

1991 Assembly Bill 984

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1991 WISCONSIN ACT 224

AN ACT to amend 852.01 (1) (a) 2 and 861.02 (1) of the statutes, relating to: making the surviving spouse's share of decedent's deferred marital property under intestacy automatic rather than elective.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 852.01 (1) (a) 2. of the statutes is amended to read:

852.01 (1) (a) 2. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of that portion of the decedent's net estate not disposed of by will consisting of decedent's property other than marital property and other than property described under s. 861.02 (1).

NOTE: Amends the surviving spouse's share under intestacy, when there are surviving issue of the decedent who are not also issue of the surviving spouse, by making the surviving spouse's share of decedent's deferred marital property automatic, rather than elective. Making the share of deferred marital property automatic:

1. Will simplify administration;
2. Is consistent with the intestacy rule that applies when there are no issue of the decedent or when the surviving issue are all issue of the surviving spouse and decedent; and
3. Is arguably more consistent with the expectations of surviving spouses and with the general approach of modern intestacy laws, which favors the surviving spouse.

It should be noted that, to the extent the revision results in a surviving spouse receiving more of a decedent's deferred

marital property [because the share is now automatic and there is no longer a potential bar under s. 861.13, stats.], children of the decedent spouse, as long as there is at least one who is not also the child of the surviving spouse, will receive less under the intestacy rules.

SECTION 2. 861.02 (1) of the statutes is amended to read:

861.02 (1) In addition to the right to elect under s. 861.03 and unless barred under s. 861.13, at the death of a spouse whose domicile is in this state the surviving spouse may elect, under s. 861.11, not more than a one-half interest in any or all items of the deferred marital property then owned by the decedent spouse which is subject to administration, reduced by any of that property used to satisfy obligations for which the property is available under s. 859.18. The election under this section does not apply to deferred marital property that passes under s. 852.01 (1) (a) or (b).

NOTE: Reflects that the intestacy rules no longer require an election of deferred marital property. See SECTION 1.

SECTION 3. Initial applicability. This act first applies to deaths that occur on the effective date of this SECTION.