

1 **SECTION 61.** 851.50 of the statutes is amended to read:

2 **851.50 Status of adopted persons.** The status of adopted persons for
3 purposes of inheritance and transfers under wills or other governing instruments,
4 as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

5 **SECTION 62.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.
6 (intro.) and amended to read:

7 852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are
8 not issue of the surviving spouse, one-half of decedent's property other than the
9 following property:

10 a. The decedent's interest in marital property.

11 **SECTION 63.** 852.01 (1) (a) 2. b. of the statutes is created to read:

12 852.01 (1) (a) 2. b. The decedent's interest in property held equally and
13 exclusively with the surviving spouse as tenants in common.

14 **SECTION 64.** 852.01 (1) (b) of the statutes is amended to read:

15 852.01 (1) (b) To the issue, per stirpes, the share of the estate not passing to the
16 spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are~~
17 ~~issue other than children, those of more remote degrees take per stirpes.~~

18 **SECTION 65.** 852.12 of the statutes is amended to read:

19 **852.12 Debts to decedent.** ~~If an heir owes a debt to the decedent, s. 854.12~~
20 ~~governs the treatment of that debt shall be charged against the intestate share of the~~
21 ~~debtor, regardless of whether the debt has been discharged in bankruptcy. If the~~
22 ~~debtor fails to survive the decedent, the debt shall not be taken into account in~~
23 ~~computing the intestate shares of the debtor's issue.~~

24 **SECTION 66.** 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and
25 amended to read:

1 853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom at least~~
2 2 witnesses who signed within a reasonable time after ~~witnessing~~ any of the
3 following:

4 1. The signing of the will as provided under sub. (1), in the conscious presence
5 of the witness.

6 2. The testator's implicit or explicit acknowledgement of the testator's
7 signature on the will, ~~within~~ in the conscious presence of ~~each of the witnesses~~
8 witness.

9 3. The testator's implicit or explicit acknowledgement of the will, ~~within~~ in the
10 conscious presence of ~~each of the witnesses~~ witness.

11 **SECTION 67.** 853.03 (2) (bm) of the statutes is created to read:

12 853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the
13 signing or acknowledgement under par. (am) 1. to 3. at different times.

14 **SECTION 68.** 853.04 (3) of the statutes is repealed and recreated to read:

15 853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the
16 form under sub. (1) or (2) is as provided in s. 856.16.

17 **SECTION 69.** 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1),
18 (2) (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended
19 to read:

20 853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (c)~~ sub. (3), if the
21 testator married the surviving spouse after the testator executed his or her will, the
22 surviving spouse is entitled to a share of the probate estate.

23 (2) VALUE OF SHARE. (intro.) The value of the share under ~~par. (a)~~ sub. (1) is the
24 value of the share that the surviving spouse would have received had the testator
25 died with an intestate estate equal to the value of the net estate of the ~~decedent less~~

1 testator but the value of the net estate of the testator shall first be reduced by the
2 value of all of the following:

3 (b) All devises to or for the benefit of the issue of a child described in ~~subd. 1.~~
4 par. (a).

5 (c) All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the
6 benefit of children described in ~~subd. 1.~~ par. (a) or issue of those children.

7 (3) EXCEPTIONS. (intro.) ~~Paragraph (a)~~ Subsection (1) does not apply if any of
8 the following applies:

9 (4) PRIORITY AND ABATEMENT. (intro.) In satisfying the share provided by this
10 subsection section:

11 (b) Devises other than those described in ~~par. (b) 1. to 3.~~ sub. (2) (a) to (c) abate
12 as provided under s. 854.18.

13 **SECTION 70.** 853.11 (2m) of the statutes is created to read:

14 853.11 (2m) PREMARITAL WILL. Entitlements of a surviving spouse under a
15 decedent's will that was executed before marriage to the surviving spouse are
16 governed by s. 853.12.

17 **SECTION 71.** 853.11 (3) of the statutes is amended to read:

18 853.11 (3) ~~FORMER TRANSFER TO FORMER SPOUSE. The effect of a~~ A transfer under
19 a will to a former spouse is governed by s. 854.15.

20 **SECTION 72.** 853.11 (6) (c) of the statutes is amended to read:

21 853.11 (6) (c) If a subsequent will that wholly or partly revoked a previous will
22 is itself revoked by another, later will, the previous will or its revoked part remains
23 revoked, unless it or its revoked part is revived. The previous will or its revoked part
24 is revived to the extent that it appears from the terms of the later will, or from the

1 testator's contemporary or subsequent declarations, that the testator intended the
2 previous will or its revoked part to take effect.

3 **SECTION 73.** 853.11 (6) (d) of the statutes is amended to read:

4 853.11 (6) (d) In the absence of an original valid will, ~~establishment of the~~
5 execution and validity of the revived will or part ~~is governed by~~ may be established
6 as provided in s. 856.17.

7 **SECTION 74.** 853.18 (1) of the statutes is amended to read:

8 853.18 (1) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766,
9 no written designation in accordance with the terms of any insurance, annuity or
10 endowment contract, or in any agreement issued or entered into by an insurance
11 company in connection therewith, supplemental thereto or in settlement thereof,
12 and no written designation made under a contract, plan, system or trust providing
13 for pension, retirement, deferred compensation, stock bonus, profit-sharing or death
14 benefits, or an employment or commission contract, of any person to be a beneficiary,
15 payee or owner of any right, title or interest thereunder upon the death of another,
16 or any assignment of rights under any of the foregoing, is subject to or defeated or
17 impaired by any statute or rule of law governing the transfer of property by will, gift
18 or intestacy, even though that designation or assignment is revocable or the rights
19 of that beneficiary, payee, owner or assignee are otherwise subject to defeasance.

20 **SECTION 75.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

21 **SECTION 76.** 853.32 (1) (bm) of the statutes is created to read:

22 853.32 (1) (bm) A writing or document is incorporated into a will under par.
23 (am) even if the writing or document is not executed in compliance with s. 853.03 or
24 853.05.

25 **SECTION 77.** 853.32 (2) (a) of the statutes is amended to read:

1 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996~~, to another
2 document that lists tangible personal property not otherwise specifically disposed of
3 in the will disposes of that property if the other document describes the property and
4 the distributees with reasonable certainty and is signed and dated by the decedent.
5 The court may enforce a document that is not dated but that fulfills all of the other
6 requirements under this paragraph.

7 **SECTION 78.** 853.32 (2) (am) of the statutes is created to read:

8 853.32 (2) (am) Another document under par. (a) is valid if it was signed in
9 compliance with s. 853.03 (1) or with the law of the place where the document was
10 signed, or where the testator resided, was domiciled, or was a national at the time
11 the document was signed or at the time of death, even if it was not otherwise executed
12 in compliance with s. 853.03 (2) or 853.05.

13 **SECTION 79.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)
14 and amended to read:

15 853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of
16 the following applies:

- 17 1. The document does not exist when the will is executed, ~~even if it.~~
18 2. The document is changed after the will is executed ~~and even if it.~~
19 3. The document has no significance except for its effect on the disposition of
20 property by the will.

21 **SECTION 80.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended
22 to read:

23 **854.01 Definition Definitions.** (intro.) In this chapter, ~~“governing:~~

24 (2) “Governing instrument” means a will; a deed; a trust instrument; an
25 insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or

1 similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a
2 beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an
3 instrument that creates or exercises a power of appointment; or any other
4 dispositive, appointive, or nominative instrument that transfers property at death.

5 **SECTION 81.** 854.01 (1) of the statutes is created to read:

6 854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible
7 under the common law parole evidence rule or a similar doctrine because the
8 evidence is not contained in the governing instrument to which it relates.

9 **SECTION 82.** 854.03 (2) (b) of the statutes is amended to read:

10 854.03 (2) (b) Except as provided in sub. (5), if property is transferred under
11 a governing instrument that establishes 2 or more co-owners with right of
12 survivorship, and if ~~it is not established that~~ at least one of the co-owners ~~survived~~
13 did not survive the others by at least 120 hours, the property is transferred to the
14 co-owners in proportion to their ownership interests.

15 **SECTION 83.** 854.03 (5) (d) of the statutes is amended to read:

16 854.03 (5) (d) The imposition of a 120-hour survival requirement would cause
17 a nonvested property interest or a power of appointment to fail to be valid, or to be
18 invalidated, under s. 700.16 or under the rule against perpetuities of the applicable
19 jurisdiction.

20 **SECTION 84.** 854.03 (5) (g) of the statutes is created to read:

21 854.03 (5) (g) The statute or governing instrument specifies that this statute,
22 or one similar to it, does not apply.

23 **SECTION 85.** 854.03 (5) (h) of the statutes is created to read:

24 854.03 (5) (h) The transfer is under a governing instrument and the transfer
25 is controlled by a provision regarding survivorship that is included in a will, trust,

1 or marital property agreement executed by the transferor and that is intended to
2 apply to transfers under other governing instruments.

3 **SECTION 86.** 854.03 (5) (i) of the statutes is created to read:

4 854.03 (5) (i) The transfer is under a governing instrument and the person who
5 executed the governing instrument had a contrary intent. Extrinsic evidence may
6 be used to construe that intent.

7 **SECTION 87.** 854.03 (5) (j) of the statutes is created to read:

8 854.03 (5) (j) The imposition of a 120-hour survival requirement would be
9 administratively cumbersome and would not change the identity of the ultimate
10 beneficiaries of the property or the property that each beneficiary would receive.

****NOTE: I removed the treatment of s. 854.03 (6) from this draft per Howie
Erlanger's e-mail. He wrote, "Logically it doesn't seem that sub.(6) should apply to sub.
(5), so maybe the amendment isn't necessary." OK? *Yes. Thanks.*

11 **SECTION 88.** 854.03 (7) of the statutes is repealed.

12 **SECTION 89.** 854.035 of the statutes is created to read:

13 **854.035 Provision regarding survivorship.** If a will, trust, or marital
14 property agreement contains a provision regarding survivorship that is intended to
15 apply to transfers under other governing instruments, that provision shall control.
16 Extrinsic evidence may be used to construe the intent of the person who executed the
17 will, trust, or marital property agreement.

18 **SECTION 90.** 854.04 (1) (a) of the statutes is amended to read:

19 854.04 (1) (a) Except as provided in subs. (5) and (6), if a statute or a governing
20 instrument calls for property to be distributed to the issue or descendants of a
21 designated person "by representation", "by right of representation," or "per
22 stirpes", the property is divided into equal shares for the designated person's
23 surviving children of the designated person and for the designated person's deceased

Remove strikeout.

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Additional Correction for 854.04 - Modes of Representation

✓ (3) Per capita at each generation. (a) Except as provided in subs. (5) and (6), if a statute or a governing instrument calls for property to be distributed to the issue or descendants of a designated person "per capita at each generation", the property is divided into equal shares at the generation nearest to the designated person that contains one or more surviving issue. Each survivor in that generation is and each deceased person in that same generation who left surviving issue are allocated one share, ~~and t.~~ The shares of the deceased persons in that same generation who left surviving issue are combined for distribution under par. (b).

1 children who left surviving issue. Each surviving child and each deceased child who
2 left surviving issue are allocated one share. *SEE INSERT Re 854.04(3)(a)* ✓

3 **SECTION 91.** 854.04 (5) (intro.) of the statutes is amended to read:

4 854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of this
5 section subs. (1) to (3), all of the following apply:

6 **SECTION 92.** 854.05 (5) of the statutes is renumbered 854.05 (5) (a) and
7 amended to read:

8 854.05 (5) (a) This section does not apply ~~to the extent that a governing~~
9 ~~instrument, either expressly or as construed from extrinsic evidence, provides~~
10 otherwise if the person who executed the governing instrument had a contrary
11 intent. Extrinsic evidence may be used to construe that intent.

12 (b) A general directive to pay debts does not give rise to a presumption of
13 exoneration.

14 **SECTION 93.** 854.06 (1) (b) of the statutes is repealed.

15 **SECTION 94.** 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (intro.) and
16 amended to read:

17 854.06 (4) CONTRARY INTENT. (intro.) ~~This section~~ Subsection (3) does not apply
18 if there is a finding of any of the following applies:

19 (c) The person who executed the governing instrument had a contrary intent
20 of the decedent. Extrinsic evidence may be used to construe that intent.

21 **SECTION 95.** 854.06 (4) (am) of the statutes is created to read:

22 854.06 (4) (am) The governing instrument provides that a transfer to a
23 predeceased beneficiary lapses.

24 **SECTION 96.** 854.06 (4) (b) of the statutes is amended to read:

1 854.06 (4) (b) ~~If the~~ The governing instrument designates one or more persons,
2 classes, or groups of people as contingent transferees, in which case those transferees
3 take in preference to those under sub. (3). ~~But~~ Unless par. (c) applies, if none of the
4 contingent transferees survives, sub. (3) applies to the first group in the sequence of
5 contingent transferees that has one or more transferees specified in sub. (2) who left
6 surviving issue.

7 **SECTION 97.** 854.07 (3) of the statutes is amended to read:

8 854.07 (3) If a governing instrument other than a will does not effectively
9 dispose of an asset that is governed by the instrument, that asset shall be paid or
10 distributed to the decedent's transferor's probate estate.

11 **SECTION 98.** 854.08 (5) (title) of the statutes is repealed and recreated to read:

12 854.08 (5) (title) PROPERTY UNDER GUARDIANSHIP, CONSERVATORSHIP, OR POWER OF
13 ATTORNEY.

14 **SECTION 99.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and
15 amended to read:

16 854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the
17 subject of a specific gift is sold or mortgaged by a guardian ~~or~~, conservator, or agent
18 of the person who executed the governing instrument, or if a condemnation award
19 or insurance proceeds are paid to a guardian ~~or~~, conservator, or agent, the specific
20 beneficiary has the right to a general pecuniary transfer equivalent to the proceeds
21 of the sale ~~or the~~, mortgage, condemnation award, or ~~the~~ insurance proceeds, reduced
22 by any amount expended or incurred to restore or repair the property or to reduce
23 the indebtedness on the mortgage, if the funds are available under the governing
24 instrument. ~~This provision~~

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

9 **SECTION 100.** 854.08 (5) (a) of the statutes is created to read:

10 854.08 (5) (a) In this subsection, “agent” means an agent under a durable power
11 of attorney, as defined in s. 243.07 (1) (a).

12 **SECTION 101.** 854.08 (5) (d) of the statutes is created to read:

13 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent if the
14 person who executed the governing instrument is competent at the time of the sale,
15 mortgage, award, or receipt of insurance proceeds but in such event the rights of the
16 specific beneficiary shall be determined as though the proceeds were paid to the
17 owner under sub. (2), (3), or (4).

18 **SECTION 102.** 854.08 (6) (a) 1. of the statutes is amended to read:

19 854.08 (6) (a) 1. ~~The person who executed the governing instrument, either~~
20 ~~expressly or as construed from extrinsic~~ had a contrary intent. Extrinsic evidence,
21 ~~shows the intent that a transfer fail under the particular circumstances~~ may be used
22 to construe that intent.

23 **SECTION 103.** 854.08 (6) (a) 2. of the statutes is amended to read:

24 854.08 (6) (a) 2. The person who executed the governing instrument gives
25 property during the person's lifetime to the specific beneficiary with the intent of

1 satisfying the specific gift. ~~Extrinsic evidence may be used to construe that intent,~~
2 and the requirement under s. 854.09 (1) is satisfied.

3 **SECTION 104.** 854.09 (3) of the statutes is amended to read:

4 854.09 (3) If the transferee fails to survive the person who executed the
5 governing instrument, ~~the gift is treated as a full or partial satisfaction of the~~
6 ~~transfer and his or her issue take a substitute transfer under intestacy or under a~~
7 governing instrument, the issue receive the same transfer that the name^d transferee
8 would have received had the transferee survived, unless the transferor has declared
9 otherwise in a document, either expressly or as construed from extrinsic evidence.

10 **SECTION 105.** 854.115 of the statutes is created to read:

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

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

24 **(3) CONTRARY INTENT.** (a) This section does not apply if the distribution is made
25 under a governing instrument and the person who executed the governing

1 instrument had a contrary intent. Extrinsic evidence may be used to construe the
2 contrary intent.

3 (b) A provision in a governing instrument that the personal representative or
4 other fiduciary may fix values for the purpose of distribution does not of itself
5 constitute authorization to fix a value other than fair market value on the date of
6 distribution.

7 **SECTION 106.** 854.12 of the statutes is created to read:

8 **854.12 Debt to transferor. (1) HEIR UNDER INTESTACY.** (a) If an heir owes a
9 debt to the decedent, the amount of the indebtedness shall be offset against the
10 intestate share of the debtor heir.

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

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

1 (b) Subject to par. (c), in contesting an offset under par. (a), the debtor shall have
2 the benefit of any defense that would be available to the transferee in a direct
3 proceeding for the recovery of the debt, except that the transferee may not defend on
4 the basis that the debt was discharged in bankruptcy, unless that discharge occurred
5 before the execution of the governing instrument, or on the basis that the relevant
6 statute of limitations has expired. If the transferee fails to survive the decedent, the
7 debt may not be included in computing the entitlement of alternate beneficiaries.

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

11 **SECTION 107.** 854.13 (title) of the statutes is amended to read:

12 **854.13 (title) Disclaimer of transfers at death.**

13 **SECTION 108.** 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

14 **SECTION 109.** 854.13 (2) (a) 1. of the statutes is created to read:

15 854.13 (2) (a) 1. In this paragraph, "person" includes a person who is unborn
16 or unascertained.

17 **SECTION 110.** 854.13 (2) (gm) of the statutes is created to read:

18 854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a
19 recipient of property under a governing instrument may disclaim that property on
20 behalf of the trust if the ^{trust} governing instrument authorizes disclaimer by the trustee.
21 If the ^{trust} governing instrument does not authorize disclaimer by the trustee, the
22 trustee's power to disclaim is subject to the approval of the court.

23 **SECTION 111.** 854.13 (2) (h) of the statutes is amended to read:

24 854.13 (2) (h) *After death.* A person's right to disclaim survives the person's
25 death and may be exercised by the person's personal representative or special

1 administrator upon receiving approval from the court having jurisdiction of the
 2 person's estate after hearing upon notice to all persons interested in the disclaimed
 3 property, if the personal representative or special administrator has not taken any
 4 action which would bar the right to disclaim under sub. (11) (11g).

5 SECTION 112. 854.13 (2) (i) of the statutes is created to read:

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

9 SECTION 113. 854.13 (7) (a) of the statutes is renumbered 854.13 (7) and
 10 amended to read:

11 854.13 (7) DEVOLUTION ~~IN GENERAL.~~ ^{(a) In General.} ^{← subtitle} Unless the transferor of the property or
 12 donee of the power has otherwise provided Subject to subs. (8), (9), and (10), unless
 13 the governing instrument provides otherwise, either expressly or as construed from
 14 extrinsic evidence, the disclaimed property devolves as if the disclaimant had died
 15 before the decedent or before the effective date of the transfer under the governing
 16 instrument. If the disclaimant is an appointee under a power exercised by a
 17 governing instrument, the disclaimed property devolves as if the disclaimant had
 18 died before the effective date of the exercise of the power. If the disclaimant is a taker
 19 in default under a power created by a governing instrument, the disclaimed property
 20 devolves as if the disclaimant had predeceased the donee of the power. ~~This~~ ^{See}
 21 ~~paragraph is subject to subs. (8), (9) and (10) applies to the disclaimer of present~~ ^{attached}
 22 ~~interests and future interests.~~ ^{Add (b) + (c)}

23 SECTION 114. 854.13 (7) (b) of the statutes is repealed.

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

1 854.13 (8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the
2 decedent provided otherwise in a governing instrument, either expressly or as
3 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to
4 the decedent's probate estate.

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

6 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL
7 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,
8 either expressly or as construed from extrinsic evidence, a disclaimed interest in
9 survivorship marital property passes to the decedent's probate estate.

10 **SECTION 117.** 854.13 (10) of the statutes is amended to read:

11 854.13 (10) DEVOLUTION OF DISCLAIMED FUTURE INTEREST. Unless the governing
12 ~~instrument creating the future interest manifests a contrary intent~~ provides
13 otherwise, either expressly or as construed from extrinsic evidence, upon the
14 disclaimer of a preceding interest, a future interest limited to take effect in
15 possession or enjoyment after the termination of the interest which is disclaimed
16 takes accelerates to take effect as if the disclaimant had died immediately before the
17 effective date of the governing instrument time when the disclaimed interest would
18 have taken effect in possession or enjoyment or, if the disclaimant is an appointee
19 under a power exercised by a ~~governing instrument~~ power of appointment, as if the
20 disclaimant had died before the effective date of the exercise of the power.

21 **SECTION 118.** 854.13 (11) (title) of the statutes is repealed.

22 **SECTION 119.** 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and
23 854.13 (11g) (title) and (a), as renumbered, are amended to read:

24 854.13 (11g) (title) ~~ACTIONS THAT BAR DISCLAIMER~~ BAR.

*please see
separate
sheet.*

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

4 SECTION 120. 854.13 (11) (b) of the statutes is renumbered 854.13 (11m), and
 5 854.13 (11p) (title), as renumbered, is amended to read:

6 854.13 (11p) (title) ~~EFFECT UPON SUCCESSORS IN INTEREST OF DISCLAIMER.~~ *OR WAIVER.*

7 SECTION 121. 854.13 (11g) (d) of the statutes is created to read:

8 854.13 (11g) (d) Any statute or common law that bars the right to disclaim.

****NOTE: I omitted the text "other than this subsection" because this subsection
 bars the right to disclaim. That phrase did not make sense to me in this context and it
 does not seem to add anything. *Reasoning was that since this subsection bars*

9 SECTION 122. 854.13 (12) (b) of the statutes is amended to read: *does so, under*

10 854.13 (12) (b) Any disclaimer that meets the requirements of section 2518 of *different circumstances*
 11 the Internal Revenue Code, or the requirements of any other federal law relating to *than*
 12 disclaimers, constitutes an effective disclaimer under this section *those* or s. 700.27. *described*
here.

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

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

15 854.14 (3m) EFFECT IF DEATH CAUSED BY SPOUSE. [^](a) *Definitions.* In this
 16 subsection: *Please add: In addition to sub.(3), all of the following apply*

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

1 2. “Ownership interest” means the rights of an owner under a policy.

2 3. “Policy” means an insurance policy insuring the life of a spouse and providing
3 for payment of death benefits at the spouse’s death.

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

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

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

22 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as
23 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the
24 nonemployee spouse, the ownership interest at death of the decedent spouse in any
25 deferred employment benefit, or in assets in an individual retirement account that

1 are traceable to the rollover of a deferred employment benefit plan, that has a marital
2 property component and that is attributable to the employment of the surviving
3 spouse is equal to one-half of the portion of the benefit or assets that was marital
4 property immediately before the death of the decedent spouse.

5 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
6 spouse unlawfully and intentionally kills the decedent spouse, the estate of the
7 decedent shall have the right to elect no more than 50% of the augmented deferred
8 marital property estate, as determined under s. 861.02 (2), as though the decedent
9 spouse were the survivor and the surviving spouse were the decedent. The court
10 shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the intent
11 of this paragraph.

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

13 854.14 (5) (a) A final judgment establishing criminal accountability for the
14 unlawful and intentional killing of the decedent conclusively establishes the
15 convicted individual as the decedent's killer for purposes of this section and s. 861.02
16 (8).

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

18 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
19 and intentional killing of the decedent conclusively establishes the adjudicated
20 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

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

22 854.14 (5) (c) In the absence of a judgment establishing criminal accountability
23 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the
24 petition of an interested person, shall determine whether, under based on the

1 preponderance of the evidence standard, the killing of the decedent was unlawful
2 and intentional for purposes of this section ~~and s. 861.02 (8).~~

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

5 854.01 (3) “Revocable~~,”~~” with respect to a disposition, provision, or
6 nomination, means one under which the decedent, at the time ~~of the divorce,~~
7 ~~annulment or similar event referred to,~~ was alone empowered, by law or under the
8 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
9 ~~former spouse’s relative,~~ change or revoke, regardless of whether ~~or not~~ the decedent
10 was then empowered to designate himself or herself in place of ~~the a~~ former spouse
11 ~~or the former spouse’s relative~~ designee, and regardless of whether ~~or not~~ the
12 decedent then had the capacity to exercise the power.

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

14 **854.17 Classification; how determined Marital property classification;**
15 **ownership and division of marital property at death.** In chs. 851 to 882,
16 ~~classification~~ Classification of the property of a decedent spouse and surviving
17 spouse ~~is, and ownership and division of that property at the death of a spouse, are~~
18 determined under ch. 766 and s. 861.01.

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

20 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
21 ~~share of the surviving spouse who elects to take an elective share in deferred marital~~
22 ~~property~~ deferred marital property elective share amount of a surviving spouse who
23 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11
24 ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of

1 distributees abate, without any preference or priority as between real and personal
2 property, in the following order:

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

4 854.18 (3) If the governing instrument expresses an order of abatement, or if
5 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
6 transfer, as expressed, implied, or determined through extrinsic evidence, would be
7 defeated by the order of abatement under sub. (1), the shares of the distributees
8 abate as necessary to give effect to the intention of the transferor.

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

11 854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is
12 treated as a birth child of the person's adoptive parents and the adoptive parents are
13 treated as the birth parents of the adoptive child for purposes of ~~intestate succession~~
14 transfers at death by, through, and from the adopted person and for purposes of any
15 statute or other rule conferring rights upon children, issue, or relatives in connection
16 with the law of intestate succession or governing instruments.

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

19 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases
20 to be treated as a child of the person's birth parents and the birth parents cease to
21 be treated as the parents of the child for the same purposes as ~~under specified in~~ sub.
22 (1) (a), except:

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

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

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

7 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
8 at the time of adoption or if the adoptive parent raised the adopted person in a
9 parent-like relationship beginning on or before the child's 15th birthday and lasting
10 for a substantial period or until adulthood.

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

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

15 854.20 (2) (am) 2. a. If Subject to subd. 2. b. and c., if a birth parent of a marital
16 child dies and the other birth parent subsequently remarries and the child is adopted
17 by the stepparent, the child is continues to be treated as the child of the deceased
18 birth parent for purposes of inheritance transfers at death through that parent and
19 for purposes of any statute or other rule conferring rights upon children, or issue or
20 relatives of that parent under the law of intestate succession or governing
21 instruments.

22 **SECTION 137.** 854.20 (3) of the statutes is renumbered 854.20 (2) (bm) and
23 amended to read:

24 854.20 (2) (bm) ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive
25 parent dies or his or her parental rights are terminated in a legal proceeding and the

Remove STRIKEOUT

Hanaman, Cathlene

From: Howard Erlanger [hserlang@wisc.edu]
Sent: Monday, December 27, 2004 11:10 PM
To: Hanaman, Cathlene
Subject: Fwd: "This section and each of its subparts..."

Hi Cathlene-- I am really hoping to hear back from you on this. If the reasoning isn't sound then we need to work on a redraft of the statute.

Thanks.
Howie

Date: Wed, 22 Dec 2004 09:39:09 -0600
To: <cathlene.hanaman@legis.state.wi.us>
From: Howard Erlanger <hserlang@wisc.edu>
Subject: "This section and each of its subparts..."

Dear Cathlene--

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.

Thanks.
Howie

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 138.** 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 139.** 854.20 (5) of the statutes is amended to read:

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

16 **SECTION 140.** 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
23 membership in the class are otherwise satisfied and any of the following applies: at
24 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

25 **SECTION 141.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.