

CHAPTER 766

PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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NOTE: Chapter 766 was created by 1983 Wis. Act 186 and affected by 1985 Wis. Act 37. Act 37 contains a prefatory note and notes following most of the sections affected by the act. These notes are not included. The explanatory notes in Act 37 were prepared by the legislative council and revised by its staff after the legislature adopted a conference substitute amendment to the original bill. Legislative council information memorandum 85–7, part I, contains original and supplemental explanatory notes to the marital property implementation law, 1985 Wis. Act 37. Part II of the memorandum contains supplemental explanatory notes to the tax provisions of the marital property implementation law, 1985 Wis. Acts 29 and 37.

See also 1987 Wis. Act 393, which contains a long prefatory note and notes following the sections affected.

766.001 Liberal construction; intent. (1) This chapter is remedial in nature and shall be liberally construed, consistent with s. 766.96.

(2) It is the intent of the legislature that marital property is a form of community property.

History: 1983 a. 186; 1985 a. 37.

Chapter 766, the Marital Property Act, does not supplant divorce property division provisions. In re Marriage of Kuhlman v. Kuhlman, 146 Wis. 2d 588, 432 N.W.2d 295 (Ct. App. 1988).

Anthology of articles and comments on the marital property act. 68 MLR No. 3 (1985).

A brief overview: The new Wisconsin marital property act. Weisberger and Wilcox. WBB July, 1984.

The marital property law. WBB July, 1984.

The trailer bill: A survey of the 1985 amendments to the Wisconsin marital property act. Furrh, WBB December, 1985.

Estate planning under Wisconsin's marital property act. Erlanger, Hughes and Weisberger, WBB February, 1986.

766.01 Definitions. In this chapter:

(1) “Acquiring” property includes reducing indebtedness on encumbered property and obtaining a lien on or security interest in property.

(2) “Appreciation” means a realized or unrealized increase in the value of property.

(2m) (a) Except as provided in pars. (b) and (c), “credit” means the right granted by a creditor to defer payment of a debt, incur debt and defer its payment or purchase property or services and defer payment for the property or services.

(b) If used in connection with a transaction governed under chs. 421 to 427, “credit” has the meaning specified in s. 421.301 (14).

(c) Paragraph (a) does not apply to s. 766.56 (2) (c) and (d).

(2r) (a) Except as provided in pars. (b) and (c), “creditor” means a person that regularly extends credit.

(b) If used in connection with a transaction governed under chs. 421 to 427, “creditor” has the meaning specified in s. 421.301 (16).

(c) Paragraph (a) does not apply to s. 766.55 (3) to (4m), 766.56 (2) (c) and (d) or 766.61 (4).

(3) “Decree” means a judgment or other order of a court.

(3m) “Deferred employment benefit” means a benefit from a deferred employment benefit plan.

(4) (a) “Deferred employment benefit plan” means a plan, fund, program or other arrangement under which compensation or benefits from employment are expressly, or as a result of surrounding circumstances, deferred to a later date or the happening of a future event. “Deferred employment benefit plan” includes but is not limited to a pension, profit sharing or stock–bonus plan, an employee stock–ownership or stock–purchase plan, a savings or thrift plan, an annuity plan, a qualified bond–purchase plan, a self–employed retirement plan, a simplified employee pension and a deferred compensation agreement or plan.

(b) “Deferred employment benefit plan” does not include life, health, accident or other insurance or a plan, fund, program or other arrangement providing benefits similar to insurance benefits, except to the extent that benefits under the plan:

1. Have a present value that is immediately realizable in cash at the option of the employee;
2. Constitute an unearned premium for the coverage;
3. Represent a right to compensation for loss of income during disability; or
4. Represent a right to payment of expenses incurred before time of valuation.

(5) “Determination date” means the last to occur of the following:

- (a) Marriage.
- (b) 12:01 a.m. on the date that both spouses are domiciled in this state.
- (c) 12:01 a.m. on January 1, 1986.

(6) “Disposition at death” means transfer of property by will, intestate succession, nontestamentary transfer or other means that takes effect at the transferor’s death.

(7) “Dissolution” means termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity or entry of a decree of legal separation or separate maintenance. The term does not include a decree resulting from an action available under ch. 767 which is not an annulment, a divorce or a legal separation.

(8) “During marriage” means a period in which both spouses are domiciled in this state that begins at the determination date and ends at dissolution or at the death of a spouse.

(9) (a) Except as provided in pars. (b) to (d), property is “held” by a person only if a document of title to the property is registered, recorded or filed in a public office in the name of the person or a writing that customarily operates as a document of title to the type of property is issued for the property in the person’s name.

(b) An account is “held” by the person who, by the terms of the account, has a present right, subject to request, to payment from the account other than as an agent. Accounts that are so “held” include accounts under s. 705.01 (1) and brokerage accounts.

(c) An uncertificated security, as defined under s. 408.102 (1) (r), is “held” by the person identified as the registered owner of the security upon books maintained for that purpose by or on behalf of the issuer. If the registered owner of an uncertificated security is identified as a brokerage account, the security is “held” as provided under par. (b).

(d) The property rights, as specified and described in ss. 178.21 and 178.22, of a partner in a general partnership are “held” by the partner.

(10) “Income” means wages, salaries, commissions, bonuses, gratuities, payments in kind, deferred employment benefits, proceeds, other than death benefits, of any health, accident or disability insurance policy or of any plan, fund, program or other arrangement providing benefits similar to those forms of insurance, other economic benefits having value attributable to the effort of a spouse, dividends, dividends on life insurance and annuity contracts to the extent that the aggregate of the dividends exceeds the aggregate premiums paid, interest, income distributed from trusts and estates, and net rents and other net returns attributable to investment, rental, licensing or other use of property, unless attributable to a return of capital or to appreciation.

(11) “Management and control” means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding or otherwise deal with property as if it were property of an unmarried person.

(12) “Marital property agreement” means an agreement that complies with s. 766.58, 766.585, 766.587, 766.588 or 766.589. The term does not include the financial disclosure form under s. 766.588 (9) or 766.589 (10).

(13) A person has “notice” of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to the person.

(15) “Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

(16) “Written consent” means a document signed by a person against whose interests it is sought to be enforced.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1997 a. 297.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

From Common Law Property to Community Property: Wisconsin’s Marital Property Act Four Years Later. Erlanger and Weisberger. 1990 WLR 769.

766.03 Applicability. (1) Except as provided in sub. (4) and ss. 766.58 (5), (11) and (12) and 766.585, this chapter first applies to spouses upon their determination date.

(2) After this chapter first applies to spouses, it continues to apply to spouses during marriage. Section 766.75 applies after a dissolution. If at the time of the death of a spouse both spouses are domiciled in this state, the provisions of this chapter which have application after the death of a spouse apply.

(3) The cessation of the application of this chapter because a spouse is no longer domiciled in this state does not by itself affect any property, right, interest or remedy acquired under this chapter by either spouse or by a 3rd party or the satisfaction of any obligation incurred by a spouse under this chapter.

(4) Section 766.97 applies to a spouse in this state whether or not that person is domiciled in this state.

(5) Any property, right, interest or remedy of a spouse or 3rd party acquired or property that is available to satisfy an obligation incurred on or after January 1, 1986, and before May 3, 1988, shall not be adversely affected by 1987 Wisconsin Act 393, sections 10, 11, 15, 16, 27, 29 and 32.

(6) This chapter does not affect the property available to satisfy an obligation incurred by a spouse that is attributable to an obligation arising when one or both spouses are not domiciled in

this state or to an act or omission occurring when one or both spouses are not domiciled in this state.

History: 1987 a. 393; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.15 Responsibility between spouses. (1) Each spouse shall act in good faith with respect to the other spouse in matters involving marital property or other property of the other spouse. This obligation may not be varied by a marital property agreement.

(2) Management and control by a spouse of that spouse’s property that is not marital property in a manner that limits, diminishes or fails to produce income from that property does not violate sub. (1).

History: 1983 a. 186.

Intentional misrepresentation is a breach of the duty of good faith for which the exclusive pre-divorce remedy is s. 766.70 (1). *Gardner v. Gardner*, 175 Wis. 2d 420, 499 N.W.2d 266 (Ct. App. 1993).

766.17 Variation by marital property agreement.

(1) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 766.58 (2), a marital property agreement may vary the effect of this chapter.

(2) Section 859.18 (6) governs the effect of a marital property agreement upon property available for satisfaction of obligations after the death of a spouse.

History: 1983 a. 186; 1985 a. 37.

766.31 Classification of property of spouses. (1) All

property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub. (8).

(2) All property of spouses is presumed to be marital property.

(3) Each spouse has a present undivided one-half interest in each item of marital property, but the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

(4) Except as provided under subs. (7) (a), (7p) and (10), income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.

(5) The transfer of property to a trust does not by itself change the classification of the property.

(6) Property owned at a marriage which occurs after 12:01 a.m. on January 1, 1986, is individual property of the owning spouse if, at the marriage, both spouses are domiciled in this state.

(7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:

(a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution of principal or income from a trust created by a 3rd person to one spouse is the individual property of that spouse unless the trust provides otherwise.

(b) In exchange for or with the proceeds of other individual property of the spouse.

(c) From appreciation of the spouse’s individual property except to the extent that the appreciation is classified as marital property under s. 766.63.

(d) By a decree, marital property agreement or reclassification under sub. (10) designating it as the individual property of the spouse.

(e) As a recovery for damage to property under s. 766.70, except as specifically provided otherwise in a decree or marital property agreement.

(f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied

from marital property and except for the amount attributable to loss of income during marriage.

(7p) Income attributable to all or specified property other than marital property, with respect to which a spouse has executed under s. 766.59 a statement unilaterally designating that income as his or her individual property, is individual property.

(8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date or the classification and ownership rights of property acquired after the determination date in exchange for or with the proceeds of property acquired before the determination date.

(9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

(10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01 (4), signed by both spouses, marital property agreement, written consent under s. 766.61 (3) (e) or unilateral statement under s. 766.59 and, if the property is a security, as defined in s. 705.21 (11), by an instrument, signed by both spouses, which conveys an interest in the security. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1993 a. 160.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

Marital property presumptions and tracing principals are applied. In *Matter of Estate of Lloyd*, 170 Wis. 2d 240, 487 N.W.2d 644 (Ct. App. 1992).

The marital property law does not reduce a non-negligent mother's wrongful death recovery for the father's contributory negligence in their child's death. *Smith v. State Farm Fire & Casualty Co.* 192 Wis. 2d 322, 531 N.W.2d 376 (Ct. App. 1995).

A quitclaim deed of a married couple's homestead from one spouse to the other is not valid to alienate the grantor's interest in the property in any way that would eliminate either spouse's contractual obligations under a mortgage containing a valid drag-net clause. *Schmidt v. Waukesha State Bank*, 204 Wis. 2d 426, 555 N.W.2d 655 (Ct. App. 1996).

The termination under sub. (3) of a marital property interest in pension benefits did not prevent the application of the equitable principle that a murderer should not profit from the crime. The trial court acted properly in imposing a constructive trust on the decedent's marital property interest in the murderer's pension benefits. *Estate of Hackl v. Hackl*, 231 Wis. 2d 43, 605 N.W.2d 579 (Ct. App. 1999).

Irreconcilable differences: Income from separate property under divorce law and under Wisconsin's marital property act. *Bascom*. 70 MLR 41 (1986).

The effects of the Wisconsin marital property act on trusts: Whose property is it? *Kusky, WBB March*, 1985.

766.51 Management and control of property of spouses. (1) A spouse acting alone may manage and control:

(a) That spouse's property that is not marital property.

(am) Except as provided in subs. (2) and (3), marital property held in that spouse's name alone or not held in the name of either spouse.

(b) Marital property held in the names of both spouses in the alternative, including marital property held in a form designating the holder by the words "(name of one spouse) or (name of other spouse)".

(d) A policy of insurance if that spouse is designated as the owner on the records of the policy issuer.

(e) Any right of an employee under a deferred employment benefit plan that accrues as a result of that spouse's employment.

(f) A claim for relief vested in that spouse by other law.

(1m) (a) Notwithstanding any provision in this section except par. (b), for the purpose of obtaining an extension of credit for an obligation described under s. 766.55 (2) (b), a spouse acting alone may manage and control all of the marital property.

(b) Unless the spouse acting alone may otherwise under this section manage and control the property, the right to manage and control marital property under this subsection does not include the right to manage and control marital property described in s.

766.70 (3) (a) to (d) or the right to assign, create a security interest in, mortgage or otherwise encumber marital property.

(2) Spouses may manage and control marital property held in the names of both spouses other than in the alternative only if they act together.

(3) The right to manage and control marital property transferred to a trust is determined by the terms of the trust.

(4) The right to manage and control marital property permits gifts of that property, subject to remedies under this chapter.

(5) The right to manage and control marital property does not determine the classification of property of the spouses and does not rebut the presumption under s. 766.31 (2).

(6) The enactment of this chapter does not affect the right to manage and control any property of either or both spouses acquired before the determination date.

(7) A court may appoint a conservator or guardian under ch. 880 to exercise a disabled spouse's right to manage and control marital property.

(8) This section does not affect s. 706.02 (1) (f).

(9) If an executory contract for the sale of property is entered into by a person having the right of management and control of the property, the rights of all persons then having or thereafter acquiring an interest in the property under this chapter are subject to the terms of the executory contract. This subsection applies to contracts entered into before or after the determination date.

(10) At the death of a spouse if property described under s. 766.70 (3) (a), (b) or (d) is held by either spouse, but not in the names of both spouses, such property may be subject to the management and control of the holding spouse as provided under s. 857.015.

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

766.53 Gifts of marital property to 3rd persons. A spouse acting alone may give to a 3rd person marital property that the spouse has the right to manage and control only if the value of the marital property given to the 3rd person does not aggregate more than either \$1,000 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses. Any other gift of marital property to a 3rd person is subject to s. 766.70 (6) unless both spouses act together in making the gift. Under this section and for the purpose of s. 766.70 (6) (a), in the case of a gift of marital property by a spouse to a 3rd person in which the donor spouse has retained an interest, the gift shall be valued at the full value of the entire transfer of marital property, regardless of any retained interest or interest donated to the other spouse. For purposes of this section only, a gift of a life insurance policy by a spouse to a 3rd person shall be valued at the amount payable under the policy if the insured died at the time the gift was made.

History: 1983 a. 186; 1985 a. 37.

766.55 Obligations of spouses. (1) An obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family. A statement separately signed by the obligated or incurring spouse at or before the time the obligation is incurred stating that the obligation is or will be incurred in the interest of the marriage or the family is conclusive evidence that the obligation to which the statement refers is an obligation in the interest of the marriage or family, except that the existence of that statement does not affect any interspousal right or remedy.

(2) After the determination date all of the following apply:

(a) A spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from all marital property and all other property of the obligated spouse.

(b) An obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from all marital property and all other property of the incurring spouse.

(c) 1. An obligation incurred by a spouse before or during marriage that is attributable to an obligation arising before marriage or to an act or omission occurring before marriage may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the marriage.

2. An obligation incurred by a spouse before, on or after January 1, 1986, that is attributable to an obligation arising before January 1, 1986, or to an act or omission occurring before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(cm) An obligation incurred by a spouse during marriage, resulting from a tort committed by the spouse during marriage, may be satisfied from the property of that spouse that is not marital property and from that spouse's interest in marital property.

(d) Any other obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not marital property and from that spouse's interest in marital property, in that order.

(2m) Unless the dissolution decree or any amendment to the decree so provides, no income of a nonincurring spouse is available for satisfaction of an obligation under sub. (2) (b) after entry of the decree. Marital property assigned to each spouse under that decree is available for satisfaction of such an obligation to the extent of the value of the marital property at the date of the decree. If a dissolution decree provides that the nonincurring spouse is responsible for satisfaction of the obligation, the obligation may be satisfied as if both spouses had incurred the obligation.

(3) This chapter does not alter the relationship between spouses and their creditors with respect to any property or obligation in existence on the determination date. An obligation of a guarantor, surety or indemnitor arising after the determination date under a guaranty or contract of indemnity or surety executed before the determination date is an obligation in existence on the determination date.

(4) Any written consent signed by a creditor which diminishes the rights of the creditor provided in this section is binding on the creditor.

(4m) Except as provided under s. 766.56 (2) (c), no provision of a marital property agreement or of a decree under s. 766.70 adversely affects the interest of a creditor unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred or, in the case of an open-end plan, as defined under s. 766.555 (1) (a), when the plan was entered into. If a creditor obtains actual knowledge of a provision of a marital property agreement or decree after an obligation is incurred or an open-end plan is entered into, the provision does not adversely affect the interest of the creditor with respect to that obligation or plan, including any renewal, extension, modification or use of the obligation or plan. The effect of this subsection may not be varied by a marital property agreement or a decree. This subsection does not affect the application of ch. 706.

(5) This chapter does not affect the exemption of any property of spouses from availability for satisfaction of an obligation, provided by other law.

(6) Subsections (2) and (2m) and s. 859.18 do not affect the satisfaction of an obligation of a spouse from collateral or other security for that obligation.

(7) Property available under this chapter to satisfy an obligation of a spouse is available regardless of whether the property is located in this state or whether this chapter no longer applies because one or both spouses are no longer domiciled in this state.

(8) After the death of a spouse, property is available for satisfaction of obligations as provided in s. 859.18.

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

Sub. (2) (c) bars the use of marital property income to satisfy pre-marital obligations, including modifications of support or maintenance under ch. 767. In re Marriage of Burger v. Burger, 144 Wis. 2d 514, 424 N.W.2d 691 (1988).

While sub. (2) (c) 2. precludes the state from satisfying a liable family member's pre-marital or pre-Act debt from a non-liable member's income, it does not preclude the department from considering the non-liable member's income in determining the liable member's ability to pay under ch. 46. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Under sub. (2) (cm) neither an innocent spouse nor an innocent spouse's insurer is liable for the tort obligations of a tortfeasor spouse. Bothe v. American Family Ins. Co., 159 Wis. 2d 378, 464 N.W.2d 109 (Ct. App. 1990).

The presumption that a debt is incurred in the interest of marriage does not apply to an obligation for support under sub. (2) (a), and thus sub. (2m) does not apply to obligations for spousal support. St. Marys Medical Center v. Brody, 186 Wis. 2d 100, 519 N.W.2d 713 (Ct. App. 1994).

The obligation of support is imposed under s. 765.001 and is not relieved simply because s. 766.55 (2) (a) may not apply. Sinai Samaritan Medical Center, Inc. v. McCabe, 197 Wis. 2d 709, 541 N.W.2d 190 (Ct. App. 1995), 95-0012.

The definition of "creditor" under s. 766.01 (2r) does not apply to sub. (4m). A judgment creditor is a creditor for purposes of sub. (4m) and must have notice of the marital property agreement at the time the misconduct resulting in the judgment occurred in order for the agreement to be effective against the creditor. The Journal Sentinel, Inc. v. Schultz, 2001 WI App 260, 248 Wis. 2d 791, 638 N.W.2d 76.

A creditor's right to reach property subject to division in a divorce is not determined by s. 767.255, but is driven solely by the classification into which the obligation falls under this section. A restitution order imposed by a criminal judgment for conversion was an obligation resulting from a tort committed by the incurring spouse under sub. (2) (cm). Whether an obligation resulted from a tort requires examination of the spouse's conduct that gave rise to the claim made. An individual's conduct may constitute a tort without a civil judgment so concluding. Sokaogon Gaming Enterprise v. Curda-Derickson, 2003 WI App 167, 266 Wis. 2d 453, 668 N.W.2d 736, 02-0924.

Necessaries and family purpose debts. Rubenzer. Wis. Law. Oct. 1996.

766.555 Obligations of spouses under open-end plans. (1) In this section:

(a) "Open-end plan" means credit extended on an account pursuant to a plan under which the creditor may permit a spouse to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide.

(b) "Open-end plan" includes only those open-end plans entered into by a person whose spouse is not a party to the account.

(2) (a) This subsection applies to spouses for whom the determination date is 12:01 a.m. on January 1, 1986.

(b) Unless additional property is available under par. (c), an obligation incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property that would have been the property of that spouse but for the enactment of this chapter.

(c) 1. An obligation described under s. 766.55 (2) (b) incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is available under par. (b) and, if the creditor gives written notice complying with this paragraph to both spouses prior to the date the obligation is incurred, from all marital property.

2. The notice under subd. 1. shall describe the nature of the open-end plan and state that an obligation described under s. 766.55 (2) (b) that is incurred under the open-end plan may be satisfied from all marital property of the spouses, including the income of both spouses, and from the property of the incurring spouse that is not marital property.

3. The notice under subd. 1. is considered given on the date it is mailed by the creditor.

4. The notice under subd. 1. may be enclosed in an envelope addressed to the incurring spouse at the last-known address of that spouse appearing on the records of the creditor if a statement appears on the face of the envelope alerting both spouses that the envelope contains important information for both spouses.

(3) (a) This subsection applies to persons for whom the determination date is after 12:01 a.m., January 1, 1986.

(b) Except as provided under par. (c), an obligation incurred by a spouse after the determination date for that spouse, under an

open–end plan entered into by that spouse before that determination date, may be satisfied only from all property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(c) An obligation described under s. 766.55 (2) (b) incurred by a spouse after the determination date for that spouse under an open–end plan entered into by that spouse before that determination date may be satisfied from all marital property and all other property of the incurring spouse.

History: 1985 a. 37.

766.56 Credit transactions with married persons.

(1) If a spouse applies for credit that will result in an obligation described under s. 766.55 (2) (b), the creditor, in evaluating the spouse’s creditworthiness, shall consider all marital property available under s. 766.55 (2) (b) to satisfy the obligation in the same manner that the creditor, in evaluating the creditworthiness of an unmarried credit applicant, considers the property of an unmarried credit applicant available to satisfy the obligation.

(2) (a) The recording, under s. 59.43 (1) (r), of a marital property agreement or a unilateral statement or revocation under s. 766.59 does not constitute actual or constructive notice to 3rd parties. This paragraph does not affect the application of ch. 706.

(b) A creditor shall include in every written application for an extension of credit that is governed by chs. 421 to 427 a notice that no provision of a marital property agreement, a unilateral statement under s. 766.59 or a court decree under s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. The notice requirement under this paragraph does not apply to renewals, extensions or modifications or the use of an open–end credit plan.

(c) If the applicant spouse in any credit transaction discloses the existence of a currently effective marital property agreement or a decree issued under s. 766.70 and provides a copy of it to the creditor prior to the time credit is granted or, in the case of an open–end plan, as defined under s. 766.555 (1) (a), prior to the time the open–end plan is entered into, the creditor is bound by any property classification, characterization of an obligation, or management and control right contained in the agreement or decree. If a spouse discloses the existence of an agreement or decree after credit is granted or an open–end plan is entered into, the creditor is not bound under this paragraph by the agreement or decree with respect to that obligation or open–end plan, including any renewals, extensions, modifications or use of the obligation or open–end plan.

(d) When a person applies for credit, the creditor may inquire as to whether the person is married, unmarried or separated, under a decree of legal separation.

(3) (a) In this subsection, “extends credit” means that an open–end credit plan, as defined under s. 421.301 (27), is established after the determination date, or that credit other than open–end credit is extended after the determination date. The term does not include renewals, extensions, modifications or the use of an open–end credit plan. This subsection does not apply to an open–end credit plan described under s. 766.555 (2) or (3).

(b) Except as provided in par. (c), if a creditor extends credit to a spouse in a credit transaction governed by chs. 421 to 427 and the extension of credit may result in an obligation described under s. 766.55 (2) (b), the creditor shall give the nonapplicant spouse written notice of the extension of credit before any payment is due. The notice requirement may be satisfied by providing a copy of the instrument, document, agreement or contract evidencing the obligation to pay or any required credit disclosure which is given to the applicant spouse, or by providing a separate writing briefly describing the nature of the credit extended. Notice is considered given on the date it is mailed to the address of the nonapplicant

spouse provided to the creditor by the applicant spouse. If the applicant spouse informs the creditor that the spouses reside at the same address, the notice may be enclosed in an envelope addressed to the nonapplicant spouse or both spouses.

(c) Notice is considered given under par. (b) if the nonapplicant spouse has actual knowledge that the credit is extended or waives the notice requirement in a signed writing.

(4) (a) Any financial organization or any other credit–granting commercial institution that violates sub. (1) is subject to the penalties under s. 138.20.

(b) Except as provided in par. (c), a creditor that fails to give notice under sub. (2) (b) is liable to each applicant spouse in the amount of \$25. Except as provided in par. (c), a creditor that fails to give notice under sub. (3) is liable to the nonapplicant spouse in the amount of \$25.

(c) A creditor is not subject to a penalty under par. (b) if the creditor shows by a preponderance of the evidence that failure to give notice was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

History: 1983 a. 186; 1985 a. 37 ss. 100 to 108, 187; 1995 a. 201.

A creditor’s failure to provide the non–applicant spouse notice under sub. (3) (b) does not prevent the obligation from being classified as marital and does not affect the creditor’s right to recovery. The non–applicant’s only remedy is under sub. (4) (b). *Park Bank–West v. Mueller*, 151 Wis. 2d 476, 444 N.W.2d 754 (Ct. App. 1989).

766.565 Relationship to consumer act. (1) In this section, “open–end credit plan” has the meaning given under s. 421.301 (27). The term includes only those plans governed by chs. 421 to 427.

(2) Except as provided under sub. (6), this section does not impose any additional or separate notice requirements on a creditor.

(3) The spouse of a person who incurs an obligation described under s. 766.55 (2) (b) and governed by chs. 421 to 427 may exercise rights and remedies available to the incurring spouse under chs. 421 to 427.

(4) Section 422.305 does not apply to the spouse of a person who incurs an obligation described under s. 766.55 (2) (b) unless that spouse also signs the writing evidencing the credit transaction or a separate guarantee or similar instrument and unless the other requirements of s. 422.305 are met.

(5) The spouse of a person who establishes an open–end credit plan that may result in an obligation described under s. 766.55 (2) (b) may terminate the plan by giving written notice of termination to the creditor. A writing evidencing an open–end credit plan may include a provision that authorizes the creditor to declare the account balance due and payable upon receipt of notice of termination, notwithstanding s. 425.103 or 425.105. Notice of termination does not affect the liability of the incurring spouse or the availability of the incurring spouse’s interest in marital property or other property of that spouse to satisfy obligations incurred under the open–end credit plan, both before and after the notice of termination. Subject to the limits under s. 422.4155 (1), the terminating spouse’s interest in marital property continues to be available under s. 766.55 (2) (b) to satisfy obligations incurred in the interest of the marriage or family both before and after notice of the termination. A creditor may consider in its evaluation of subsequent applications for credit the fact that a prior open–end credit plan offered by the creditor and entered into by the applicant spouse has been terminated under this subsection.

(6) Written notice to a spouse under s. 422.415 (2) (a) or (c) concerning an increase in the rate of finance charge is not effective with respect to the interest of the nonincurring spouse in marital property unless notice is given to both spouses. Notice is considered given on the date it is mailed by the creditor. The notice may be enclosed in an envelope addressed to the incurring spouse at the last–known address of that spouse appearing on the records of the creditor if a statement appears on the face of the envelope alerting

the spouses that the envelope contains important information for both spouses.

(7) With respect to consumer credit transactions, the division of banking may promulgate rules to interpret this chapter and chs. 421 to 427, consistent with the purposes and policies of this chapter and chs. 421 to 427.

History: 1985 a. 37; 1995 a. 27.

766.57 Protection of bona fide purchasers dealing with spouses. (1) In this section:

(a) “Bona fide purchaser” means a purchaser of property for value who was not knowingly a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse and acted in the transaction in good faith.

(b) “Purchase” means to acquire property by sale, lease, discount, negotiation, mortgage, pledge or lien, or otherwise to deal with property in a voluntary transaction other than a gift.

(c) A purchaser gives “value” for property acquired in return for a binding commitment to extend credit, as security for or in total or partial satisfaction of a preexisting claim, by accepting delivery pursuant to a preexisting contract for purchase, or, generally, in return for any consideration sufficient to support a simple contract.

(2) Notice of the existence of a marital property agreement, a marriage or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

(3) Marital property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under s. 766.51 is acquired free of any claim of the other spouse and of any claim asserted through or under the other spouse. The effect of this subsection may not be varied by a marital property agreement.

History: 1983 a. 186; 1985 a. 37.

766.575 Protection of trustees dealing with spouses.

(1) In this section:

(a) “Business day” has the meaning given under s. 421.301 (6).

(b) “Governing instrument” means the contract or other instrument pursuant to which a trustee has possession or control of property. The term includes, in the case of trustees whose rights, duties and responsibilities are fixed by court order or statute or both, the court order and the applicable statutory provisions as modified by any court order, as they would apply if this chapter had not been enacted.

(c) “Notice of claim” means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or person claiming under a deceased spouse’s disposition at death, that the person claims to be entitled to property in the trustee’s possession or control, specifying the portion of property to which the claim relates.

(d) “Property” includes, in addition to the meaning given under s. 766.01 (15), any proceeds of property, any income earned on property or derived from property and any income or proceeds derived from proceeds or income previously received and reinvested.

(e) “Trustee” has the meaning given under s. 701.01 (8).

(2) Except as provided in sub. (3), in a court order or in the terms of a trust, the classification of property in the possession or control of a trustee shall not affect the trustee’s right and duty to administer, manage and distribute the property in accordance with the terms of the governing instrument and the trustee may rely on and act in accordance with those terms.

(3) (a) If at least 5 business days before distributing property in accordance with the terms of a governing instrument a trustee has received at its principal business office a notice of claim, the trustee shall notify the persons to whom the property would otherwise be distributed, whether as a matter of right or in the exercise of any discretion granted under the governing instrument, of the receipt of the notice of claim and shall suspend the distribution of

the portion of property to which the claim relates for 14 business days.

(b) If within 14 business days after receiving the notice of claim the trustee receives, as purporting to support the claim, a decree, marital property agreement or proof that a legal action has been commenced, including a copy of an election filed pursuant to s. 861.08 (1), to establish the validity of the claim, the trustee shall suspend distribution of the portion of the property to which the claim relates pending resolution of the validity of the claim.

(c) If documentation purporting to support the claim is not submitted as described in par. (b), the trustee may proceed to distribute the property as if the notice of claim had not been received.

(4) A trustee is not liable to any person for any claim for damages as a result of distribution of property in accordance with the terms of the governing instrument prior to its receipt of a notice of claim under sub. (3) or for any damages claimed as a result of suspension of distribution under this section. A person who files a notice of claim under sub. (3) is not entitled to recover fees or expenses charged against such property by the trustee prior to or in connection with the establishment of the validity of his or her claim. A trustee shall pay interest or earnings which accrue during the suspension of any action under sub. (3).

History: 1987 a. 393; 1997 a. 188.

766.58 Marital property agreements. (1) A marital property agreement shall be a document signed by both spouses. Only the spouses may be parties to a marital property agreement. A marital property agreement is enforceable without consideration.

(2) A marital property agreement may not adversely affect the right of a child to support.

(3) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 859.18 (6), and in sub. (2), in a marital property agreement spouses may agree with respect to any of the following:

(a) Rights in and obligations with respect to any of either or both spouses’ property whenever and wherever acquired or located.

(b) Management and control of any of either or both spouses’ property.

(c) Disposition of any of either or both spouses’ property upon dissolution or death or upon the occurrence or nonoccurrence of any other event.

(d) Modification or elimination of spousal support, except as provided in sub. (9).

(e) Making a will, trust or other arrangement to carry out the marital property agreement.

(f) Providing that upon the death of either spouse any of either or both spouses’ property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition. Any such provision in a marital property agreement is revoked upon dissolution of the marriage as provided in s. 767.266 (1). If a marital property agreement provides for the nontestamentary disposition of property, without probate, at the death of the 2nd spouse, at any time after the death of the first spouse the surviving spouse may amend the marital property agreement with regard to property to be disposed of at his or her death unless the marital property agreement expressly provides otherwise and except to the extent property is held in a trust expressly established under the marital property agreement.

(g) Choice of law governing construction of the marital property agreement.

(h) Any other matter affecting either or both spouses’ property not in violation of public policy or a statute imposing a criminal penalty.

(3m) Chapter 854 applies to transfers at death under a marital property agreement.

(4) A marital property agreement may be amended or revoked only by a later marital property agreement.

(5) Persons intending to marry each other may enter into a marital property agreement as if married, but the marital property agreement becomes effective only upon their marriage.

(6) A marital property agreement executed before or during marriage is not enforceable if the spouse against whom enforcement is sought proves any of the following:

(a) The marital property agreement was unconscionable when made.

(b) That spouse did not execute the marital property agreement voluntarily.

(c) Before execution of the marital property agreement, that spouse:

1. Did not receive fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations; and

2. Did not have notice of the other spouse's property or financial obligations.

(7) (a) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies a deferred employment benefit plan or an individual retirement account as marital property does not affect the operation of s. 766.62 (5).

(b) Unless the marital property agreement expressly provides otherwise, marital property agreement that classifies as marital property the noninsured spouse's interest in a policy that designates the other spouse as the owner and insured does not affect the operation of s. 766.61 (7). In this paragraph, "owner" has the meaning given in s. 766.61 (1) (a) and "policy" has the meaning given in s. 766.61 (1) (c).

(8) The issue of whether a marital property agreement is unconscionable is for the court to decide as a matter of law. In the event that legal counsel is retained in connection with a marital property agreement the fact that both parties are represented by one counsel or that one party is represented by counsel and the other party is not represented by counsel does not by itself make a marital property agreement unconscionable or otherwise affect its enforceability.

(9) (a) Modification or elimination of spousal support during the marriage may not result in a spouse having less than necessary and adequate support, taking into consideration all sources of support.

(b) If a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance at the time of dissolution of the marriage or termination of the marriage by death, the court may require the other spouse or the other spouse's estate to provide support necessary to avoid that eligibility, notwithstanding the marital property agreement.

(10) If the spouses agree in writing to arbitrate any controversies arising under this chapter or a marital property agreement, the arbitration agreement is enforceable under ch. 788.

(11) Married persons or persons intending to marry each other may record a marital property agreement in the county register of deeds office under s. 59.43 (1) (r).

(12) (a) A provision of a document signed before the determination date by spouses or unmarried persons who subsequently married each other, which provision affects the property of either of them and is enforceable by either of them without reference to this chapter, is not affected by this chapter except as provided otherwise in a marital property agreement made after the determination date.

(b) If a provision or an amendment to a provision in a document described under par. (a) is intended to negate, apply or modify any right or obligation which may be acquired under 1983 Wisconsin Act 186, 1985 Wisconsin Act 37, or a community property system, the provision or amendment is enforceable after the determination date if the document was enforceable when executed or, if it is executed after April 4, 1984, either was enforceable when executed or would be enforceable if it were executed after the determination date.

(c) This subsection does not affect a marital property agreement executed under s. 766.585.

(13) (a) With respect to a provision of a marital property agreement that is effective upon or after dissolution of the marriage or termination of the marriage by death, any statute of limitations applicable to enforcement of the provision is tolled until dissolution of the marriage or termination of the marriage by death, respectively.

(b) After the death of a spouse, no action concerning a marital property agreement may be brought later than 6 months after the inventory is filed under s. 858.01. If an amended inventory is filed, the action may be brought within 6 months after the filing of the amended inventory if the action relates to information contained in the amended inventory that was not contained in a previous inventory.

(c) The court may extend the 6-month period under par. (b) for cause if a motion for extension is made within the applicable 6-month period.

(14) Limitations on the effect of marital property agreements for state income tax purposes are set forth in ch. 71.

History: 1983 a. 186; 1985 a. 37, 403; 1991 a. 301; 1993 a. 160, 213; 1995 a. 201; 1997 a. 188.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

Whether property agreements are inequitable under s. 767.255 (11) [now (3) (L)] is discussed. *Button v. Button*, 131 Wis. 2d 84, 388 N.W.2d 546 (1986).

An annuity that transferred ownership from the owner to a "co-annuitant" on the owner's death was a joint account under s. 705.04 (1) and a contractual agreement that creates a nonprobate transfer under s. 705.20 (1). Both will defeat a marital agreement that does not make the transfer. *Reichel v. Jung*, 2000 WI App 151, 237 Wis. 2d 853, 616 N.W.2d 118.

Spouses may affirmatively waive the homestead protection in s. 706.02 (1) (f) in a premarital agreement. *Jones v. Estate of Jones*, 2002 WI 61, 253 Wis. 2d 158, 646 N.W.2d 280.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

A Decade Post-Button v. Button: Drafting Prenuptial Agreements. Garczynski. Wis. Law. Aug. 1999.

766.585 Marital property agreements before determination date. (1) After April 4, 1984, and before their determination date, spouses or unmarried persons who subsequently marry each other may execute a marital property agreement under s. 766.58, which is intended to apply only after their determination date, to the same extent that persons may execute a marital property agreement under s. 766.58 after their determination date. The marital property agreement does not apply before the persons' determination date. Upon application, the marital property agreement has the same effect as if executed after the persons' determination date.

(2) Notwithstanding the execution of the marital property agreement before the persons' determination date and notwithstanding the January 1, 1986, effective date of 1983 Wisconsin Act 186 and 1985 Wisconsin Act 37, the law in effect on the date when the marital property agreement applies, not on the date of execution of the marital property agreement, applies to the execution and enforceability or other legal effect of the marital property agreement.

(3) A document executed by spouses or unmarried persons who subsequently marry each other which is intended to apply in whole or in part before their determination date is governed by s. 766.58 (12).

History: 1985 a. 37, 332.

766.587 Statutory individual property classification agreement. (1) **GENERALLY.** (a) Spouses may execute a statutory individual property classification agreement under this section to classify all the property of the spouses, including property presently owned and property acquired in the future but before the agreement terminates, as the individual property of the owner. Ownership of the property of the spouses is determined as if it were December 31, 1985. Except as provided in this section, s. 766.58 applies to an agreement under this section. Persons intending to marry each other may execute an agreement as if married,

but the agreement becomes effective only upon their marriage. The form of the agreement is set forth in sub. (7).

(b) If, while an agreement is in effect, spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If, while an agreement is in effect, spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common.

(2) EXECUTION. An agreement under this section is executed when signed by both spouses.

(3) EFFECTIVE PERIOD. (a) An agreement under this section may be executed on or after January 1, 1986. If executed before January 1, 1986, it is effective on January 1, 1986, or upon the marriage of the parties, whichever is later. If executed on or after January 1, 1986, it is effective when executed or upon the marriage of the parties, whichever is later.

(b) An agreement under this section terminates on January 1, 1987. Termination does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(4) ENFORCEABILITY. An agreement under this section is enforceable without the disclosure of a spouse's property or financial obligations to the other spouse.

(5) EFFECT ON SUPPORT AND AT DIVORCE. An agreement under this section does not affect the duty of support that spouses have to each other or the determination of property division under s. 767.255 or of maintenance payments under s. 767.26.

(6) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the death of a spouse who is a party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(7) STATUTORY INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT FORM. The following is the form for a statutory individual property classification agreement under this section:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. EFFECTIVE JANUARY 1, 1986, A NEW PROPERTY LAW, KNOWN AS THE MARITAL PROPERTY SYSTEM, GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. UNDER THE MARITAL PROPERTY SYSTEM, EACH SPOUSE HAS A 50% OWNERSHIP INTEREST IN PROPERTY ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN SUCH PROPERTY ACQUIRED DURING 1986.

2. CLASSIFICATION BY THIS AGREEMENT OF YOUR AND YOUR SPOUSE'S PROPERTY AS THE INDIVIDUAL PROPERTY OF THE OWNER MAY AFFECT YOUR ACCESS TO CREDIT, THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE AND THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

3. THIS AGREEMENT TERMINATES ON JANUARY 1, 1987. IF YOU WISH TO CHANGE THIS AGREEMENT BEFORE JANUARY 1, 1987, OR IF YOU WISH TO CONTINUE TO CLASSIFY YOUR PROPERTY AS PROVIDED IN THIS AGREEMENT AFTER IT TERMINATES ON JANUARY 1, 1987, YOU MAY DO SO BY EXECUTING A NEW MARITAL PROPERTY AGREEMENT THAT COMPLIES WITH SECTION 766.58, WISCONSIN STATUTES.

4. THIS AGREEMENT DOES NOT AFFECT RIGHTS AT DIVORCE.

5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

6. THIS AGREEMENT MAY AFFECT YOUR TAXES.

7. THIS AGREEMENT MAY AFFECT ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

8. THIS AGREEMENT DOES NOT ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

9. BOTH SPOUSES MUST SIGN THIS AGREEMENT. IF SIGNED BEFORE JANUARY 1, 1986, IT IS EFFECTIVE ON JANUARY 1, 1986, OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER. IF SIGNED ON OR AFTER JANUARY 1, 1986, IT IS EFFECTIVE ON THE DATE SIGNED OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER.

STATUTORY INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.587, Wisconsin Statutes)

This agreement is made and entered into by and, (husband and wife) (who intend to marry) (strike one).

The parties to this agreement agree to classify all their property, including property owned by them now and property acquired before January 1, 1987, as the individual property of the owning spouse, and agree that ownership of their property shall be determined as if it were December 31, 1985.

This agreement terminates on January 1, 1987.

Signature Date

Print Name

Here:

Address:

Signature Date

Print Name

Here:

Address:

[NOTE: Each spouse should retain a copy of the agreement for himself or herself.]

(8) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may, before January 1, 1987, classify their property as the individual property of the owner.

History: 1985 a. 37; 1987 a. 393 s. 53; 1997 a. 188.

766.588 Statutory terminable marital property classification agreement. (1) GENERALLY. (a) Spouses may execute an agreement under this section to classify the property of the spouses presently owned and property acquired, reclassified or created in the future, as marital property. Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (9). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(b) Notwithstanding an agreement under this section:

1. The marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse; and

2. The marital property interest of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured is limited as provided under s. 766.61 (7).

(c) 1. If property is held as survivorship marital property under s. 766.60 (5) (a) or 766.605 at the time an agreement under this section becomes effective, or if property is held as or acquired as survivorship marital property under s. 766.60 (5) (a) or 766.605 while an agreement is in effect, the property remains survivorship marital property as long as it is so held.

2. A joint tenancy which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is survivorship marital property.

3. A tenancy in common which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is marital property.

4. With respect to a tenancy in common or joint tenancy not described under subs. 2. and 3. in which at least one spouse is a tenant when an agreement under this section becomes effective or while an agreement is in effect, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of marital property, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(d) 1. In this paragraph:

a. “Joint account” has the meaning given in s. 705.01 (4).

b. “Marital account” has the meaning given in s. 705.01 (4m).

2. An agreement under this section does not defeat the survivorship feature of a joint account under s. 705.04 (1).

3. An agreement under this section does not affect the ownership, under s. 705.04 (2m), of sums remaining on deposit in a marital account at the death of a party to the account, regardless of when the agreement became effective or the marital account was established.

(2) EXECUTION. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (9).

(3) EFFECTIVE DATE AND EFFECTIVE PERIOD. (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (9) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses have signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (9), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) LIMITATION ON EXECUTION OF 3-YEAR AGREEMENT. If spouses execute an agreement under this section which becomes effective for any period and if the spouses did not complete the financial disclosure form under sub. (9) for that agreement, the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (9) is completed.

(4) TERMINATION BY ONE SPOUSE. (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (9).

(b) Notice of termination is given to the other spouse on the date:

1. That a signed termination is personally delivered to the other spouse; or

2. That a signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(d) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) ENFORCEABILITY. (a) If the spouses do not complete the financial disclosure form under sub. (9), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse’s property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (9), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse’s property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse’s property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their property as marital property.

(8) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(9) STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable marital property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable marital property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. PROPERTY WHICH IS BROUGHT TO THE MARRIAGE AND PROPERTY WHICH IS ACQUIRED BY ONE SPOUSE DURING THE MARRIAGE BY GIFT OR INHERITANCE IS NOT MARITAL PROPERTY BUT IS SOLELY OWNED BY THE ACQUIRING SPOUSE. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO A SOLE OWNERSHIP INTEREST IN YOUR SOLELY OWNED PROPERTY; HOWEVER, YOU ARE ACQUIRING AUTOMATIC,

EQUAL OWNERSHIP RIGHTS, WITH YOUR SPOUSE, TO ALL PROPERTY THAT YOU AND YOUR SPOUSE OWN OR ACQUIRE.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

C. BY ITSELF PROVIDE THAT, UPON YOUR DEATH, YOUR MARITAL PROPERTY PASSES TO YOUR SURVIVING SPOUSE. IF THAT IS WHAT YOU INTEND, YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE TO DETERMINE WHAT MUST BE DONE TO ACCOMPLISH THAT RESULT.

5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (It is not necessary to furnish a copy of the financial disclosure form.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

6. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

7. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT, EXECUTE A SUBSEQUENT STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT, IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT, YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

8. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN.

9. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

10. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

11. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED BY OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

12. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

13. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE MARITAL
PROPERTY CLASSIFICATION AGREEMENT

(Pursuant to Section 766.588, Wisconsin Statutes)

This agreement is entered into by and (husband and wife) (who intend to marry) (strike one). The parties hereby classify all of the property owned by them when this agreement becomes effective, and property acquired during the term of this agreement, as marital property.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse:

Date:

Print Name Here:

Residence Address:

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, (year)

*....

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)

.... County) ss.

Personally came before me this day of, (year) the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....

Notary Public, County, Wisconsin.

My Commission is permanent.

(If not, state expiration date:, (year))

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

Signature of Other Spouse:

Date:

Print Name Here:

Residence Address:

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, (year)

*....

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)

.... County) ss.

Personally came before me this day of, (year) the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....

Notary Public, County, Wisconsin.

My Commission is permanent.

(If not, state expiration date:, (year))

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

TERMINATION OF STATUTORY TERMINABLE
MARITAL PROPERTY CLASSIFICATION AGREEMENT

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.588 (4) OF THE WISCONSIN STATUTES.

2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.

3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable marital property classification agreement entered into by me and my spouse on (date last spouse signed the agreement) under section 766.588 of the Wisconsin Statutes.

Signature:

Date:

Print Name Here:

Residence Address:

SCHEDULE "A"

FINANCIAL DISCLOSURE

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

Husband Wife Both Names

I. ASSETS

- A. Real estate (gross value)
- B. Stocks, bonds and mutual funds
- C. Accounts at and certificates or other instruments issued by financial institutions
- D. Mortgages, land contracts, promissory notes and cash
- E. Partnership interests
- EL. Limited liability company interests.
- F. Trust interests
- G. Livestock, farm products, crops
- H. Automobiles and other vehicles
- I. Jewelry and personal effects
- J. Household furnishings
- K. Life insurance and annuities:
 1. Face value
 2. Cash surrender value
- L. Retirement benefits (include value):
 1. Pension plans
 2. Profit sharing plans
 3. HR-10 KEOGH plans
 4. IRAs
 5. Deferred compensation plans
- M. Other assets not listed elsewhere

II. OBLIGATIONS (TOTAL OUTSTANDING BALANCE):

- A. Mortgages and liens
- B. Credit cards
- C. Other obligations to financial institutions
- D. Alimony, maintenance and child support (per month)
- E. Other obligations (such as other obligations to individuals, guarantees, contingent liabilities)

III. ANNUAL COMPENSATION FOR SERVICES:

(for example, wages and income from self-employment; also include social security, disability and similar income here)

(IF YOU NEED ADDITIONAL SPACE,
ADD ADDITIONAL SHEETS)

History: 1987 a. 393; 1991 a. 301; 1993 a. 112, 160; 1997 a. 250.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.589 Statutory terminable individual property classification agreement. (1) GENERALLY. (a) For purposes of

determining ownership of property classified by an agreement under this section, a spouse owns property if the property is held by that spouse. If property classified by an agreement under this section is not held by either or both spouses, ownership of the property is determined as if the spouses were unmarried when the property was acquired.

(b) Spouses may execute an agreement under this section to classify the marital property of the spouses presently owned and property acquired, reclassified or created in the future that would otherwise be marital property, as the individual property of the owner. At the death of the owning spouse, property classified by an agreement under this section is subject to the rights of the surviving spouse under sub. (7). Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (10). Persons intending to marry

each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(c) 1. If at the time an agreement under this section is executed property is held as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If at the time an agreement under this section is executed property is held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. If while an agreement is in effect spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If while an agreement is in effect spouses acquire property as tenants in common exclusively between themselves, the spouses' respective ownership interests in the property are classified as the individual property of the owners. If while an agreement is in effect spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. An agreement under this section does not affect the incidents under ch. 705 of a joint account, as defined in s. 705.01 (4).

2. For purposes of an agreement under this section, to the extent the incidents of a joint tenancy or tenancy in common conflict with or differ from the incidents of individual property, the incidents of the tenancy in common or joint tenancy, including the incident of survivorship, control.

(2) EXECUTION. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (10).

(3) EFFECTIVE DATE AND EFFECTIVE PERIOD. (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (10) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (10), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) LIMITATION ON EXECUTION OF 3-YEAR AGREEMENT. If spouses execute an agreement under this section which becomes effective for any period and, for that agreement, do not complete the financial disclosure form under sub. (10), the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (10) is completed.

(4) TERMINATION BY ONE SPOUSE; GOOD FAITH DUTY. (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (10).

(b) Notice of termination is given to the other spouse on the date:

1. That signed termination is personally delivered to the other spouse; or

2. That signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) After notice of termination is given under this subsection and until the agreement terminates, each spouse shall act in good faith with respect to the other spouse in matters involving the property of the spouse who is required to act in good faith which is classified as individual property by the agreement. Management and control by a spouse of that property in a manner that lim-

its, diminishes or fails to produce income from that property does not violate this paragraph.

(d) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(e) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) ENFORCEABILITY. (a) If the spouses do not complete the financial disclosure form under sub. (10), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (10), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the time of death of a spouse who is party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(8) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their marital property.

(9) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(10) STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable individual property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable individual property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO

BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN PROPERTY ACQUIRED AS A RESULT OF SPOUSAL EFFORT DURING MARRIAGE AND THE TERM OF THE AGREEMENT; HOWEVER, YOU ARE ACQUIRING AUTOMATIC OWNERSHIP RIGHTS TO PROPERTY TITLED IN YOUR NAME.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

5. NOTWITHSTANDING THIS AGREEMENT, THE PROPERTY CLASSIFIED BY THIS AGREEMENT WHICH IS OWNED BY THE FIRST SPOUSE TO DIE IS SUBJECT TO CERTAIN ELECTIVE RIGHTS OF THE SURVIVING SPOUSE. YOU MAY BAR THESE ELECTIVE RIGHTS BY SEPARATE MARITAL PROPERTY AGREEMENT.

6. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (IT IS NOT NECESSARY TO FURNISH A COPY OF THE FINANCIAL DISCLOSURE FORM.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

7. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

8. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT EXECUTE A SUBSEQUENT STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASON-

ABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

9. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN. IF SUCH NOTICE OF TERMINATION IS GIVEN BY ONE SPOUSE TO THE OTHER SPOUSE, EACH SPOUSE HAS A DUTY TO THE OTHER SPOUSE TO ACT IN GOOD FAITH IN MATTERS INVOLVING THE PROPERTY OF THE SPOUSE WHO IS REQUIRED TO ACT IN GOOD FAITH WHICH HAS BEEN CLASSIFIED AS INDIVIDUAL PROPERTY BY THIS AGREEMENT. THE GOOD FAITH DUTY CONTINUES UNTIL THE AGREEMENT TERMINATES (30 DAYS AFTER NOTICE IS GIVEN).

10. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

11. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

12. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM, THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

13. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

14. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.589, Wisconsin Statutes)

This agreement is entered into by and (husband and wife) (who intend to marry) (strike one). The parties hereby classify the marital property owned by them when this agreement becomes effective, and property acquired during the term of this agreement which would otherwise have been marital property, as the individual property of the owning spouse. The parties agree that ownership of such property shall be determined by the name in which the property is held and, if property is not held by either or both spouses, ownership shall be determined as if the parties were unmarried persons when the property was acquired.

Upon the death of either spouse the surviving spouse may, except as otherwise provided in a subsequent marital property agreement, and regardless of whether this agreement has terminated, elect against the property of the decedent spouse as provided in section 766.589 (7) of the Wisconsin Statutes.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE THAT SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse:

Date:

Print Name Here:

Residence Address:

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, (year)

*....

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)

.... County) ss.

Personally came before me this day of, (year) the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....

Notary Public, County, Wisconsin.

My Commission is permanent.

(If not, state expiration date:, (year))

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

Signature of Other Spouse:

Date:

Print Name Here:

Residence Address:

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, (year)

*....

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)

.... County) ss.

Personally came before me this day of, (year) the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....

Notary Public, County, Wisconsin.

My Commission is permanent.

(If not, state expiration date:, (year))

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should

be typed or printed below their signatures.

TERMINATION OF

STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.589 (4) OF THE WISCONSIN STATUTES.

2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.

3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable individual property classification agreement entered into by me and my spouse on (date last spouse signed the agreement) under section 766.589 of the Wisconsin Statutes.

Signature:

Date:

Print Name Here:

Residence Address:

SCHEDULE "A"

FINANCIAL DISCLOSURE

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

Husband Wife Both Names

I. ASSETS:

- A. Real estate (gross value)
- B. Stocks, bonds and mutual funds
- C. Accounts at and certificates and other instruments issued by financial institutions
- D. Mortgages, land contracts, promissory notes and cash
- E. Partnership interests
- EL. Limited liability company interests
- F. Trust interests
- G. Livestock, farm products, crops
- H. Automobiles and other vehicles
- I. Jewelry and personal effects
- J. Household furnishings
- K. Life insurance and annuities:
 - 1. Face value
 - 2. Cash surrender value
- L. Retirement benefits (include value):
 - 1. Pension plans
 - 2. Profit sharing plans
 - 3. HR-10 KEOGH plans
 - 4. IRAs
 - 5. Deferred compensation plans
- M. Other assets not listed elsewhere

II. OBLIGATIONS (TOTAL OUTSTANDING BALANCE):

- A. Mortgages and liens
- B. Credit cards
- C. Other obligations to financial institutions
- D. Alimony, maintenance and child support (per month)
- E. Other obligations (such as other obligations to individuals guarantees, contingent liabilities)

III. ANNUAL COMPENSATION FOR SERVICES:

(for example, wages and income from self–employment; also include social security, disability and similar income here)

(IF YOU NEED ADDITIONAL SPACE,
ADD ADDITIONAL SHEETS.)

History: 1987 a. 393; 1991 a. 301; 1993 a. 112; 1997 a. 188, 250.

766.59 Unilateral statement; income from nonmarital property. (1) A spouse may unilaterally execute a written statement which classifies the income attributable to all or certain of that spouse’s property other than marital property as individual property.

(2) (a) The statement is executed when signed by the executing spouse and acknowledged by a notary. If executed before January 1, 1986, the statement is effective on January 1, 1986, or at a later time if provided otherwise in the statement. If executed on or after January 1, 1986, the statement is effective when executed or at a later time if provided otherwise in the statement.

(b) Within 5 days after the statement is signed, the executing spouse shall notify the other spouse of the statement’s contents by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse’s last–known address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

(c) The executing spouse may record the statement in the county register of deeds office under s. 59.43 (1) (r).

(3) Any income of the property designated in the statement which accrues on or after the date the statement becomes effective and before a revocation under sub. (4) is individual property. However, a statement only affects income accrued during the marriage during which the statement was executed.

(4) A statement may be revoked in writing by the executing spouse. The revoking spouse shall notify the other spouse of the revocation by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse’s last–known address. The revoking spouse may record the revocation in the county register of deeds office under s. 59.43 (1) (r).

(5) With respect to its effect on 3rd parties, a statement or a revocation shall be treated as if it were a marital property agreement.

(6) A person intending to marry may execute a statement under this section as if married. A statement executed by a person intending to marry is effective upon the marriage or at a later time if so provided in the statement. Within 5 days after the statement is executed, the person executing the statement shall notify the person whom he or she intends to marry or has married of the statement’s contents by personally delivering a copy of the statement to that person or by sending a copy by certified mail to that person’s address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

History: 1985 a. 37; 1991 a. 301; 1995 a. 201.

766.60 Optional forms of holding property; survivorship ownership. (1) Spouses may hold marital property in a form that designates the holders of it by the words “(name of one spouse) or (name of other spouse) as marital property”.

(2) Spouses may hold marital property in a form that designates the holder of it by the words “(name of one spouse) and (name of other spouse) as marital property”.

(3) A spouse may hold individual property in a form that designates the holder of it by the words “(name of spouse) as individual property”.

(4) (a) Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership. Except as provided in par. (b) and except with respect to any remedy a spouse has under this chapter, whether a tenancy in common or joint tenancy was created before or after the determination date, to the extent the incidents of the tenancy in common or joint tenancy conflict with

or differ from the incidents of property classification under this chapter, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(b) 1. Except as provided in subd. 2. or in a marital property agreement under s. 766.58:

a. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a joint tenancy exclusively between spouses after the determination date, the property is survivorship marital property under sub. (5).

b. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a tenancy in common exclusively between spouses after the determination date, the property is marital property.

2. A joint tenancy or tenancy in common exclusively between spouses which is given to the spouses by a 3rd party after the determination date is survivorship marital property or marital property, respectively, unless the donor provides otherwise.

(5) (a) If the words “survivorship marital property” are used instead of the words “marital property” in the form described in sub. (1) or (2), the marital property so held is survivorship marital property. On the death of a spouse, the ownership rights of that spouse in the property vest solely in the surviving spouse by non-testamentary disposition at death. The first deceased spouse may not dispose at death of any interest in survivorship marital property. Holding marital property in a form described in sub. (1) or (2) does not alone establish survivorship ownership between the spouses with respect to the property held.

(b) A real estate mortgage, a security interest under ch. 409 or a lien under s. 71.91 (5) (b) or ch. 49 or 779 on or against the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. The surviving spouse takes the interest of the deceased spouse subject to the mortgage, security interest or lien.

(c) A judgment lien on the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. If execution on the judgment lien was issued before the spouse’s death the surviving spouse takes the interest of the deceased spouse subject to the lien. If execution on the judgment lien was not issued before the spouse’s death, the surviving spouse takes the interest of the deceased spouse free of the judgment lien, unless the judgment lien is on the interests of both spouses in the survivorship marital property and all of the property of the spouses was available under s. 766.55 to satisfy the obligation for which the judgment was rendered.

History: 1983 a. 186; 1985 a. 37; 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

When land contract sellers who owned the property as survivorship marital property, received the property back from the buyers by quit claim deed in lieu of foreclosure, the sellers’ ownership interest could not be changed by the deed to other than survivorship property. *Wonka v. Estate of Bierbrauer*, 2001 WI App 274, 249 Wis. 2d 23, 637 N.W.2d 92.

766.605 Classification of homestead. A homestead acquired after the determination date which, when acquired, is held exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement. A homestead may be reclassified under s. 766.31 (10).

History: 1983 a. 186; 1987 a. 393; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.61 Classification of life insurance policies and proceeds. (1) In this section:

(a) “Owner” means a person appearing on the records of the policy issuer as the person having the ownership interest, or means the insured if no person other than the insured appears on those records as a person having that interest. In the case of group insurance, the term means the holder of each individual certificate of coverage under the group plan and does not include the person

who contracted with the policy issuer on behalf of the group, regardless of whether that person is listed as the owner on the contract.

(b) Except as provided in sub. (3) (e), “ownership interest” means the rights of an owner under a policy.

(c) “Policy” means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse’s death and, for purposes of sub. (3) (e), the term includes an insurance policy insuring the life of any individual and providing for payment of death benefits at the death of the insured. This paragraph does not apply to sub. (2).

(d) “Proceeds” means the death benefit from a policy and all other economic benefits from it, whether they accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

(2) (a) In this subsection:

1. “Business day” has the meaning given under s. 421.301 (6).

2. “Notice of claim” means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or a person claiming under a deceased spouse’s disposition at death, that the person claims to be entitled to proceeds, payments or an interest in the policy.

3. “Policy” means an insurance policy insuring the life of a spouse or a life insurance policy of which a spouse is the owner.

(b) Except as provided in par. (c):

1. A policy issuer may rely on and act in accordance with the issuer’s policy and records. If a policy issuer makes payments or takes actions in accordance with the policy and the issuer’s records, the issuer is not liable because of those payments or actions.

2. The classification of a policy or a portion of a policy as marital property has no effect on the policy issuer’s duty to perform under the issuer’s contract when making payment or taking action in accordance with the policy and the issuer’s records.

(c) 1. If at least 5 business days before making payment or taking action in accordance with the issuer’s policy and records, a policy issuer has received at its home office a notice of claim, the issuer shall notify the party directing the payment or action of the receipt of the notice of claim and shall not take any action on the policy for 14 business days.

2. If within 14 business days after receiving the notice of claim the issuer receives at its home office, as purporting to support the notice of claim, a decree, marital property agreement, written directive signed by the beneficiary and surviving spouse, consent under sub. (3) (e) or proof that a legal action has been filed, including a copy of an election filed pursuant to s. 861.08 (1), to secure an interest as evidenced in such a document, the issuer shall make payment or take action on the policy after the issuer receives from a court or from the claimant and the person directing action or payment written documentation indicating that the dispute has been resolved.

3. If documentation purporting to support the claim is not submitted as described under subd. 2., the policy issuer shall take action or make payment as if the notice of claim had not been received.

(d) A policy issuer is not liable to any person for any claim for damages as a result of the issuer’s suspension of policy action or the taking of any action pursuant to this subsection. A policy issuer shall pay interest which accrues during the suspension of any action under this subsection.

(2m) (a) In determining the marital property component of the ownership interest and proceeds of a policy under sub. (3), the date on which a policy becomes effective is the date of original issuance or coverage of the policy, whichever is earlier, if the policy is thereafter kept in force merely by continuing premium payments, without any further underwriting by the issuer. If additional underwriting is required after original issuance of the policy or if the amount of proceeds increases after original issuance as a result of unscheduled additional premiums paid by the policy-

holder, the effective date of the policy is the date on which the newly underwritten right to proceeds or the right to increased proceeds begins.

(b) In determining the marital property component of the ownership interest and proceeds of a group policy sponsored by an employer or association under sub. (3), the date on which the policy becomes effective is the date on which individual coverage begins, notwithstanding that the employer or association thereafter changes policy issuers or that the amount of coverage changes under the policy pursuant to the plan or benefit offered by the employer or association. If additional underwriting is required after original issuance of the policy, or if the coverage is provided by a different employer or association, the effective date of the policy is the date on which the newly underwritten or newly provided coverage begins.

(3) Except as provided in subs. (4) to (6):

(a) 1. Except as provided in subd. 2., the ownership interest and proceeds of a policy issued after the determination date which designates the insured as the owner are marital property, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1. the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are mixed property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect and the denominator of which is the entire period that the policy was in effect.

(b) The ownership interest and proceeds of a policy issued before the determination date which designates the insured as the owner are mixed property if a premium on the policy is paid from marital property after the determination date, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(c) 1. Except as provided in subd. 2., the ownership interest and proceeds of a policy which designates the spouse of the insured as the owner are individual property of its owner, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1. the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are individual property and property that is other than individual or marital property. The individual property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the entire period during which the policy was in effect less that period during which the insured or his or her spouse were at any time not domiciled in this state and the denominator of which is the entire period that the policy was in effect.

(d) This chapter does not affect the ownership interest and proceeds of a policy that designates a person other than either spouse as the owner, if no premium on the policy is paid from marital property after the determination date. If a premium on the policy is paid from marital property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part marital property of the spouses, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property compo-

ment of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(e) A written consent in which a spouse consents to the designation of another person as the beneficiary of the proceeds of a policy or consents to the use of property to pay premiums on a policy is effective, to the extent that the written consent provides, to relinquish or reclassify all or a portion of that spouse's interest in property used to pay premiums on the policy or in the ownership interest or proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on that policy. Unless the written consent expressly provides otherwise, a written consent under this paragraph is revocable in writing and is effective only with respect to the beneficiary named in it. Unless the written consent expressly provides otherwise, a revocation of a written consent is effective no earlier than the date on which it is signed by the revoking spouse and does not operate to reclassify any property which was reclassified or in which the revoking spouse relinquished an interest from the date of the consent to the date of revocation. In this paragraph, "ownership interest" includes the interests of a spouse in a policy who is not an owner under the policy.

(f) Designation of a trust as the beneficiary of the proceeds of a policy with a marital property component does not by itself reclassify that component.

(4) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned to the creditor as security or payable to the creditor.

(5) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or to parenthood is not marital property, regardless of the classification of property used to pay premiums on that policy.

(6) This section does not affect the ownership interest or proceeds of a policy if neither spouse is designated as an owner in the policy or the policy issuer's records and no marital property is used to pay a premium on the policy.

(7) If a noninsured spouse predeceases an insured spouse, the marital property interest of the decedent spouse in a policy which designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one-half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the date of death of the deceased spouse. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

(8) This section does not apply to a policy held by a deferred employment benefit plan. Classification of a deferred employment benefit, regardless of the nature of the assets held by the deferred employment benefit plan, is determined under s. 766.62.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1997 a. 188.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.62 Classification of deferred employment benefits. (1) (a) Except as provided in par. (b), a deferred employment benefit attributable to employment of a spouse occurring after the determination date is marital property.

(b) A deferred employment benefit attributable to employment of a spouse occurring after the determination date is mixed property if, after the determination date and during the period of employment giving rise to the benefit, the employed spouse or his or her spouse are at any time not domiciled in this state. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the

numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit.

(2) A deferred employment benefit attributable to employment of a spouse occurring while the spouse is married and partly before and partly after the determination date is mixed property. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit.

(2m) Unless provided otherwise in a decree or marital property agreement, a mixed property deferred employment benefit shall be valued as of a dissolution or an employee spouse's death.

(3) Ownership or disposition provisions of a deferred employment benefit plan which conflict with sub. (1) or (2) are ineffective between spouses or former spouses or between a surviving spouse and a person claiming under a deceased spouse's disposition at death.

(4) If a deferred employment benefit plan administrator makes payments or takes actions in accordance with the plan and the administrator's records, the administrator is not liable because of those payments or actions.

(5) If the nonemployee spouse predeceases the employee spouse, the marital property interest of the nonemployee spouse in all of the following terminates at the death of the nonemployee spouse:

(a) A deferred employment benefit plan.

(b) Assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan.

History: 1983 a. 186; 1985 a. 37 ss. 128, 187; 1987 a. 393; 1991 a. 301; 1993 a. 160.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

The termination under sub. (5) of a marital property interest in pension benefits did not prevent the application of the equitable principal that a murderer should not profit from the crime. The trial court acted properly in imposing a constructive trust on the decedent's marital property interest in the murderer's pension benefits. *Estate of Hackl v. Hackl*, 231 Wis. 2d 43, 605 N.W.2d 579 (Ct. App. 1999).

766.63 Mixed property. (1) Except as provided otherwise in ss. 766.61 and 766.62, mixing marital property with property other than marital property reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced.

(2) Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse's property other than marital property creates marital property attributable to that application if both of the following apply:

(a) Reasonable compensation is not received for the application.

(b) Substantial appreciation of the property results from the application.

History: 1983 a. 186; 1985 a. 37; 1991 a. 301.

Marital property presumptions and tracing principals are applied. In *Matter of Estate of Lloyd*, 170 Wis. 2d 240, 487 N.W.2d 644 (Ct. App. 1992).

If tracing of the marital component of a mixed asset is established under sub. (1) reclassification does not occur. Instead, a claim for reimbursement exists in favor of the marital estate measured by the enhanced value of the asset, not the marital amounts expended. *Estate of Kobylski*, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Under sub. (2) a party who applies substantial uncompensated labor to property may not recover if there is no resulting substantial appreciation. *Estate of Kobylski*, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Expenditures that result in the mere maintenance of property, including the payment of property taxes, do not result in marital property being created through mixing. *Krueger v. Rodenberg*, 190 Wis. 2d 367, 527 N.W.2d 381 (Ct. App. 1994).

If a nonmarital asset is mixed with marital property, tracing the nonmarital property to its nonmarital source preserves the traced component's nonmarital status. There is no requirement that the party tracing the nonmarital component also trace the mixing of the marital component. That the marital property was used to satisfy a nonmarital

tal debt against the property does not change the nonmarital character of the traceable property. *Bille v. Zuraff*, 198 Wis. 2d 867, 543 N.W.2d 568 (Ct. App. 1995), 95–0007.

766.70 Remedies. (1) A spouse has a claim against the other spouse for breach of the duty of good faith imposed by s. 766.15 resulting in damage to the claimant spouse's property. Except as otherwise provided in sub. (6), no spouse may commence an action under this subsection later than 6 years after acquiring actual knowledge of the facts giving rise to the claim.

(2) Upon request of a spouse, a court may order an accounting of the spouses' property and obligations and may determine rights of ownership in, beneficial enjoyment of or access to marital property and the classification of all property of the spouses.

(3) Upon request of a spouse, a court may order the name of the spouse added to marital property or to a document evidencing ownership of marital property held in the name of the other spouse alone except with respect to any of the following:

(a) An interest in a partnership or joint venture held by the other spouse as a general partner or as a participant.

(aL) An interest in a limited liability company held by the other spouse as a member.

(b) An interest in a professional corporation, professional association or similar entity held by the other spouse as a stockholder or member.

(c) An asset of an unincorporated business if the other spouse is the only one of the spouses involved in operating or managing the business.

(d) A corporation, the stock of which is not publicly traded. Under this paragraph, stock of a corporation is publicly traded if both of the following apply:

1. The stock is traded on a national stock exchange or quoted on the national association of securities dealers automated quotations system.

2. The employees, officers and directors of the corporation own, in the aggregate, less than 10% in value of the outstanding shares of the stock in the corporation.

(e) Any other property if the addition would adversely affect the rights of a 3rd person.

(4) (a) If marital property has been or is likely to be substantially injured by the other spouse's gross mismanagement, waste or absence, upon request of a spouse a court may order any of the following:

1. A temporary or permanent limitation or termination of any of the other spouse's management and control rights in marital property.

2. A change in classification of marital property.

3. A division of the obligations of the spouses existing on the date of the request, after considering the classification of the obligation under s. 766.55 and the factors specified under ss. 767.255 and 767.26.

4. That all obligations incurred after the court order are the obligations of the incurring spouse and that the other spouse is not liable for, and his or her property is not available to satisfy, the obligations.

5. That any property acquired by either spouse after the court order is the individual property of the acquiring spouse.

(b) The court may make any order under this subsection subject to any equitable condition.

(c) This subsection does not apply to property described in sub. (3) (a), (b), (d) and (e).

(5) When marital property is used to satisfy an obligation other than an obligation under s. 766.55 (2) (a) or (b), the nonobligated spouse may request the court to order that he or she receive as individual property marital property equal in value to the marital property used to satisfy the obligations of the obligated spouse, subject to the rights of any 3rd party who relied upon the availability of the marital property to satisfy any obligation under s. 766.55 (2) (a) or (b) and subject to equitable considerations. No person

may bring an action under this subsection later than one year after the obligation is satisfied.

(6) (a) Except as provided in pars. (b) and (c), if a gift of marital property during marriage by a spouse does not comply with s. 766.53, the other spouse may bring an action to recover the property or a compensatory judgment equal to the amount by which the gift exceeded the limit under s. 766.53. The other spouse may bring the action against the donating spouse, the gift recipient or both. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or on or before the deadline for filing a claim under s. 859.01 after the death of either spouse. If the recovery occurs during marriage, it is marital property. If the recovery occurs after a dissolution or the death of either spouse, the recovery is limited to 50% of the recovery that would have been available if the recovery had occurred during marriage.

(b) 1. If a transfer of marital property to a 3rd person during marriage by a spouse acting alone becomes a completed gift upon the death of the spouse or if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one-half of the gift of marital property. The surviving spouse may not commence an action under this paragraph later than one year after the death of the decedent spouse.

2. If the spouse entitled to a remedy under subd. 1. predeceases the donor spouse, no action may be commenced later than one year after the decedent's death. Except as provided in s. 766.61 (7), recovery in such an action is the same as if the donor spouse had predeceased the spouse entitled to recover, but is valued at the date of death of the spouse entitled to recover.

(c) 1. If a spouse acting alone makes a gift of marital property to a 3rd person during marriage in the form of a joint tenancy and the spouse and the 3rd person are joint tenants with respect to that property, the other spouse has a right of reimbursement against the donor spouse or the gift recipient or both with respect to that portion of the gift representing the quotient resulting from dividing the number of joint tenants other than the donor spouse by the total number of joint tenants, including the donor spouse. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or one year after the death of either spouse.

2. If the gift of marital property under subd. 1. remains in the form of a joint tenancy, at the death of the tenant spouse the surviving spouse has a right of reimbursement against the decedent spouse's estate or the gift recipient or both with respect to one-half of that portion of the joint tenancy representing the quotient resulting from dividing one by the total number of joint tenants immediately before the death of the tenant spouse, valued at the date of death. The surviving spouse may not commence the action later than one year after the death of the decedent spouse. If the spouse entitled to a right of reimbursement under this subdivision predeceases the tenant spouse, the action may not be commenced later than one year after the decedent's death. The portion subject to the right of reimbursement in such an action is the same as if the tenant spouse had predeceased the spouse with the right of reimbursement, but is valued at the date of death of the spouse with the right of reimbursement.

(7) After the date of death within 90 days after the earlier of either the receipt of the inventory listing any life insurance policy or deferred employment benefit plan covered by s. 766.61 or 766.62, or the discovery of the existence of such a policy or plan, the surviving spouse may purchase the decedent's interest in the policy or plan from the decedent's estate at the interest's fair market value at the date of death, if all or part of the policy or plan is included in the decedent spouse's estate.

(8) Except as provided in sub. (6) and ss. 766.55 (4m), 766.56 (2) (c) and 766.57, no decree issued under this section may adversely affect the interest of a 3rd party.

History: 1983 a. 186; 1985 a. 37 ss. 89, 130 to 139; 1987 a. 393; 1989 a. 96; 1991 a. 301; 1993 a. 112.

Intentional misrepresentation is a breach of the duty of good faith for which the the exclusive pre-divorce remedy is s. 766.70 (1). Commencement of a divorce bars an action under this section. *Gardner v. Gardner*, 175 Wis. 2d 420, 499 N.W.2d 266 (Ct. App. 1993).

A divorce action terminates on the death of a spouse. After the death an order prohibiting an act in regard to marital property entered in the divorce may not be enforced under ch. 767. As the parties are legally married at the time of death, the sole remedy for resolving disputes over marital property lies under this section. *Socha v. Socha*, 204 Wis. 2d 474, 555 N.W.2d 152 (Ct. App. 1996).

A cause of action under this section requires that the complained of conduct arise as a result of the marital relationship and a breach of the good faith duty between spouses. Once a divorce is commenced, the claim must be resolved in divorce court. A cause of action between spouses arising outside the marital relationship, such as a stockbroker-client relationship, does not fall within this section and may be maintained independent of the divorce. *Knafelc v. Dain Bosworth, Inc.* 224 Wis. 2d 346, 591 N.W.2d 611 (Ct. App. 1999).

766.73 Invalid marriages. If a marriage is invalidated by a decree, a court may apply so much of this chapter to the property of the parties to the invalid marriage as is necessary to avoid an inequitable result. This section does not apply if s. 767.255 applies to the action to invalidate the marriage.

History: 1983 a. 186; 1985 a. 37.

766.75 Treatment of certain property at dissolution. After a dissolution each former spouse owns an undivided one-half interest in the former marital property as a tenant in common, except as provided otherwise in a decree or an agreement entered into by the former spouses after dissolution.

History: 1983 a. 186; 1985 a. 37.

766.95 Rules of construction. Unless displaced by this chapter, the principles of law and equity supplement its provisions.

History: 1983 a. 186.

766.96 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: 1983 a. 186.

766.97 Equal rights; common law disabilities.

(1) Women and men have the same rights and privileges under the law in the exercise of suffrage, freedom of contract, choice of residence, jury service, holding office, holding and conveying property, care and custody of children and in all other respects. The various courts and executive and administrative officers shall construe the statutes so that words importing one gender extend and may be applied to either gender consistent with the manifest intent of the legislature. The courts and executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this subsection.

(2) Nothing in this chapter revives the common law disabilities on a woman's right to own, manage, inherit, transfer or receive gifts of property in her own name, to enter into contracts in her own name or to institute civil actions in her own name. Except as otherwise provided in this chapter and in other sections of the statutes controlling marital property or property of spouses that is not marital property, either spouse has the right to own and exclusively manage his or her property that is not marital property, enter into contracts with 3rd parties or with his or her spouse, institute and defend civil actions in his or her name and maintain an action against his or her spouse for damages resulting from that spouse's intentional act or negligence.

(3) The common law rights of a spouse to compel the domestic and sexual services of the other spouse are abolished. Nothing in this subsection affects a spouse's common law right to consortium or society and companionship.

History: 1983 a. 186 ss. 47, 48; Stats. 1983 s. 766.97; 1985 a. 37.