

1 **SECTION 97.** 854.06 (4) (am) of the statutes is created to read:

2 854.06 (4) (am) The governing instrument provides that a transfer to a
3 predeceased beneficiary lapses.

4 **SECTION 98.** 854.06 (4) (b) of the statutes is amended to read:

5 854.06 (4) (b) ~~If the~~ The governing instrument designates one or more persons,
6 classes, or groups of people as contingent transferees, in which case those transferees
7 take in preference to those under sub. (3). ~~But~~ Unless par. (c) applies, if none of the
8 contingent transferees survives, sub. (3) applies to the first group in the sequence of
9 contingent transferees that has one or more transferees specified in sub. (2) who left
10 surviving issue.

11 **SECTION 99.** 854.07 (3) of the statutes is amended to read:

12 854.07 (3) If a governing instrument other than a will does not effectively
13 dispose of an asset that is governed by the instrument, that asset shall be paid or
14 distributed to the ~~decedent's~~ transferor's probate estate.

15 **SECTION 100.** 854.08 (5) (title) of the statutes is repealed and recreated to read:

16 854.08 (5) (title) PROPERTY UNDER GUARDIANSHIP, CONSERVATORSHIP, OR POWER OF
17 ATTORNEY.

18 **SECTION 101.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and
19 amended to read:

20 854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the
21 subject of a specific gift is sold or mortgaged by a guardian ~~or~~, conservator, or agent
22 of the person who executed the governing instrument, or if a condemnation award
23 or insurance proceeds are paid to a guardian ~~or~~, conservator, or agent, the specific
24 beneficiary has the right to a general pecuniary transfer equivalent to the proceeds
25 of the sale ~~or the~~ mortgage, condemnation award, or the insurance proceeds, reduced

1 by any amount expended or incurred to restore or repair the property or to reduce
2 the indebtedness on the mortgage, if the funds are available under the governing
3 instrument. This provision

4 (c) Paragraph (b) does not apply with respect to a guardian or conservator if ~~the~~
5 the person who executed the governing instrument subsequent to the sale ~~or~~ mortgage,
6 award, or receipt of insurance proceeds, is adjudicated competent and survives such
7 adjudication for a period of one year; but in such event ~~a sale by a guardian or~~
8 ~~conservator within 2 years of that person's death is a sale by that person for purposes~~
9 ~~of sub. (2) the rights of the specific beneficiary shall be determined as though the~~
10 proceeds were paid to the owner under sub. (2), (3), or (4).

11 SECTION 102. 854.08 (5) (a) of the statutes is created to read:

12 854.08 (5) (a) In this subsection, "agent" means an agent under a durable power
13 of attorney, as defined in s. 243.07 (1) (a).

14 SECTION 103. 854.08 (5) (d) of the statutes is created to read:

15 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent if the
16 person who executed the governing instrument is competent at the time of the sale,
17 mortgage, award, or receipt of insurance proceeds but in such event the rights of the
18 specific beneficiary shall be determined as though the proceeds were paid to the
19 owner under sub. (2), (3), or (4).

20 SECTION 104. 854.08 (6) (a) 1. of the statutes is amended to read:

21 854.08 (6) (a) 1. The person who executed the governing instrument, either
22 expressly or as construed from extrinsic had a contrary intent. Extrinsic evidence,
23 shows the intent that a transfer fail under the particular circumstances may be used
24 to construe that intent.

25 SECTION 105. 854.08 (6) (a) 2. of the statutes is amended to read:

November 28, 2004
Change for § 854.09

(3) If the transferee fails to survive the person who executed the governing instrument, ~~the gift is treated as a full or partial satisfaction of the transfer, and his or her issue take a substitute transfer under intestacy or under a governing instrument, the issue receive the same transfer that the named transferee would have received had the transferee survived,~~ unless the transferor has declared otherwise in a document, either expressly or as construed from extrinsic evidence.

Committee Note

Clarifies provision regarding the effect of an advancement when the transferee who received the advancement predeceases the donor. The amendment brings the text of the statute into concert with the original Committee Note to § 854.09. According to that note, 1997 Act 188 was not intended to change prior Wisconsin law on this issue. Thus, if the issue of the transferee take under intestacy, under § 854.06 (antilapse/ predeceased beneficiary), under § 854.07 (failed transfer), or because of a substitute gift in the governing instrument, the issue are in the same position as the transferee would have been if he or she had survived. If the lifetime transfer was an advancement to the transferee, then it will reduce the share passing to the transferee's issue who stand in place of the transferee, unless the transferor declared otherwise in a document, either expressly or as construed from extrinsic evidence.

~~Intrinsic or~~

~~Please check for other places in the stats where it says that a document may be construed from extrinsic evidence; generally these should be changed to say "construed from intrinsic or extrinsic evidence."~~

1 854.08 (6) (a) 2. The person who executed the governing instrument gives
2 property during the person's lifetime to the specific beneficiary with the intent of
3 satisfying the specific gift. ~~Extrinsic evidence may be used to construe that intent,~~
4 and the requirement under s. 854.09 (1) is satisfied.

5 **SECTION 106.** 854.115 of the statutes is created to read:

6 **854.115 Valuation of distributed assets. (1) VALUATION OF IN-KIND**
7 DISTRIBUTIONS AS OF DATE OF DISTRIBUTION. A distribution of property in kind to a
8 distributee who receives a pecuniary transfer, a dollar amount fixed by formula or
9 otherwise, or a fractional share in a group of assets shall be made on the basis of the
10 fair market value of the property on the date of distribution. This subsection applies
11 to distributions under a governing instrument or under a statute, except that
12 distributions under a governing instrument are subject to subs. (2) and (3).

13 **(2) EXCEPTION IF GOVERNING INSTRUMENT PROVIDES OTHERWISE.** Subject to sub.
14 (3), if the distribution is made under a governing instrument, and the instrument
15 requires or permits a different value to be used, all assets available for distribution,
16 including cash, shall be distributed so that the assets distributed to satisfy the
17 transfer fairly represent the net appreciation or depreciation since the date of the
18 death in the value of the available property on the date of the distribution.

19 **(3) CONTRARY INTENT.** (a) This section does not apply if the distribution is made
20 under a governing instrument and the person who executed the governing
21 instrument had a contrary intent. Extrinsic evidence may be used to construe the
22 contrary intent.

23 (b) A provision in a governing instrument that the personal representative or
24 other fiduciary may fix values for the purpose of distribution does not of itself

1 constitute authorization to fix a value other than fair market value on the date of
2 distribution.

3 **SECTION 107.** 854.12 of the statutes is created to read:

4 **854.12 Debt to transferor. (1) HEIR UNDER INTESTACY.** (a) If an heir owes a
5 debt to the decedent, the amount of the indebtedness shall be offset against the
6 intestate share of the debtor heir.

7 (b) In contesting an offset under par. (a), the debtor heir shall have the benefit
8 of any defense that would be available to the debtor heir in a direct proceeding by the
9 personal representative for the recovery of the debt, except that the debtor heir may
10 not defend on the basis that the debt was discharged in bankruptcy or on the basis
11 that the relevant statute of limitations has expired. If the debtor fails to survive the
12 decedent, the court may not include the debt in computing any intestate shares of the
13 debtor's issue.

14 **(2) TRANSFEREE UNDER REVOCABLE GOVERNING INSTRUMENT.** (a) Subject to par.
15 (c), if a transferee under a revocable governing instrument survives the transferor
16 and is indebted to the transferor, the amount of the indebtedness shall be treated as
17 an offset against the property to which the debtor transferee is entitled. The property
18 not distributed to the debtor becomes part of the decedent's probate estate if it is not
19 already. If multiple revocable governing instruments transfer property to the debtor,
20 the debt shall be equitably allocated against the various instruments.

21 (b) Subject to par. (c), in contesting an offset under par. (a), the debtor shall have
22 the benefit of any defense that would be available to the transferee in a direct
23 proceeding for the recovery of the debt, except that the transferee may not defend on
24 the basis that the debt was discharged in bankruptcy, unless that discharge occurred
25 before the execution of the governing instrument, or on the basis that the relevant

1 statute of limitations has expired. If the transferee fails to survive the decedent, the
2 debt may not be included in computing the entitlement of alternate beneficiaries.

****NOTE: I left "may" in the last sentence of par. (b) because our style is to use "may
not" to prohibit. "Shall" is directive. *OK . Thanks for explaining.*

3 (c) Paragraph (a) or (b) does not apply if the person who executed the governing
4 instrument had a contrary intent. Extrinsic evidence may be used to construe that
5 intent.

6 **SECTION 108.** 854.13 (title) of the statutes is amended to read:

7 **854.13 (title) Disclaimer of transfers at death.**

8 **SECTION 109.** 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

9 **SECTION 110.** 854.13 (2) (a) 1. of the statutes is created to read:

10 854.13 (2) (a) 1. In this paragraph, "person" includes a person who is unborn
11 or unascertained.

12 **SECTION 111.** 854.13 (2) (gm) of the statutes is created to read:

13 854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a
14 recipient of property under a governing instrument may disclaim that property on
15 behalf of the trust if the governing instrument authorizes disclaimer by the trustee.
16 If the governing instrument does not authorize disclaimer by the trustee, the
17 trustee's power to disclaim is subject to the approval of the court.

18 **SECTION 112.** 854.13 (2) (h) of the statutes is amended to read:

19 854.13 (2) (h) *After death.* A person's right to disclaim survives the person's
20 death and may be exercised by the person's personal representative or special
21 administrator upon receiving approval from the court having jurisdiction of the
22 person's estate after hearing upon notice to all persons interested in the disclaimed

December 6, 2004
Further changes for 854.13 - Disclaimer
Please make parallel changes to 700.27

#1 of 3

The "original" text is the current statute. Strike through and underlines are changes that have been made as part of 05-0135P2. **Strike through and underlined italics are further changes**
Committee notes are mostly about the most recent changes.

(7) Devolution in general. ~~(a) Subject to subs. (8), (9) and (10), unless the transferor of the property or donee of the power has otherwise provided governing instrument provides otherwise, either expressly or as construed from *intrinsic or extrinsic* evidence, the disclaimed property devolves as if the disclaimant had died *before the decedent or* before the effective date of the transfer under the governing instrument. If the disclaimant is an appointee under a power exercised by a governing instrument, the disclaimed property devolves as if the disclaimant had died before the effective date of the exercise of the power. If the disclaimant is a taker in default under a power created by a governing instrument, the disclaimed property devolves as if the disclaimant had predeceased the donee of the power. *This paragraph is subject to subs. (8), (9) and (10). This paragraph applies to the disclaimer of present interests and future interests*~~

Committee Note

Clarifies that the statute applies to present and future interests and that information from the governing instrument itself can be used in its construction.

Note that sub. (7) refers to a situation where "the governing instrument provides otherwise," while sub (8) and (9) refer to a situation where "the decedent provided otherwise in a governing instrument." This difference is significant, because under (7) the governing instrument may be a power of appointment created by a third party, while under (8) and (9) the governing instrument must have been created by the decedent.

~~*In general*
(b) A disclaimer relates back for all purposes to the date of the decedent's death or the effective date of the transfer under the governing instrument. If the disclaimant is an appointee under a power exercised under a governing instrument, the disclaimer relates back to the effective date of the exercise of the power. If the disclaimant is a taker in default under a power created by a governing instrument, the disclaimer relates back to the last possible date for exercise of the power. A disclaimer of the future right to receive mandatory distributions of income or profits relates to the period stated in the disclaimer.~~

Committee Note

Repeals provision about disclaimer "relating back" to the date of the transfer. Current thinking on the law of disclaimer is that a "relating back" provision is redundant and creates an unnecessary ambiguity. The repeal is a remedial change and does not affect the substantive law of disclaimer.

(8) Devolution of disclaimed interest in joint tenancy. ~~Unless the decedent provided otherwise in a governing instrument, either expressly or as construed from *intrinsic or extrinsic* evidence, a disclaimed interest in a joint tenancy passes to the decedent's probate estate.~~

243

Committee Note

Clarifies that information from the governing instrument itself can be used in its construction. Note that the governing instrument that creates a different devolution does not need to be the instrument creating the survivorship arrangement.

(9) Devolution of disclaimed interest in survivorship marital property. ~~A~~ Unless the decedent provided otherwise in a governing instrument, either expressly or as construed from ~~intrinsic~~ or extrinsic evidence, a disclaimed interest in survivorship marital property passes to the decedent's probate estate.

Committee Note

Clarifies that information from the governing instrument itself can be used in its construction. Note that the governing instrument that creates a different devolution does not need to be the instrument creating the survivorship arrangement.

(10) Devolution of disclaimed future interest Acceleration of future interest when preceding interest is disclaimed. (a) Future interest held by a person other than the disclaimant. Unless the governing instrument creating the future interest manifests a contrary intent provides otherwise, either expressly or as construed from ~~intrinsic~~ or extrinsic evidence, upon the disclaimer of a preceding interest, a future interest limited to take effect in possession or enjoyment after the termination of the interest which is disclaimed held by a person other than the disclaimant takes accelerates to take effect as if the disclaimant had died immediately before the effective date of the governing instrument time of distribution time when the disclaimed interest would have taken effect in possession or enjoyment or, if the disclaimant is an appointee under a power exercised by a governing instrument power of appointment, as if the disclaimant had died before the effective date of the exercise of the power.

(b) Future interest held by the disclaimant. A future interest held by the disclaimant takes effect as described in par. (a) unless the court determines that acceleration would contradict the donor's probable intent.

Committee Note

Changes title to clarify that statute is concerned with the acceleration of a future interest when a *preceding* interest is disclaimed, not the disclaimer of a future interest itself – for example, beneficiary A may disclaim a life estate, thus accelerating the remainder interest of beneficiary B. Clarifies that information from the governing instrument itself can be used in its construction. (The Drafting Committee considered but decided not to adopt a rule that would allow a court to override the statute if it determined that acceleration would contradict the donor's probable intent.)

(11g)

(11) ~~Bar~~ (a) ~~ACTIONS THAT BAR DISCLAIMER.~~ A person's right to disclaim property is barred by any of the following:

1. (a) The person's assignment, conveyance, encumbrance, pledge or transfer of the property or a contract therefor.

2. (b) The person's written waiver of the right to disclaim.

3.(c) The person's acceptance of the property or benefit of the property.

(d) Any statute or common law, other than this section, that bars the right to disclaim.

Sub

Committee Note

Separates current section (11) into separate sections, because the current subsections deal with completely different issues. Clarifies that disclaimer may be barred by other law, such as the law relating to bankruptcy or governmental benefits.

receipt of

OF DISCLAIMER

(b11m) EFFECT UPON ON DISCLAIMANT AND SUCCESSORS IN INTEREST. The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him or her.

Committee Note

See note to (11).

(12) Nonexclusiveness of remedy. (a) This section does not affect the right of a person to waive, release, disclaim or renounce property under any other statute, the common law, or as provided in the creating instrument.

stat
leave
in "the
common
law"

Committee Note

~~Removes reference to the possibility of common disclaimer. The Drafting Committee does not believe that there is a common law of disclaimer, and is concerned that an inference that there is one could lead to undesirable tax consequences.~~

(b) Any disclaimer that meets the requirements of section 2518 of the Internal Revenue Code, or the requirements of any other federal law relating to disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

(13) Construction of effective date. In this section, the effective date of a transfer under a revocable governing instrument is the date on which the person with the power to revoke the transfer no longer has that power or the power to transfer the legal or equitable ownership of the property that is the subject of the transfer.

1 property, if the personal representative or special administrator has not taken any
2 action which would bar the right to disclaim under sub. (11) (11g).

3 **SECTION 113.** 854.13 (2) (i) of the statutes is created to read:

4 854.13 (2) (i) *Disclaimer of inter vivos transfers.* A person who is a recipient
5 of property under an inter vivos governing instrument, as defined in s. 700.27 (1) (c),
6 may disclaim the property as provided in s. 700.27.

7 **SECTION 114.** 854.13 (7) (a) of the statutes is amended to read:

8 854.13 (7) (a) Unless the transferor of the property or donee of the power has *charges.*
9 otherwise provided governing instrument provides otherwise, either expressly or as
10 construed from extrinsic evidence, the disclaimed property devolves as if the
11 disclaimant had died before the decedent or before the effective date of the transfer
12 under the governing instrument. If the disclaimant is an appointee under a power
13 exercised by a governing instrument, the disclaimed property devolves as if the
14 disclaimant had died before the effective date of the exercise of the power. If the
15 disclaimant is a taker in default under a power created by a governing instrument,
16 the disclaimed property devolves as if the disclaimant had predeceased the donee of
17 the power. This paragraph is subject to subs. (8), (9) and (10).

18 **SECTION 115.** 854.13 (8) of the statutes is amended to read:

19 854.13 (8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the
20 decedent provided otherwise in a governing instrument, either expressly or as
21 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to
22 the decedent's probate estate.

23 **SECTION 116.** 854.13 (9) of the statutes is amended to read:

24 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL
25 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,

*Please see
3 page insert
re disclaimer
charges.*

1 either expressly or as construed from extrinsic evidence, a disclaimed interest in
2 survivorship marital property passes to the decedent's probate estate.

3 **SECTION 117.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and
4 amended to read:

5 854.13 (10) (a) *Future interest held by a person other than the disclaimant.*
6 Unless the governing instrument creating the future interest manifests a contrary
7 intent provides otherwise, either expressly or as construed from extrinsic evidence,
8 upon the disclaimer of a preceding interest, a future interest limited to take effect
9 in possession or enjoyment after the termination of the interest which is disclaimed
10 held by a person other than the disclaimant takes effect as if the disclaimant had died
11 immediately before the effective date of the governing instrument time of
12 distribution or, if the disclaimant is an appointee under a power exercised by a
13 governing instrument power of appointment, as if the disclaimant had died before
14 the effective date of the exercise of the power.

15 **SECTION 118.** 854.13 (10) (b) of the statutes is created to read:

16 854.13 (10) (b) *Future interest held by the disclaimant.* A future interest held
17 by the disclaimant takes effect as described in par. (a) unless the court determines
18 that acceleration would contradict the donor's probable intent.

19 **SECTION 119.** 854.13 (11) (title) of the statutes is repealed.

20 **SECTION 120.** 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and
21 854.13 (11g) (title) and (a), as renumbered, are amended to read:

22 854.13 (11g) (title) ACTIONS THAT BAR DISCLAIMER BAR.

(No additional
change here.)

23 (a) The person's assignment, conveyance, encumbrance, pledge, or transfer of
24 the property or a contract therefor for the assignment, conveyance, encumbrance,
25 pledge, or transfer of the property.

Just curious. ³⁸ With 2 inserts,
wouldn't the convention be
to use g + P, rather than
g + M?

1 SECTION 121. 854.13 (11) (b) of the statutes is renumbered 854.13 (11m), and
2 854.13 (11m) (title), as renumbered, is amended to read:

3 854.13 **(11m)** (title) ~~EFFECT UPON ON DISCLAIMANT AND SUCCESSORS IN INTEREST.~~
OF DISCLAIMER (to parallel the title of 700.27(10))

4 SECTION 122. 854.13 (12) (b) of the statutes is amended to read:

5 854.13 **(12)** (b) Any disclaimer that meets the requirements of section 2518 of
6 the Internal Revenue Code, or the requirements of any other federal law relating to
7 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

8 SECTION 123. 854.14 (1) of the statutes is repealed.

9 SECTION 124. 854.14 (3m) of the statutes is created to read:

10 854.14 **(3m)** EFFECT IF DEATH CAUSED BY SPOUSE. (a) *Definitions*. In this
11 subsection:

12 1. "Owner" means a person appearing on the records of the policy issuer as the
13 person having the ownership interest, or means the insured if no person other than
14 the insured appears on those records as a person having that interest. In the case
15 of group insurance, the "owner" means the holder of each individual certificate of
16 coverage under the group plan and does not include the person who contracted with
17 the policy issuer on behalf of the group, regardless of whether that person is listed
18 as the owner on the contract.

19 2. "Ownership interest" means the rights of an owner under a policy.

20 3. "Policy" means an insurance policy insuring the life of a spouse and providing
21 for payment of death benefits at the spouse's death.

22 4. "Proceeds" means the death benefit from a policy and all other economic
23 benefits from it, whether they accrue or become payable as a result of the death of
24 an insured person or upon the occurrence or nonoccurrence of another event.

1 (b) *Life insurance.* 1. Except as provided in sub. (6), if a noninsured spouse
2 unlawfully and intentionally kills an insured spouse, the surviving spouse's
3 ownership interest in a policy that designates the decedent spouse as the owner and
4 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to
5 one-half of the marital property interest in the interpolated terminal reserve and in
6 the unused portion of the term premium of the policy on the date of death of the
7 decedent spouse. All other rights of the surviving spouse in the ownership interest
8 or proceeds of the policy, other than the marital property interest described in this
9 subsection, terminate at the decedent spouse's death.

10 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured
11 spouse unlawfully and intentionally kills a noninsured spouse, the ownership
12 interest at death of the decedent spouse in any policy with a marital property
13 component that designates the surviving spouse as the owner and insured is a
14 fractional interest equal to one-half of the portion of the policy that was marital
15 property immediately before the death of the decedent spouse.

16 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as
17 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the
18 nonemployee spouse, the ownership interest at death of the decedent spouse in any
19 deferred employment benefit, or in assets in an individual retirement account that
20 are traceable to the rollover of a deferred employment benefit plan, that has a marital
21 property component and that is attributable to the employment of the surviving
22 spouse is equal to one-half of the portion of the benefit or assets that was marital
23 property immediately before the death of the decedent spouse.

24 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
25 spouse unlawfully and intentionally kills the decedent spouse, the estate of the

1 decedent shall have the right to elect no more than 50% of the augmented deferred
2 marital property estate, as determined under s. 861.02 (2), as though the decedent
3 spouse were the survivor and the surviving spouse were the decedent. The court
4 shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the intent
5 of this paragraph.

6 **SECTION 125.** 854.14 (5) (a) of the statutes is amended to read:

7 854.14 (5) (a) A final judgment establishing criminal accountability for the
8 unlawful and intentional killing of the decedent conclusively establishes the
9 convicted individual as the decedent's killer for purposes of this section and s. 861.02
10 (8).

11 **SECTION 126.** 854.14 (5) (b) of the statutes is amended to read:

12 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
13 and intentional killing of the decedent conclusively establishes the adjudicated
14 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

15 **SECTION 127.** 854.14 (5) (c) of the statutes is amended to read:

16 854.14 (5) (c) In the absence of a judgment establishing criminal accountability
17 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the
18 petition of an interested person, shall determine whether, ~~under~~ based on the
19 preponderance of the evidence standard, the killing of the decedent was unlawful
20 and intentional for purposes of this section and s. 861.02 (8).

21 **SECTION 128.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and
22 amended to read:

23 854.01 (3) "Revocable", with respect to a disposition, provision, or
24 nomination, means one under which the decedent, at the time of the divorce,
25 annulment or similar event referred to, was alone empowered, by law or under the

1 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
2 ~~former spouse's relative, change or revoke, regardless of whether or not~~ the decedent
3 was then empowered to designate himself or herself in place of the a former spouse
4 ~~or the former spouse's relative~~ designee, and regardless of whether or not the
5 decedent then had the capacity to exercise the power.

6 SECTION 129. 854.17 of the statutes is amended to read:

7 ~~854.17 Classification; how determined~~ **Marital property classification;**
8 **ownership and division of marital property at death.** In chs. 851 to 882,
9 ~~classification~~ Classification of the property of a decedent spouse and surviving
10 spouse is, and ownership and division of that property at the death of a spouse, are
11 determined under ch. 766 and s. 861.01.

12 SECTION 130. 854.18 (1) (a) (intro.) of the statutes is amended to read:

13 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
14 ~~share of the surviving spouse who elects to take an elective share in deferred marital~~
15 ~~property~~ deferred marital property elective share amount of a surviving spouse who
16 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11
17 ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of
18 distributees abate, without any preference or priority as between real and personal
19 property, in the following order:

20 SECTION 131. 854.18 (3) of the statutes is amended to read:

21 854.18 (3) If the governing instrument expresses an order of abatement, or if
22 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
23 transfer, as expressed, implied, or determined through extrinsic evidence, would be
24 defeated by the order of abatement under sub. (1), the shares of the distributees
25 abate as necessary to give effect to the intention of the transferor.

1 **SECTION 132.** 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and
2 amended to read:

3 854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is
4 treated as a birth child of the person's adoptive parents and the adoptive parents are
5 treated as the birth parents of the adoptive child for purposes of ~~intestate succession~~
6 transfers at death by, through, and from the adopted person and for purposes of any
7 statute or other rule conferring rights upon children, issue, or relatives in connection
8 with the law of intestate succession or governing instruments.

9 **SECTION 133.** 854.20 (2) (intro.) of the statutes is renumbered 854.20 (2) (am)
10 (intro.) and amended to read:

11 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases
12 to be treated as a child of the person's birth parents and the birth parents cease to
13 be treated as the parents of the child for the same purposes as ~~under specified in~~
14 (1) (a), except:

15 **SECTION 134.** 854.20 (2) (a) of the statutes is renumbered 854.20 (2) (am) 1. and
16 amended to read:

17 854.20 (2) (am) 1. ~~If a birth parent marries or remarries and the parent-child~~
18 relationship between the child is adopted by the stepparent, and one birth parent is
19 replaced by adoption, but the relationship to the other birth parent is not replaced,
20 then for all purposes the child ^{continues to be} ~~is~~ treated as the child of the birth parent whose spouse
21 adopted the child relationship was not replaced.

22 **SECTION 135.** 854.20 (2) (am) 2. b. and c. of the statutes are created to read:

23 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
24 at the time of adoption or if the adoptive parent raised the adopted person in a

1 parent-like relationship beginning on or before the child's 15th birthday and lasting
2 for a substantial period or until adulthood.

3 c. Subdivision 2. a. does not apply if the parental rights of the deceased birth
4 parent had been terminated.

5 SECTION 136. 854.20 (2) (b) of the statutes is renumbered 854.20 (2) (am) 2. a.
6 and amended to read:

7 854.20 (2) (am) 2. a. If Subject to subd. 2. b. and c., if a birth parent of a marital
8 child dies and the other birth parent subsequently remarries and the child is adopted
9 by the stepparent, the child ^{continues to be} is treated as the child of the deceased birth parent for
10 purposes of inheritance transfers at death through that parent and for purposes of
11 any statute or other rule conferring rights upon children, or issue or relatives of that *Keep original*
12 parent under the law of intestate succession or governing instruments.

***NOTE: I did not change "is" to be "continues to be" in this version because this change requires striking and scoring to change it. Usually our nonsubstantive changes update archaic language or fix errors. I am worried that this amendment might be viewed as substantive. Please let me know if you still want the change. *Would still like it; it isn't as big a change as the others made in this para, it seems.*

We have decided to drop this provision

13 SECTION 137. 854.20 (2) (bm) of the statutes is created to read:
14 854.20 (2) (bm) Subject to sub. (5), in par. (am) 2., the child is not treated as the
15 child of the deceased birth parent for purposes of transfers at death from or through
16 the child to relatives of that parent, other than issue of the child, or for purposes of
17 any statute or other rule conferring rights upon relatives of that parent, other than
18 issue of the child, under the law of intestate succession or governing instruments.

19 SECTION 138. 854.20 (3) of the statutes is renumbered 854.20 (2) ^(am) and
20 amended to read: ^(bm)

21 854.20 (2) ^(bm) ~~(am)~~ *Sequential adoption.* Subject to sub. (4) (5), if an adoptive
22 parent dies or his or her parental rights are terminated in a legal proceeding and the

Please review this Committee Note to s. 854.20[5] and let us know whether it correctly captures the LRB view of the meaning of the statute. We are fine with the language in the statute if it will do the job.

Committee Note

Sub. (5) provides that the rules as stated above are merely default rules. The substance of this provision is unchanged from the former statute. It is important to note that for this statute – as for all others in Chapter 854 where contrary intent applies – the person who executed the governing instrument may have had a contrary intent regarding only part of the statute. Thus the provision can be read to state, “If the transfer is made under a governing instrument and the person who executed the instrument had a contrary intent regarding this section or any of its subparts, the section or subpart does not apply to the transfer. Extrinsic evidence may be used to construe that intent.”

Consider the following examples under s. 854.20(2)(am)

1. A and B are birth parents of a nonmarital child, C. A dies, and B’s new partner adopts C. A’s parent provides for a transfer at death to his or her “grandchildren,” and sufficient evidence exists to show that A’s parent meant to include C as a grandchild. Under sub. (5), the general provision of (2)(am) would be negated, and C would take as a grandchild.
2. A and B are birth parents of a marital child, C. A dies, and B’s new spouse adopts C at a young age. A’s parent provides for a transfer at death to his or her “grandchildren,” and sufficient evidence exists to show that A’s parent did not intend to include C as a grandchild. Under sub. (5), the exception of (2)(am)2.a. would be negated, the general provision of (2)(am) would apply, and C would not take.

1 adopted child is subsequently adopted by another person, the former adoptive parent
2 is considered to be a birth parent for purposes of this section subsection.

3 SECTION 139. 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20
4 (1) (b) (intro.) and 3., as renumbered, are amended to read:

5 854.20 (1) (b) *Applicability*. (intro.) Subsections (1), (2) and (3) apply Subject
6 to sub. (5), par. (a) applies only if at least one of the following applies:

7 3. The adoptive parent raised the adopted person was raised as a member of
8 the household by the adoptive parent from in a parent-like relationship beginning
9 on or before the child's 15th birthday or before and lasting for a substantial period
10 or until adulthood.

11 SECTION 140. 854.20 (5) of the statutes is amended to read:

12 854.20 (5) CONTRARY INTENT. ^{* Keep} ~~This Any part of this~~ section does not apply if the
13 to a transfer is made under a governing instrument and there is a finding of contrary
14 intent of if the person who executed the instrument had a contrary intent/to that part
15 of this section. Extrinsic evidence may be used to construe that intent.

****NOTE: By "this section or any of its subparts," I think you mean that the section parts were severable and that a contrary intent to one part would not invalidate the other parts. Is this language okay? But language that is similar to the old language remains throughout ch. 854, and probably elsewhere. If you change the language here to clarify the meaning, should you review the other instances too?

Good point. Seems like the best thing to do would be to put it in the Committee Notes, and not try to do it in the stats. Do you agree?

16 SECTION 141. 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)

17 and amended to read:

18 854.21 (1) (a) Except as provided in ~~par. (b) or sub. (7)~~, a gift of property by a
19 governing instrument to a class of persons described as "issue," "lawful issue,"
20 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"
21 "distributees," or the like includes a person adopted by a person whose birth child
22 would be a member of the class, and issue of the adopted person, if the conditions for

Go back to original and just deal with it in the notes? Seems like we need to change it every where or nowhere.

1 membership in the class are otherwise satisfied and any of the following applies: at
2 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

3 **SECTION 142.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

4 **SECTION 143.** 854.21 (1) (b) of the statutes is amended to read:

5 854.21 (1) (b) Except as provided in sub. (7), a gift under par. (a) of property by
6 a governing instrument to a class of persons described as “issue,” “lawful issue,”
7 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”
8 “distributees,” or the like excludes a birth child and his or her issue otherwise within
9 the class if the birth child has been adopted and would cease to be treated as a child
10 of the birth parent under s. 854.20 (2).

11 **SECTION 144.** 856.05 (5) of the statutes is amended to read:

12 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~
13 ~~documents incorporated by reference under s. 853.32 (1) or (2)~~ and information
14 needed for proof of a lost missing will under s. 856.17.

15 **SECTION 145.** 856.15 (1) of the statutes is amended to read:

16 856.15 (1) GENERALLY. The court may grant probate of an uncontested will on
17 the execution in open court by one of the subscribing witnesses of a sworn statement
18 that the will was executed as required by the statutes and that the testator was of
19 sound mind, of full age, and not acting under any restraint at the time of the
20 execution thereof. If an uncontested will contains an attestation clause showing
21 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
22 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
23 probate without any testimony or other evidence.

24 **SECTION 146.** 856.16 of the statutes is repealed and recreated to read:

1 **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in
2 connection with the affidavit, if a will includes an affidavit in substantially the form
3 under s. 853.04 (1) or (2), all of the following apply:

4 (a) The will is conclusively presumed to have been executed in compliance with
5 s. 853.03.

6 (b) Other requirements related to the valid execution of the will are rebuttably
7 presumed.

8 (c) A signature affixed to the affidavit is considered a signature affixed to the
9 will, if necessary to prove the due execution of the will.

10 (2) Admission of a will under s. 856.13 or 856.15 is not dependent on the
11 existence of a valid affidavit under s. 853.04.

12 **SECTION 147.** 856.17 of the statutes is amended to read:

13 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
14 accident ~~or~~ destroyed without the testator's consent, unavailable but revived under
15 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
16 and validity of the will and to establish the same. The petition for the probate of the
17 will shall set forth the provisions ~~thereof~~ of the will.

18 **SECTION 148.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and
19 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

20 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a
21 successor in interest to all or part of the decedent's one-half interest in marital
22 property may petition the court to approve an exchange of interests in the marital
23 property authorized under subd. 1. or 2., but court approval of the exchange is not
24 required for the agreement under subd. 1. or 2. to be effective. If the court approves
25 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall

11/9/02
Changes for LRB-0135/P2

page 1 of 2

PROPOSED AMENDMENT OF STATUTES REGARDING CREDITORS' CLAIMS.

Problem: § 859.01 sets the time for filing claims, but does not say what the consequences are of missing the deadline. Under § 859.02 claims that miss the deadline are barred, but certain claims are exempted from the bar. For two types of claims exempted from the bar – torts claims and claims of known creditors – there are separate statutes of limitations late in Chapter 859 (§§ 859.45 and 859.48). However, the cross references are incomplete. The latter sections refer to §§ 859.01 or 859.02, but the earlier sections do not give any indication that there are special rules late in Chapter 859; they simply provide that the SOL in § 859.02 does not apply.

Proposed solution: Add cross reference to § 859.01 and in new § 859.02(2m):

859.01 Time for filing claims. When an application for administration is filed, the court, or the probate registrar under informal administration proceedings, shall by order set a date as the deadline for filing a claim against the decedent's estate. The date shall be not less than 3 nor more than 4 months from the date of the order. If a claim is not filed by the deadline, the consequences are as provided in ss. 859.02.

Note: I considered saying "the consequences are as provided in ss. 859.02, 859.45, and 859.48." However, that might imply that these are the only consequences, and that would be incorrect because there are other claims for which the SOL in 859.02 doesn't apply but for which there don't seem to be SOL's provided elsewhere in Chapter 859.

859.02 Limitation on claims. (1) Except as provided in sub. (2) and s. 859.03, all claims against a decedent's estate including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the estate, the personal representative and the heirs and beneficiaries of the decedent unless filed on or before the date set under s. 859.01.

(2) A claim against a decedent's estate that is not filed on or before the date set under s. 859.01 is not barred if:

(a) It is a claim based on tort, on a marital property agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income, franchise, sales, withholding, gift or death taxes, or on unemployment insurance contributions due or benefits overpaid, a claim for funeral or administrative expenses, a claim of this state under s. 46.27 (7g), 49.496 or 49.682 or a claim of the United States; or

(b) All of the following circumstances exist:

1. On or before the date set under s. 859.01, the personal representative knew, or in the exercise of reasonable diligence should have known, of the existence of the potential claim and of the identity and mailing address of the potential claimant.

2. At least 30 days prior to the date set under s. 859.01, the personal representative had not given notice to the potential claimant of the final day for filing his or her claim and the court in which the estate proceeding was pending.

3. At least 30 days prior to the date set under s. 859.01, the claimant did not have actual knowledge that the estate proceeding was pending and of the court in which that proceeding was

11/9/02

Changes for LRB-0135/P2

page 2 of 2

pending.

(2m) A claim based on tort is subject to s. 859.45. A claim of a creditor without notice is subject to s. 859.48.

(3) Failure of a claimant timely to file a claim against a decedent's estate does not bar the claimant from satisfying the claim from property other than the decedent's estate.

Statutes Reprinted for Reference -

859.45 Tort claims. (1) Filed within time limited. If a claim based on a cause of action in tort or for contribution resulting from a cause of action in tort is filed on or before the deadline for filing a claim under s. 859.01 or 859.21 or a continuance is secured under s. 859.03, the claimant will receive the same protection in regard to payment as a claimant who has filed a claim which was required to be filed.

(2) Not filed within time limited. A cause of action against a decedent in tort or for contribution resulting from a cause of action in tort is not defeated by failure to file the claim or commence or continue an action against the personal representative on or before the deadline for filing a claim under s. 859.01 against an estate, but the failure relieves the court of all responsibility to protect the rights of the claimant and the claimant shall not be granted any of the protections under s. 859.21. If the claim is made absolute through court approved settlement or adjudication and a certified copy of the settlement or judgment is filed in the court in which the estate is being administered prior to the approval of the final account, it shall be paid prior to the distribution of the estate, otherwise the estate may be distributed as though the claim did not exist. After the final account has been approved, a claimant whose claim has been made absolute through court approved settlement or through adjudication may proceed against the distributees, but no distributee may be liable for an amount greater than that allowed under s. 859.23.

859.48 Claims of creditors without notice. (1) A claim not barred by s. 859.02 (1) because of the operation of s. 859.02 (2) (b) may be enforced only as provided in this section.

(2) The claimant shall file the claim in the court in which the estate is administered within one year after the decedent's death and within 30 days after the earlier of the following:

(a) The date that the personal representative gives notice to the potential claimant of the deadline for filing a claim against the estate under s. 859.01 or this section and of the court in which the estate is administered.

(b) The date that the claimant first acquires actual knowledge that the estate is being or was administered and of the court in which the estate is administered.

(3) The claimant shall serve a copy of the claim upon or mail a copy of the claim to the personal representative or the attorney for the estate within 10 days after the claim is filed.

(4) In any proceeding under this section, the claimant shall have the burden of establishing by the greater weight of the credible evidence that all of the circumstances under s. 859.02 (2) (b) existed.

(5) If the claim is allowed, it shall be paid to the same extent as other claims of the same class. If allowed after the assets of the estate have been partially or fully distributed, any unpaid portion of the claim may be enforced by separate action against the distributees. No distributee is liable for any amount greater than that allowed under s. 859.23.

(6) This section does not extend the time for commencement of a claim beyond the time provided by any statute of limitations applicable to that claim.

1 exchange their respective interests in 2 or more items of marital property and
2 distribute the items in a manner to conform with the exchange. The exchange shall:

3 a. Occur before the final distribution of the estate assets under the governing
4 instrument;

5 **SECTION 149.** 857.03 (2m) of the statutes is created to read:

6 857.03 (2m) The surviving spouse and the personal representative may
7 petition the court to approve an exchange of interests in marital property as provided
8 in s. 766.31 (3) (b) 3.

9 **SECTION 150.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and
10 amended to read:

11 766.31 (7m) PERSONAL INJURY DAMAGES; LOST EARNINGS. To the extent that
12 marital property includes damages for loss of future income arising from a personal
13 injury claim of ~~the~~ a surviving spouse, the surviving spouse is entitled to receive as
14 individual property that portion of the award that represents an income substitute
15 after the death of the other spouse.

16 **SECTION 151.** 861.01 (3m) of the statutes is created to read:

17 861.01 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS. Section 766.31 (7m)
18 determines the rights of a surviving spouse to that part of a personal injury claim
19 that represents future lost earnings of the surviving spouse.

20 **SECTION 152.** 861.01 (4) of the statutes is created to read:

21 861.01 (4) ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN
22 NONPROBATE ASSETS. Section 766.70 applies to enforcement of a surviving spouse's
23 marital property rights in nonprobate assets.

24 **SECTION 153.** 861.01 (5) of the statutes is created to read:

1 **SECTION 160.** 861.04 (2) of the statutes is repealed.

2 **SECTION 161.** 861.04 (2m) of the statutes is created to read:

3 861.04 **(2m)** When the surviving spouse is treated as the decedent under sub.
4 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
5 (1) (e) or (2m).

6 **SECTION 162.** 861.05 (1) (c) of the statutes is amended to read:

7 861.05 **(1)** (c) Transfers of deferred marital property to persons other than the
8 surviving spouse who did not make the transfer, with the written joinder or written
9 consent of ~~the surviving~~ that spouse.

10 **SECTION 163.** 861.05 (1) (e) of the statutes is created to read:

11 861.05 **(1)** (e) The deferred marital property component of any deferred
12 employment benefit plan, or of assets in an individual retirement account that are
13 traceable to the rollover of a deferred employment benefit plan, held by the surviving
14 spouse that would have terminated under s. 766.62 (5) had it been marital property.

15 **SECTION 164.** 861.05 (2) (title) of the statutes is amended to read:

16 861.05 **(2)** (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

17 **SECTION 165.** 861.05 (2m) of the statutes is created to read:

18 861.05 **(2m)** VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The
19 surviving spouse's property included in the augmented deferred marital property
20 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's
21 property included in the augmented deferred marital property estate is valued under
22 sub. (2), subject to the following:

23 (a) The surviving spouse shall be treated as having died after the decedent on
24 the date of the decedent's death notwithstanding the 120-hour survival requirement
25 under s. 854.03 (1).

1 (b) Life insurance on the surviving spouse's life shall have the value of the
2 deferred marital property component of the interpolated terminal reserve and the
3 unused portion of the term premium of the policy as of the date of the decedent's
4 death.

5 **SECTION 166.** 861.06 (title) of the statutes is amended to read:

6 **861.06 (title) Satisfaction of deferred marital property elective share**
7 **amount.**

8 **SECTION 167.** 861.06 (2) (title) of the statutes is amended to read:

9 **861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE**
10 **SHARE AMOUNT.**

11 **SECTION 168.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

12 **861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred**
13 **individual property, transferred to the surviving spouse, including any beneficial**
14 **interest in property transferred in trust:**

15 **SECTION 169.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

16 **861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent**
17 **to the surviving spouse each year. Each gift shall be valued as of the date of the gift.**

18 **SECTION 170.** 861.06 (6) of the statutes is created to read:

19 **861.06 (6) VALUATION.** The value of property used to satisfy the deferred marital
20 property elective share includes the value of any property transferred outright to the
21 surviving spouse, the commuted value of any present or future interest in property
22 transferred to the surviving spouse, and the commuted value of property payable to
23 the surviving spouse under any trust, life insurance settlement option, annuity
24 contract, public or private pension, disability compensation, death benefit or
25 retirement plan, or any similar arrangement.

1 **SECTION 171.** 861.07 (2) (intro.) of the statutes is amended to read:

2 861.07 (2) **PERSONS LIABLE.** (intro.) The following persons are liable to make
3 a prorated contribution toward satisfaction of the surviving spouse's deferred
4 marital property elective share amount:

5 **SECTION 172.** 861.10 (1) of the statutes is amended to read:

6 861.10 (1) **RIGHT TO ELECT MAY BE WAIVED.** The right to elect a deferred marital
7 property elective share amount may be waived by the surviving spouse in whole or
8 in part. The waiver may take place before or after marriage. The waiver shall must
9 be contained in a marital property agreement that is enforceable under s. 766.58 or
10 in a signed document filed with a court described in s. 861.08 (1) (a) after the
11 decedent's death.

12 **SECTION 173.** 861.10 (2) of the statutes is amended to read:

13 861.10 (2) **WAIVER OF "ALL RIGHTS".** Unless the waiver provides otherwise, a
14 waiver of "all rights" or equivalent language, in the property or estate of a present
15 or prospective spouse, or in a complete property settlement entered into because of
16 separation or divorce, is a waiver of all rights in the deferred marital property
17 elective share amount.

18 **SECTION 174.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

19 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other
20 3rd party who has received satisfactory proof of the decedent's death and who has not
21 received written notice that the surviving spouse or his or her representative intends
22 to file a petition for the deferred marital property elective share amount or that a
23 petition for the election has been filed is not liable for any of the following:

24 **SECTION 175.** 861.11 (2) (b) of the statutes is amended to read:

1 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other
2 actions taken after receipt of written notice of the intent to file a petition for the
3 elective share amount or written notice that a petition for the elective share amount
4 has been filed.

5 **SECTION 176.** 861.11 (5) (b) of the statutes is amended to read:

6 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
7 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a
8 financial institution is not liable for having transferred an account included in the
9 augmented deferred marital property estate under s. 861.03 to a beneficiary
10 designated in a governing instrument, or for having taken any other action in
11 reliance on the beneficiary's apparent entitlement under the terms of a governing
12 instrument, regardless of whether the financial institution received written notice
13 of an intent to file, or the filing of, a petition for the deferred marital property elective
14 share amount.

15 **SECTION 177.** 861.17 (3) of the statutes is amended to read:

16 861.17 (3) If the spouse is successful in an action to reach fraudulent property
17 arrangements, recovery is limited to the share amount the spouse would receive
18 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.
19 Recovery A spouse who recovers under this subsection forfeits any power of
20 appointment ~~which~~ that the surviving spouse possesses over the remaining portion
21 of the fraudulently arranged property, except a special power.

22 **SECTION 178.** 861.21 (1) (a) of the statutes is amended to read:

23 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

24 **SECTION 179.** 861.21 (2) of the statutes is amended to read:

1 861.21 (2) ~~IF-MARITAL DECEDENT'S PROPERTY INTEREST IN HOME.~~ Subject to subs.
2 (4) and (5), if a married decedent has a ~~marital~~ property interest in a home, the
3 decedent's entire interest in the home shall be assigned to the surviving spouse if the
4 surviving spouse petitions the court requesting such a distribution and if a governing
5 instrument does not provide a specific transfer of the decedent's interest in the home
6 to someone other than the surviving spouse. The surviving spouse shall file the
7 petition within 6 months after the decedent's death, unless the court extends the
8 time for filing.

9 **SECTION 180.** 861.21 (3) of the statutes is repealed.

10 **SECTION 181.** 861.21 (4) of the statutes is amended to read:

11 861.21 (4) **PAYMENT BY SURVIVING SPOUSE.** The court shall assign the interest in
12 the home under sub. (2) to the surviving spouse upon payment of the value of the
13 decedent's interest in the home that does not pass to the surviving spouse under
14 intestacy or under ~~the~~ a governing instrument. Payment shall be made to the
15 fiduciary holding title to the interest. The surviving spouse may use assets due him
16 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court
17 extends the time, the surviving spouse shall have one year from the decedent's death
18 to pay the value of the assigned interest.

19 **SECTION 182.** 861.21 (5) of the statutes is amended to read:

20 861.21 (5) **SEVERANCE OF HOME FROM SURROUNDING LAND.** On petition of the
21 surviving spouse or of any interested person that part of the land is not necessary for
22 dwelling purposes and that it would be inappropriate to assign all of the surrounding
23 land as the home under sub. (2), the court may set off for the home as much of the
24 land as is necessary for a dwelling. In determining how much land should be set off,

1 the court shall take into account the use and marketability of the parcels set off as
2 the home and the remaining land.

3 **SECTION 183.** 861.31 (1c) of the statutes is repealed.

4 **SECTION 184.** 861.31 (1m) of the statutes is amended to read:

5 861.31 **(1m)** The court may, without notice or on such notice as the court
6 directs, order payment by the personal representative or special administrator of an
7 allowance as ~~it~~ the court determines necessary or appropriate for the support of the
8 surviving spouse and any ~~dependent~~ minor children of the decedent during the
9 administration of the estate. ~~In making or denying the order the~~ The court shall
10 consider the size of the probate estate, other resources available for support, the
11 existing standard of living, and any other factors it considers relevant.

12 **SECTION 185.** 861.31 (2) of the statutes is amended to read:

13 861.31 **(2)** The court may order that an allowance may be made to the spouse
14 for support of the spouse and any ~~dependent~~ minor children of the decedent, or that
15 separate allowances may be made to the spouse and to the ~~dependent~~ minor children
16 of the decedent or their guardian, if any, if the court finds separate allowances
17 advisable. If there is no surviving spouse, the court may order that an allowance may
18 be made to the ~~dependent~~ minor children of the decedent or to their guardian, if any.

19 **SECTION 186.** 861.31 (4) (intro.) of the statutes is amended to read:

20 861.31 **(4)** (intro.) The court may ~~direct~~ order that the allowance be charged
21 against income or principal, either as an advance or otherwise, but ~~in no event may~~
22 the court may not order that an allowance for support of ~~dependent~~ minor children
23 of the decedent be charged against the income or principal interest of the surviving
24 spouse. The court may ~~direct~~ order that the allowance for support of the surviving

1 spouse, not including any allowance for support of dependent minor children of the
2 decedent, be applied in satisfaction of any of the following:

3 **SECTION 187.** 861.31 (4) (a) of the statutes is amended to read:

4 861.31 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
5 853.12.

6 **SECTION 188.** 861.33 (title) of the statutes is amended to read:

7 **861.33 (title) Selection of personalty by surviving spouse or children.**

8 **SECTION 189.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

9 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
10 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~
11 ~~children~~, may file with the court a written selection of the following personal
12 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the
13 personal representative:

14 **SECTION 190.** 861.33 (1) (b) of the statutes is amended to read:

15 861.33 (1) (b) The selection in par. (a) may not include items specifically
16 bequeathed except that the surviving spouse ~~or children~~ may in every case select the
17 normal household furniture, furnishings, and appliances necessary to maintain the
18 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are
19 specifically bequeathed are not classifiable as normal household furniture or
20 furnishings.

21 **SECTION 191.** 861.33 (1) (c) of the statutes is repealed.

22 **SECTION 192.** 861.33 (2) of the statutes is amended to read:

23 861.33 (2) If it appears that claims may not be paid in full, the court may, upon
24 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~
25 under this section to items not exceeding \$5,000 in aggregate inventory value until

1 such time as the claims are paid in full or the court otherwise orders; or the court
2 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
3 the option of the spouse ~~or children~~, pay the excess in value over this amount.

4 **SECTION 193.** 861.33 (3) of the statutes is amended to read:

5 861.33 (3) The surviving spouse ~~or children~~ may select items not specifically
6 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000
7 limit or obtain the transfer of items exceeding the limit set by the court under sub.
8 (2), by paying to the personal representative the excess of inventory value over the
9 respective limit.

10 **SECTION 194.** 861.33 (4) of the statutes is amended to read:

11 861.33 (4) ~~Subject to sub. (1) (c), the~~ The personal representative has power,
12 without court order, to execute appropriate documents to effect transfer of title to any
13 personal property ~~selected by the spouse or children~~ selects under this section. A
14 person may not question the validity of the documents of transfer or refuse to
15 accomplish the transfer on the grounds that the personal representative is also the
16 surviving spouse ~~or the only child~~ of the decedent.

17 **SECTION 195.** 861.35 (title) of the statutes is amended to read:

18 **861.35 (title) Special allowance for support of spouse and support and**
19 **education of dependent minor children.**

20 **SECTION 196.** 861.35 (1c) of the statutes is repealed.

21 **SECTION 197.** 861.35 (1m) (intro.) of the statutes is amended to read:

22 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor
23 children, the court may order an allowance for the support and education of each
24 dependent minor child until he or she reaches a specified age, not to exceed 18, and
25 for the support of the spouse. This allowance may be made whether the estate is

1 testate or intestate. If the decedent is not survived by a spouse, the court also may
2 allot directly to ~~any of the dependent~~ the minor children household furniture,
3 furnishings, and appliances. ~~No~~ The court may not order an allowance may be made
4 under this section if any of the following ~~apply~~ applies:

5 **SECTION 198.** 861.35 (1m) (a) of the statutes is amended to read:

6 861.35 **(1m)** (a) The decedent has amply provided for each minor child and for
7 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~
8 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate
9 assets, or support and education have been provided for by any other means.

10 **SECTION 199.** 861.35 (1m) (b) of the statutes is amended to read:

11 861.35 **(1m)** (b) In the case of ~~dependent~~ minor children, if the surviving spouse
12 is legally responsible for support and education and has ample means to provide
13 them in addition to his or her own support.

14 **SECTION 200.** 861.35 (1m) (c) of the statutes is amended to read:

15 861.35 **(1m)** (c) In the case of the surviving spouse, if he or she has ample means
16 to provide for his or her support.

17 **SECTION 201.** 861.35 (2) of the statutes is amended to read:

18 861.35 **(2)** The court may set aside property to provide an allowance and may
19 appoint a trustee to administer the property, subject to the continuing jurisdiction
20 of the court. If a child dies or reaches the age of 18, or if at any time the property held
21 by the trustee is no longer required for the support of the spouse or the support and
22 education of ~~any dependent~~ the minor child, any remaining property is to be
23 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
24 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
25 unpaid claims of the decedent's estate.

1 **SECTION 202.** 861.35 (3) (a) of the statutes is amended to read:

2 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the
3 needs of the spouse or dependent minor children against the nature of the creditors'
4 claims in setting the amount allowed under this section.

5 **SECTION 203.** 861.35 (4) (intro.) of the statutes is amended to read:

6 861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the
7 surviving spouse, not including any allowance for the support and education of
8 dependent minor children, be applied in satisfaction of any of the following:

9 **SECTION 204.** 861.35 (4) (a) of the statutes is amended to read:

10 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 ~~(2)~~
11 853.12.

12 **SECTION 205.** 863.08 of the statutes is amended to read:

13 **863.08 Exchange by distributee and surviving spouse.** In its final
14 judgment or other order, the court shall assign items to the surviving spouse and
15 distributee to conform with the exchange under s. 857.03 (2) 766.31 (3) (b) to the
16 extent that the court approved the exchange.

17 **SECTION 206.** 863.15 of the statutes is amended to read:

18 **863.15 Right of retention Debts to estate.** ~~When If~~ a distributee of an estate
19 is indebted to the estate, the amount of the indebtedness if due, or the present worth
20 of the indebtedness, if not due, shall be treated as an offset by the personal
21 representative against property of the estate to which the distributee is entitled. In
22 contesting the offset the distributee shall have the benefit of any defense which
23 would be available to the distributee in a direct proceeding by the personal
24 representative for the recovery treatment of the debt is governed by s. 854.12.

25 **SECTION 207.** 863.16 of the statutes is repealed and recreated to read:

1 **863.16 Valuation used in distribution of fractional shares.** Valuation of
2 property distributed in satisfaction of a fractional share is determined by s. 854.115.

3 **SECTION 208.** 863.19 of the statutes is repealed and recreated to read:

4 **863.19 Valuation used in distribution of estate assets.** Valuation of
5 property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed
6 by formula or otherwise, is determined by s. 854.115.

7 **SECTION 209.** 865.07 (1) (d) of the statutes is amended to read:

8 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
9 the original will is in the possession of the court or accompanies the application and,
10 contains an attestation clause showing compliance with the requirements of
11 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
12 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

13 **SECTION 210.** 867.03 (1g) (intro.) of the statutes is amended to read:

14 867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves ~~solely owned~~ property
15 subject to administration in this state which does not exceed \$20,000 \$50,000 in
16 value, any heir of the decedent or person who was guardian of the decedent at the
17 time of the decedent's death may collect any money due the decedent, receive the
18 property of the decedent, and have any evidence of interest, obligation to, or right of
19 the decedent transferred to the affiant if the heir or guardian provides to the person
20 owing the money, having custody of the property, or acting as registrar or transfer
21 agent of the evidences of interest, obligation to, or right, or, if the property is an
22 interest in or lien on real property, provides to the register of deeds preliminary to
23 the recording required under sub. (2m), proof of prior mailed notice under sub. (1m)
24 if applicable and an affidavit in duplicate showing all of the following:

25 **SECTION 211.** 867.03 (1g) (b) of the statutes is amended to read:

1 867.03 (1g) (b) The total value of the decedent's property subject to
2 administration in this state at the date of decedent's death.

3 **SECTION 212.** 867.035 (1) (a) 4. of the statutes is amended to read:

4 867.035 (1) (a) 4. The value of the ~~solely-owned~~ property subject to
5 administration in this state left by the decedent, after payment of burial costs, does
6 not exceed the amount under s. 867.03 (1g) (intro.).

7 **SECTION 213.** 880.61 (11m) of the statutes is created to read:

8 880.61 (11m) "Qualified minor's trust" means any trust, including a trust
9 created by the custodian, ~~for which all of the following apply.~~

10 ~~(a) The minor is the sole beneficiary.~~

*(turns out that (a) is subsumed
under (b))*

11 ~~(b) The trust~~ satisfies the requirements of section 2503 (c) of the Internal
12 Revenue Code and the regulations implementing that section.

13 **SECTION 214.** 880.675 (1m) of the statutes is created to read:

14 880.675 (1m) At any time a custodian may transfer part or all of the custodial
15 property to a qualified minor's trust without a court order. Such a transfer
16 terminates the custodianship to the extent of the transfer.

17 **SECTION 215.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

18 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers
19 relating to deaths occurring on January 1, 1999, except with respect to irrevocable
20 that this act does not apply to transfers under governing instruments executed that
21 were irrevocable before that date.

22 **SECTION 216. Initial applicability.**

23 (1) The treatment of sections 40.02 (8) (a) 2., 705.06 (1) (c) and (2), 705.27,
24 852.12, 854.08 (6) (a) 1. and 2., 854.115, 854.12, 861.31 (1m), (2), and (4) (intro.) and
25 (a), 861.33 (1) (a) (intro.) and (b), (2), (3), and (4), 861.35 (1m) (intro.), (1m) (a), (b),

1 and (c), (2), (3) (a), and (4) (intro.) and (a), 863.15, 863.16, and 863.19 of the statutes,
2 the renumbering and amendment of sections 705.04 (2), 852.01 (1) (a) 2., and 854.08
3 (5) of the statutes, and the creation of sections 705.04 (2) (a) and (d), 852.01 (1) (a)
4 2. b., and 854.08 (5) (a) and (d) of the statutes first apply to transfers related to deaths
5 occurring on the effective date of this subsection but do not apply to transfers under
6 governing instruments that were irrevocable before that date.

7

(END)