from the will or the writing by the testator evidencing the advance.

(3) **VALUATION.** The value of a gift established as an advance under sub. (1) is determined as of the time when the beneficiary comes into possession or enjoyment of the property advanced, or the time of death of the testator if that occurs first.

853.25 Unintentional failure to provide for issue of testator. (1) **CHILDREN BORN OR ADOPTED AFTER MAKING OF THE WILL.** If a testator fails to provide in his will for any child born or adopted after the making of the will, that child is entitled to receive a share in the estate of the testator equal in value to the share which the child would have received if the testator had died intestate, unless: (a) the testator left all or substantially all of his estate to the mother of the child; or (b) the testator eliminated all of his children known to him to be living at the time of execution of the will from any share under the will, or (c) the testator provided for the subsequently born or adopted child by transfers outside the will and the intent that the transfers be in lieu of a testamentary gift is either shown by statements of the testator or inferred from the amount of the transfers and other circumstances, or (d) in any other case it appears from the will or evidence outside the will that the omission was intentional. If a child entitled to a share under this section dies before the testator, and the child leaves issue who survive the testator, the issue who represent the child are entitled to his share.

(2) **LIVING ISSUE OMITTED BY MISTAKE.** If clear and convincing evidence proves that by mistake or accident the testator failed to provide in his will for a child living at the time of making of the will, or for the issue of any then deceased child, the child or issue is entitled to receive a share in the estate of the testator equal in value to the share which he or they would have received if the testator had died intestate. But failure to mention a child or issue in the will is not in itself evidence of mistake or accident.

(3) **TIME FOR PRESENTING DEMAND FOR RELIEF.** A demand for relief under this section must be presented to the court in writing not later than (a) entry of the final judgment, or (b) 6 months after allowance of the will, whichever first occurs.

(4) **FROM WHAT ESTATE SHARE IS TO BE TAKEN.** Except as provided in sub. (5), the court shall in its final judgment assign the share provided by this section:

(a) From any intestate property first;

(b) The balance from each of the beneficiaries under the will in proportion to the value of the estate each would have received under the will as written, unless the obvious intention of the testator in relation to some specific gift or other provision in the will would thereby be defeated, in which case the court may adopt a different apportionment and may exempt a specific gift or other provision.

(5) **DISCRETIONARY POWER OF COURT TO ASSIGN DIFFERENT SHARE.** If in any case under sub. (1) or (2) the court determines that the intestate share is a larger amount than the testator would have wanted to provide for the omitted child or issue of a deceased child, because it exceeds the value of a provision for another child or for issue of a deceased child under the will, or that assignment of the intestate share would unduly disrupt the testamentary scheme, the court may in its final

judgment make such provision for the omitted child or issue out of the estate as it deems would best accord with the probable intent of the testator, such as assignment, outright or in trust, of any amount less than the intestate share but approximating the value of the interest of other issue, or modification of the provisions of a testamentary trust for other issue to include the omitted child or issue.

853.27 Rights of issue of beneficiary dying before testator (lapse). (1) Unless a contrary intent is indicated by the will, if provision in the will is made for any relative of the testator and the relative dies before the testator and leaves issue who survive the testator, then the issue as represent the deceased relative are substituted for him under the will and take the same interest as he would have taken had he survived the testator.

(2) For purposes of this section, a provision in the will means:

(a) A gift to an individual whether he is dead at the time of the making of the will or dies after the making of the will;

(b) A share in a class gift only if a member of the class dies after the making of the will; or

(c) An appointment by the testator under any power of appointment, unless the issue who would take under this section could not have been appointees under the terms of the power.

A bequest to a wife "and to her heirs and assigns forever", where the wife predeceased the testator, held ambiguous where the words were in a residuary clause so that the effect would be intestacy if strictly construed, the draftsman testified that the words were not used in a technical sense and the will acknowledged testator's debt to his wife. Estate of Mangel, 51 W (2d) 55, 186 NW (2d) 276.

A will containing a disinheritance clause and a residuary clause naming a residuary legatee, not related to the testatrix, with no gift over, was subject to the anti-lapse statute as the legacy lapsed when the legatee predeceased the testatrix; hence the lapsed gift passed to the heirs-at-law by intestate succession, not to the children of the deceased named beneficiary. Estate of Connolly, 65 W (2d) 440, 222 NW (2d) 885.

"Relative" within meaning of (1) is one related by blood. In re Estate of Haese, 80 W (2d) 285, 259 NW (2d) 54.

853.29 After-acquired property. A will is presumed to pass all property which the testator owns at his death and which he has power to transmit by will, including property acquired after the execution of the will.

853.31 Presumption that will passes all of testator's interest in property. Any gift of property by will is presumed to pass all the estate or interest which the testator could lawfully will in the property unless it clearly appears by the will, interpreted in light of the surrounding circumstances, that the testator intended to pass a less estate or interest.

Where a testatrix in a single dispositive paragraph divided her estate one half to her sister and the other to 2 nieces, who were her only then living full-blood relatives, and was survived by only the one niece of the whole blood and brothers and sisters of the half blood, provision in the will that it was her intention that all of her estate be inherited by her named "kindred of the whole blood, and none shall go to my brothers and sisters of the half blood" did not permit strict application of the rule of disinheritance so as to create an intestacy in favor of the half brothers and sisters because such literal application would defeat the intention of the testatrix which was that her estate be given to her relatives of the whole blood (here her surviving niece) and none to her brothers and sisters of the half blood. (Rule of disinheritance as enunciated in Will of Ziehlike, 230 Wis. 574, and Will of Rosnow, 273 Wis. 438, modified.) Estate of Farber, 57 W (2d) 363, 204 NW (2d) 478.

853.33 Gift of securities construed as specific. Every gift of a stated number of shares or amount of securities is construed to be a specific gift if the testator owned the same or a greater number of shares or amount of the securities at the time of execution of the will, even though the will does not describe the securities more specifically or qualify the description by a possessive pronoun such as "my", unless the will expressly empowers the personal representative to purchase securities to satisfy the bequest. "Securities" is used in this section in the broadest possible sense and includes but is not

limited to stocks, bonds and corporate securities of any kind, shares in an investment trust or common trust fund, and bonds or other obligations of the United States, any state, other governmental unit or agency, foreign or domestic.

853.35 Nonademption of specific gifts in certain cases. (1) SCOPE OF SECTION. It is the intent of this section to abolish the common law doctrine of ademption by extinction in the situations governed by this section. This section is inapplicable if the intent that the gift fail under the particular circumstances appear in the will, or if the testator during his lifetime gives property to the specific beneficiary with the intent of satisfying the specific gift. Whenever the subject of the specific gift is property only part of which is destroyed, damaged, sold or condemned, the specific gift of any remaining interest in the property owned by the testator at the time of his death is not affected by this section; but this section applies to the part which would have been adeemed under the common law by the destruction, damage, sale or condemnation.

(2) PROCEEDS OF INSURANCE ON PROPERTY. If insured property which is the subject of a specific gift is destroyed, damaged, lost, stolen or otherwise subject to any casualty compensable by insurance, the specific beneficiary has the right to: (a) any insurance proceeds paid to the personal representative after death of the testator, with the incidents of the specific gift; and (b) a general pecuniary legacy equivalent to any insurance proceeds paid to the testator within one year of his death; but the amount hereunder is reduced by any amount expended or incurred by the testator in restoration or repair of the property.

(3) PROCEEDS OF SALE. If property which is the subject of a specific gift is sold by the testator within 2 years of his death, the specific beneficiary has the right to: (a) any balance of the purchase price unpaid at the time of death (including any security interest in the property and interest accruing before death), if part of the estate, with the incidents of the specific gift; and (b) a general pecuniary legacy equivalent to the amount of the purchase price paid to the testator within one year of his death. Acceptance of a promissory note of the purchaser or a 3rd party is not considered payment, but payment on the note is payment on the purchase price; and for purposes of this section property is considered sold as of the date when a valid contract of sale is made. Sale by an agent of the testator or by a trustee under a revocable living trust created by the testator, the principal of which is to be paid to the personal representative or estate of the testator on his death, is a sale by the testator for purposes of this section.

(4) CONDEMNATION AWARD. If property which is the subject of a specific gift is taken by condemnation prior to the testator's death, the specific beneficiary has the right to: (a) any amount of the condemnation award unpaid at the time of death, with the incidents of the specific gift; and (b) a general pecuniary legacy equivalent to the amount of an award paid to the testator within one year of his death. In the event of an appeal in a condemnation proceeding, the award is for purposes of this section limited to the amount established on the appeal. Acceptance of an agreed price or a jurisdictional offer is a sale within the meaning of sub. (3).

(5) SALE BY GUARDIAN OR CONSERVATOR OF INCOMPETENT. If property which is the subject of a specific gift is sold by a guardian or conservator of the testator or a condemnation award or insurance proceeds are paid to a guardian or conservator, the specific beneficiary has the right to a general pecuniary legacy equivalent to the proceeds of the sale or the condemnation award as defined in sub. (4) or the insurance proceeds, reduced by any amount expended or incurred in

restoration or repair of the property. This provision does not apply if testator subsequent to the sale or award or receipt of insurance proceeds is adjudicated competent and survives such adjudication for a period of one year; but in such event sale by a guardian or conservator within 2 years of testator's death is a sale by the testator within the meaning of sub. (3).

(6) **SECURITIES.** If securities are specifically willed to a beneficiary, and subsequent to execution of the will, other securities in the same or another entity are distributed to the testator by reason of his ownership of the specifically bequeathed securities and as a result of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange, or any other similar transaction, and if such other securities are part of testator's estate at death, the specific gift is deemed to include the additional or substituted securities. "Securities" has the same meaning as in s. 853.33.

(7) **REDUCTION OF RECOVERY BY REASON OF EXPENSES AND TAXES.** Throughout this section the amount the specific beneficiary receives is reduced by any expenses of the sale or of collection of proceeds of insurance, sale, or condemnation award and by any amount by which the income tax of the decedent or his estate is increased by reason of items covered by this section. Expenses include legal fees paid or incurred.

853.40 Disclaimer of transfers by will, intestacy or appointment. (1) DEFINITIONS. In this section:

(a) "Beneficiary under a will" includes a beneficiary of a trust or any other interest created by a will.

(b) "Power" has the meaning designated in s. 702.01 (4).

(c) "Property" has the meaning designated in s. 851.27.

(2) **RIGHT TO DISCLAIM.** (a) *In general.* A person who is an heir, person succeeding to a disclaimed intestate interest, beneficiary under a will, person succeeding to a disclaimed interest created by will, donee of a power created by will, appointee under a power exercised by will or taker in default under a power created by will or a guardian of any person identified in this paragraph if that guardian is qualified to disclaim and if that guardian disclaims for the guardian's ward may disclaim any property or interest in property, including contingent or future interests or the right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

(b) *Partial disclaimer.* Property may be disclaimed in whole or in part, except that a partial disclaimer of property passing by will or by the exercise of a power may not be made if partial disclaimer is expressly prohibited by the will or by the instrument exercising the power.

(c) *Spendthrift provision.* The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) *After death.* A person's right to disclaim survives the person's death and may be exercised by the person's personal representative or special administrator upon receiving approval from the court having jurisdiction of the person's estate after hearing upon notice to all interested persons if the personal representative or special administrator has not taken any action which would bar the right to disclaim under sub. (7) (a) and if the right to disclaim is not otherwise barred under sub. (7) (b) or (c).

(3) **INSTRUMENT OF DISCLAIMER.** (a) The instrument of disclaimer shall:

1. Describe the property or interest disclaimed;
2. Declare the disclaimer and the extent of the disclaimer;
3. Be signed by the disclaimant; and
4. Be delivered within the time and in the manner provided under subs. (4) and (5).

(b) Notwithstanding par. (a), any disclaimer which meets the requirements of section 2518 of the U.S. internal revenue code of 1954, or any other provisions of federal law, constitutes an effective disclaimer under this section.

(4) **TIME FOR EFFECTING DISCLAIMER.** (a) *Disclaiming a present interest.* An instrument disclaiming a present interest shall be executed and delivered not later than 9 months after the death of the deceased transferor of property or the deceased donee of a power, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just.

(b) *Disclaiming a future interest.* An instrument disclaiming a future interest shall be executed and delivered not later than 9 months after the event that determines that the taker of the property or interest is finally ascertained and his or her interest indefeasibly fixed, except that, for cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9-month period, for such additional time as the court deems just.

(c) *Future right to income or profits.* Notwithstanding pars. (a) and (b), an instrument disclaiming the future right to receive mandatory distributions of income or profits from any source may be executed and delivered at any time.

(d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21 years of age may disclaim at any time not later than 9 months after the day on which the person attains 21 years of age.

(e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person whose interest in property arises by disclaimer, or by default of exercise of a power created by will, may disclaim at any time not later than 9 months after the day on which the prior instrument of disclaimer is delivered or the date of death of the donee of the power, as the case may be.

(5) **DELIVERY AND FILING OF DISCLAIMER.** (a) *Delivery.* In addition to any requirements imposed by the creating instrument, the instrument of disclaimer is effective only if, within the time specified under sub. (4), it is delivered to and received by:

1. The personal representative or special administrator of the deceased transferor of the property; or
2. The holder of legal title to the property.

(b) *Delivery to trustee.* If the trustee of any trust to which the interest or power relates does not receive the instrument of disclaimer under par. (a), a copy shall also be delivered to the trustee.

(c) *Filing.* A copy of the instrument of disclaimer shall be filed in the probate court having jurisdiction.

(d) *Failure to deliver or file.* Failure to deliver a copy of the instrument of disclaimer to the trustee under par. (b), or to file a copy in the probate court under par. (c), within the time specified under sub. (4), does not affect the validity of any disclaimer.

(e) *Recording.* If real property or an interest in real property is disclaimed, a copy of the instrument of disclaimer may be recorded in the office of the register of deeds of the county in which the real estate is situated.

(6) **EFFECT OF DISCLAIMER.** (a) *Property not vested.* The property or interest disclaimed under this section shall be deemed not to have been vested in, created in or transferred to the disclaimant.

(b) *Devolution.* Unless the deceased transferor of the property or deceased donee of the power has otherwise provided, the property or interest disclaimed devolves as if the disclaimant had predeceased the deceased transferor of the property, or, if the disclaimant is an appointee under a

power exercised by will or a taker in default under a power created by will, as if the disclaimant had predeceased the donee of the power. A disclaimer relates back for all purposes to the date of death of the deceased transferor of the property or the deceased donee of the power, except that a disclaimer of the future right to receive mandatory distributions of income or profits relates to the period stated in the disclaimer.

(c) *Future interest.* Unless the instrument creating the future interest manifests a contrary intent, a future interest to take effect in possession or enjoyment after the termination of the interest which is disclaimed takes effect as if the disclaimant had predeceased the deceased transferor of the property or the deceased donee of the power.

(7) **BAR.** (a) *Method.* A person's right to disclaim property or an interest in property is barred by the person's:

1. Assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor;
2. Written waiver of the right to disclaim; or
3. Acceptance of the property or interest or benefit of the property.

(b) *Payment of debt.* A person's right to disclaim property or an interest in property is barred if there is a pending proceeding under s. 863.46 for the payment of a debt.

(c) *Effect upon successor in interest.* The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under that person.

(8) **NONEXCLUSIVENESS OF REMEDY.** This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest in property under any other statute, the common law or as provided in the creating instrument.

(9) **APPLICABILITY.** This section applies to property or an interest in property existing or created on or after May 13, 1978 if the time for delivery of a disclaimer under this section has not expired.

History: 1977 c. 309; 1983 a. 186; 1983 a. 189 s. 329 (26); 1985 a. 29, 37; 1987 a. 220.

Unless barred by statute, debtor can disclaim bequest, thus defeating creditor's action under 813.026. *Estate of Goldhammer v. Goldhammer*, 138 W (2d) 77, 405 NW (2d) 693 (Ct. App. 1987).

853.50 Definitions. In ss. 853.50 to 853.62:

(1) "By right of representation" means that the issue of a deceased person inherit the share of an estate that their immediate ancestor would have inherited, if living.

(2) "Children" includes all children whether born or adopted before or after a Wisconsin basic will or basic will with trust is executed.

(3) "Issue" means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. 851.51 and children who are not legitimate and their lineal descendants to the extent provided by s. 852.05.

(4) "Testator" means any person choosing to make a Wisconsin basic will or basic will with trust.

(5) "Trustee" means a person so designated in a Wisconsin basic will with trust and any other person acting at any time as the trustee under a Wisconsin basic will with trust.

(6) "Wisconsin basic will" means a Wisconsin basic will executed in accordance with ss. 853.50 to 853.62.

(7) "Wisconsin basic will with trust" means a Wisconsin basic will with trust executed in accordance with ss. 853.50 to 853.62.

History: 1983 a. 376.

853.51 Execution of will. The only method of executing a Wisconsin basic will or basic will with trust is for all of the following to occur:

(1) The testator shall do all of the following:

(a) Complete the blanks, boxes and lines according to the instructions. Any failure to comply with instructions described under s. 853.54 (3) does not affect the validity of the will.

(b) Sign the will.

(2) The witnesses shall do all of the following:

(a) Observe the testator's signing.

(b) Sign their names in the presence of the testator and each other.

History: 1983 a. 376.

853.52 Contents of wills. (1) There are 2 Wisconsin basic wills: the Wisconsin basic will and the Wisconsin basic will with trust.

(2) The Wisconsin basic will includes all of the following:

(a) The contents of the form for the Wisconsin basic will under s. 853.55.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.
2. The clause under s. 853.57.
3. The property disposition clause under s. 853.58 adopted by the testator.
4. The mandatory clauses under s. 853.60.

(3) The Wisconsin basic will with trust includes all of the following:

(a) The contents of the form for the Wisconsin basic will with trust under s. 853.56.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.
2. The clause under s. 853.57.
3. The property disposition clause under s. 853.59 adopted by the testator.
4. The mandatory clauses under ss. 853.60 and 853.61.

(4) Any person who prints forms for the Wisconsin basic will or basic will with trust shall place a signature line on each page of the printed document. A testator shall sign on each such line. Failure to comply with this subsection does not affect the validity of the will.

History: 1983 a. 376.

853.53 Selection of property disposition clause. If more than one property disposition clause is selected or if none is selected, the residuary property of a testator who signs a Wisconsin basic will or basic will with trust shall be distributed to the testator's heirs as if the testator did not make a will.

History: 1983 a. 376.

853.54 Revocation or revision. (1) A Wisconsin basic will or a basic will with trust may be revoked and may be amended in the same manner as other wills.

(2) Any additions to or deletions from the face of the form of the Wisconsin basic will or basic will with trust, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

(3) Notwithstanding sub. (2), any failure to print in the proper places, provide the full name of a person or charity to receive a gift, include residences or use the phrase "not used" where applicable does not affect the validity of a Wisconsin basic will or basic will with trust.

History: 1983 a. 376.

853.55 Wisconsin basic will. The following is the form for the Wisconsin basic will:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

2. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

3. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL. YOU MAY REVOKE THIS WISCONSIN BASIC WILL, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

5. THE FULL TEXT OF THIS WISCONSIN BASIC WILL, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

6. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

7. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

8. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE WISCONSIN BASIC WILL WITH TRUST OR ANOTHER TYPE OF WILL.

11. IF THIS WISCONSIN BASIC WILL DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will shall set forth the above notice in 10-point boldface type.]

WISCONSIN BASIC WILL OF

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. **PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS.** Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. **GIFTS TO PERSONS OR CHARITIES.** I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures (\$....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
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2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will go under Property Disposition Clause (b) and I realize that means the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION.

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL.

Article 3. Nominations of Personal Representative and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before I do or if for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.3. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

[Empty rectangular box for signature]

I sign my name to this Wisconsin Basic Will on (date), at (city), (state).

Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature Residence Address:
Print Name:
Here:

Signature Residence Address:
Print Name
Here:

History: 1983 a 376.

853.56 Wisconsin basic will with trust. The following is the form for the Wisconsin basic will with trust:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR FAMILY. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.
2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.
3. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.
4. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.
5. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL WITH TRUST. YOU MAY REVOKE THIS WISCONSIN BASIC WILL WITH TRUST, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.
6. THE FULL TEXT OF THIS WISCONSIN BASIC WILL WITH TRUST, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).
7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.
8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.
9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.
10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.
11. IF THIS WISCONSIN BASIC WILL WITH TRUST DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will with trust shall set forth the above notice in 10-point boldface type.]

WISCONSIN BASIC WILL WITH TRUST OF

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. **PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS.** Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2 **GIFTS TO PERSONS OR CHARITIES.** I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures (\$....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)</p>	<p>AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.</p>	<p>SIGNATURE OF TESTATOR.</p> <p>.....</p>
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<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)</p>	<p>AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.</p>	<p>SIGNATURE OF TESTATOR.</p> <p>.....</p>
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<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)</p>	<p>AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.</p>	<p>SIGNATURE OF TESTATOR.</p> <p>.....</p>
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<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)</p>	<p>AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.</p>	<p>SIGNATURE OF TESTATOR.</p> <p>.....</p>
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<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)</p>	<p>AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.</p>	<p>SIGNATURE OF TESTATOR.</p> <p>.....</p>
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2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINES. If I sign on more than one line or if I fail to sign on any line, the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

IF YOU HAVE A SUBSTANTIAL ESTATE, CHOOSING CLAUSE (a) OR (b) MIGHT NOT BE THE MOST ADVANTAGEOUS TAX OPTION AVAILABLE TO YOU. If you have questions concerning the tax implications of these clauses, you should consult a competent tax advisor.

PROPERTY DISPOSITION CLAUSES (Select one.)

- (a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.)

- (b) TO MY SPOUSE AND CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING SPOUSE AND NO LIVING CHILD UNDER 21 YEARS OF AGE.

(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.)

Article 3. Nominations of Personal Representative, Trustee and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

[Empty rectangular box for signature]

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. TRUSTEE. (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE

SECOND TRUSTEE

THIRD TRUSTEE

3.3. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before me or for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.4. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative, trustee or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS

I sign my name to this Wisconsin Basic Will With Trust on (date), at (city), (state).

Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL WITH TRUST IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature
Print Name
Here:

Residence Address:

Signature
Print Name
Here:

Residence Address:

History: 1983 a. 376

853.57 Personal, recreational and household items. The following is the full text of paragraph 2.1 of the Wisconsin basic will and the basic will with trust:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, recreational equipment, household furnishings and effects, and other tangible articles of a household, recreational or personal use, together with all policies of insurance insuring any such items. If my spouse does not survive me, the personal representative shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the personal representative's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

History: 1983 a. 376

853.58 Residuary estate; basic will. The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

History: 1983 a. 376

853.59 Residuary estate; basic will with trust. The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will with trust, except that if a different age is specified by the testator in the Wisconsin basic will with trust, that specified age is substituted for 21 years in this section:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much, or all, of the principal or net income of the trust or both, as the trustee deems necessary for their health, support, maintenance and education of my descendants. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational and other studies after high school, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO MY SPOUSE AND CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING SPOUSE OR CHILD UNDER 21 YEARS OF AGE.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as my spouse or any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of my spouse or any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much or all, of the principal or net income of the trust or both as the trustee deems necessary for their health, support, maintenance and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational and other studies after high school, and reasonably related living expenses. The welfare of my spouse is the primary consideration regarding distributions. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when my spouse is not living and there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall

distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

History: 1983 a. 376.

Trust B of the Wisconsin basic will may be a hazardous estate plan. Erlanger and Crowley, WBB January, 1986.

853.60 Mandatory clauses. The Wisconsin basic will and basic will with trust include the following mandatory clauses:

(1) **INTESTATE DISPOSITION.** If the testator has not made an effective disposition of the residuary estate, the personal representative shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the state of Wisconsin in effect on the date of the testator's death.

(2) **POWERS OF PERSONAL REPRESENTATIVE.** (a) In addition to any powers conferred upon personal representatives by law, the personal representative may do any of the following:

1. Sell estate assets at public or private sale, for cash or on credit terms.

2. Lease estate assets without restriction as to duration.

3. Invest any surplus moneys of the estate in real or personal property, as the personal representative deems advisable.

(b) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to any of the following:

1. The guardian of the minor's person or estate.

2. Any adult person with whom the minor resides and who has the care, custody or control of the minor.

3. A custodian, serving on behalf of the minor under the uniform gifts to minors act or uniform transfers to minors act of any state.

(c) On any distribution of assets from the estate, the personal representative may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the personal representative may distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

(3) **POWERS OF GUARDIAN.** A guardian of the person or of the estate nominated in the Wisconsin basic will or basic will with trust, and subsequently appointed, shall have all of the powers conferred by law.

History: 1983 a. 376; 1987 a. 191.

853.61 Mandatory clauses; basic will with trust. The Wisconsin basic will with trust includes the following mandatory clauses:

(1) **INEFFECTIVE DISPOSITION.** If, at the termination of any trust created in the Wisconsin basic will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the state of Wisconsin then in effect.

(2) **POWERS OF TRUSTEE.** (a) In addition to any powers conferred upon trustees by law, the trustee shall have all the powers listed in s. 701.16.

(b) In addition to the powers granted in par. (a), the trustee may:

1. Hire and pay from the trust the fees of investment advisers, accountants, tax advisers, agents, attorneys and other assistants for the administration of the trust and for the

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management of any trust asset and for any litigation affecting the trust.

2. On any distribution of assets from the trust, the trustee may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

3. The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the uniform gifts to minors act or uniform transfers to minors act of any state. The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with this section.

(3) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a Wisconsin basic will with trust:

(a) The interests of trust beneficiaries shall not be transferable by voluntary or involuntary assignment or by operation

of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy or other legal process to the fullest extent permissible by law.

(b) The trustee shall be entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(c) All persons who have any interest in a trust under a Wisconsin basic will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the Wisconsin basic will with trust.

History: 1983 a. 376; 1987 a. 191.

853.62 Date of execution of will. Except as specifically provided in ss. 853.50 to 853.61, a Wisconsin basic will or basic will with trust includes only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the will is executed.

History: 1983 a. 376.

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