



State of Wisconsin  
2005 - 2006 LEGISLATURE

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LRB-0135/P4

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Refer cat

1 AN ACT *to repeal* 854.03 (7), 854.06 (1) (b), 854.13 (7) (b), 854.13 (11) (title),  
2 854.14 (1), 854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33  
3 (1) (c) and 861.35 (1c); *to renumber* 701.06 (6), 701.115 (1), 766.62 (4), 853.32  
4 (1) and 854.13 (2) (a); *to renumber and amend* 701.24, 701.26, 705.04 (2),  
5 766.31 (3), 766.31 (6), 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.32  
6 (2) (b), 854.01, 854.05 (5), 854.06 (4) (a), 854.08 (5), 854.13 (10), 854.13 (11) (a),  
7 854.13 (11) (b), 854.15 (1) (e), 854.20 (1), 854.20 (2) (intro.), 854.20 (2) (a), 854.20  
8 (2) (b), 854.20 (3), 854.20 (4), 854.21 (1) (a) (intro.), 857.03 (2) and 861.01 (3); *to*  
9 *amend* 30.541 (3) (d) 2. d., 40.02 (8) (a) 2., 71.05 (6) (a) 16., 71.05 (6) (b) 12., 71.05  
10 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4., 700.11 (1), 700.13 (2), 701.06 (7),  
11 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5) (d), 701.24 (title), 701.26 (title),  
12 702.03 (1), 702.08, 705.06 (1) (c), 705.06 (2), 705.21 (12) (a), 705.27, 766.61 (7),  
13 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1) (b), 851.31, 851.50,  
14 852.01 (1) (b), 852.05 (1) (intro.), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d),  
15 853.32 (2) (a), 854.03 (2) (b), 854.03 (5) (d), 854.04 (1) (a), 854.04 (3) (a), 854.04

1 (5) (intro.), 854.04 (6), 854.06 (4) (b), 854.07 (3), 854.07 (4), 854.08 (6) (a) 1.,  
2 854.08 (6) (a) 2., 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2) (h), 854.13 (7)  
3 (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13 (12) (b), 854.14 (5) (a), 854.14  
4 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.), 854.18 (3), 854.20 (5), 854.21  
5 (1) (b), 854.21 (7), 854.22 (4), 856.05 (5), 856.15 (1), 856.17, 859.01, subchapter  
6 II (title) of chapter 861 [precedes 861.018], 861.02 (title), 861.02 (4), 861.02 (6),  
7 861.02 (7) (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06 (2) (title),  
8 861.06 (2) (b) (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10  
9 (2), 861.11 (2) (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.21 (1) (a),  
10 861.21 (2), 861.21 (4), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.),  
11 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2),  
12 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35  
13 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4)  
14 (a), 863.08, 863.15, 865.07 (1) (d), 867.03 (1g) (intro.), 867.03 (1g) (b) and  
15 867.035 (1) (a) 4.; **to repeal and recreate** 701.19 (10), 853.04 (3), 854.08 (5)  
16 (title), 854.13 (10) (title), 856.16, 861.02 (8), 863.16 and 863.19; **to create** 40.18,  
17 700.27, 701.06 (6) (b), (c) and (d), 701.115 (1) (a), 701.24 (2), 701.26 (1) (d), 701.26  
18 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f), 705.21 (12) (am),  
19 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31 (5)  
20 (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p) (title),  
21 766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4)  
22 (c) and (d), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.18  
23 (1) (a), (b) and (c), 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5) (g),  
24 854.03 (5) (h), 854.03 (5) (i), 854.03 (5) (j), 854.035, 854.06 (4) (am), 854.08 (5)  
25 (a), 854.08 (5) (d), 854.115, 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2)

1 (i), 854.13 (7) (bm) and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and  
2 c., 857.03 (2m), 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m),  
3 861.05 (1) (e), 861.05 (2m), 861.06 (6), 880.61 (11m) and 880.675 (1m) of the  
4 statutes; and *to affect* 1997 Wisconsin Act 188, section 233 (1); **relating to:**  
5 miscellaneous remedial modifications to the Wisconsin Probate Code.

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***Analysis by the Legislative Reference Bureau***

This bill makes remedial modifications to current law and primarily corrects technical errors and clarifies various provisions in 1997 Wisconsin Act 188, which modernized the Wisconsin Probate Code. This bill continues the process of extending various interpretative rules from probate to nonprobate assets and of allowing extrinsic evidence to be used when interpreting the intent of the transferor, especially with respect to rules of construction. This bill also creates additional protections for a decedent spouse who is murdered by the surviving spouse.

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

6 **SECTION 1.** 30.541 (3) (d) 2. d. of the statutes is amended to read:

7 30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
8 proceeds under s. 867.03 (1g) and the total value of the decedent's solely owned  
9 property subject to administration in the state, including boats transferred under  
10 this subdivision, does not exceed ~~\$20,000~~ \$50,000.

11 **SECTION 2.** 40.02 (8) (a) 2. of the statutes is amended to read:

12 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all  
13 beneficiaries so designated die before filing with the department an application for  
14 any death benefit payable, the person determined in the following sequence: group  
15 1, widow or widower; group 2, ~~children if at least one child survives the participant,~~  
16 ~~employee or annuitant, in which event the share of any deceased child shall be~~  
17 ~~payable to the surviving spouse of the child or to the surviving children of the child~~

1 if there is no spouse, or otherwise to the other eligible children in this group; group  
2 3, grandchild; group 4, parent; group 5, brother and sister issue, as defined in s.  
3 851.13, per stirpes, as described in s. 854.04 (1). No payment may be made to a person  
4 included in any group 2 if there is a living person in any preceding group 1.

5 SECTION 3. 40.18 of the statutes is created to read:

6 40.18 Applicability of other statutes. (1) MARITAL PROPERTY RIGHTS.  
7 Chapter 766 applies to ownership rights and remedies of a spouse in benefits  
8 provided under this chapter.

9 (2) TRANSFERS AT DEATH. Chapter 854 applies to transfers at death under this  
10 chapter.

11 (3) DEFERRED MARITAL PROPERTY ELECTION. Sections 861.018 to 861.10 apply to  
12 the election rights of a surviving spouse in benefits provided under this chapter.

13 SECTION 4. 71.05 (6) (a) 16. of the statutes is amended to read:

14 71.05 (6) (a) 16. Any amount recognized as a loss under section 1001 (c) of the  
15 internal revenue code Internal Revenue Code if a surviving spouse and a distributee  
16 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

17 SECTION 5. 71.05 (6) (b) 12. of the statutes is amended to read:

18 71.05 (6) (b) 12. Any amount recognized as a gain under section 1001 (c) of the  
19 internal revenue code Internal Revenue Code if a surviving spouse and a distributee  
20 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

21 SECTION 6. 71.05 (12) (d) of the statutes is amended to read:

22 71.05 (12) (d) Property exchanged under s. 857.03 (2) 766.31 (3) (b) shall be  
23 treated as if acquired by gift for the determination of basis.

24 SECTION 7. 101.9211 (4) (b) 4. of the statutes is amended to read:

1           101.9211 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse  
2 is proceeding under s. 867.03 (1g) and the total value of the decedent's solely-owned  
3 property subject to administration in the state, including the manufactured homes  
4 transferred under this paragraph, does not exceed \$10,000 \$50,000.

5           **SECTION 8.** 342.17 (4) (b) 4. of the statutes is amended to read:

6           342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
7 proceeding under s. 867.03 (1g) and the total value of the decedent's solely-owned  
8 property subject to administration in the state, including the vehicles transferred  
9 under this paragraph, does not exceed \$20,000 \$50,000.

10          **SECTION 9.** 700.11 (1) of the statutes is amended to read:

11          700.11 (1) If a statute, inter vivos governing instrument, as defined in s. 700.27  
12 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property  
13 is to be distributed to, or a future interest is to be created in, a designated individual's  
14 "heirs", "heirs at law", "next of kin", "relatives" ~~or~~ "family," or a term that has  
15 a similar meaning, or if a class gift in favor of "descendants", "issue," or "heirs of the  
16 body" does not specify the manner in which the property is to be distributed among  
17 the class members, the property is distributed according to s. 854.22.

18          **SECTION 10.** 700.13 (2) of the statutes is amended to read:

19          700.13 (2) ~~Unless the instrument of transfer manifests a contrary intent, The~~  
20 effect of a renunciation or release of an interest for life or years accelerates  
21 succeeding interests is as provided in ss. 700.27 ~~(7)~~ and 854.13 (10).

\*\*\*\*NOTE: Please review the x-refs to ss. 700.27 ~~(7)~~ <sup>(8)</sup> and 854.13 (10) to ensure that  
they are the specific references you want.

22          **SECTION 11.** 700.27 of the statutes is created to read:

23          **700.27 Disclaimer of transfers during life.** (1) DEFINITIONS. In this section:

1 (a) “Beneficiary under an inter vivos governing instrument” includes any  
2 person who receives or might receive property under the terms or legal effect of an  
3 inter vivos governing instrument.

4 (b) “Extrinsic evidence” has the meaning given in s. 854.01 (1).

5 (c) “Inter vivos governing instrument”:

6 1. Means a gratuitous deed, inter vivos trust instrument, insurance policy,  
7 contract, inter vivos instrument that creates or exercises a power of appointment, or  
8 any other dispositive, appointive, or nominative instrument that transfers property  
9 other than a governing instrument as defined in s. 854.01 (2).

10 2. Includes an inter vivos gift that is not subject to a written instrument.

11 (d) “Power” has the meaning given in s. 702.01 (4).

12 (2) RIGHT TO DISCLAIM. (a) *In general.* 1. In this paragraph, “person” includes  
13 a person who is unborn <sup>✓ whose identity is</sup> or unascertained.

14 2. A person who is a recipient of property or beneficiary under an inter vivos  
15 governing instrument, donee of a power created by an inter vivos governing  
16 instrument, appointee under a power exercised by an inter vivos governing  
17 instrument, taker in default under a power created by an inter vivos governing  
18 instrument, or person succeeding to disclaimed property created by an inter vivos  
19 governing instrument may disclaim any property, including contingent or future  
20 interests or the right to receive discretionary distributions, by delivering a written  
21 instrument of disclaimer under this section.

22 (b) *Partial disclaimer.* Property transferred under an inter vivos governing  
23 instrument may be disclaimed in whole or in part, except that a partial disclaimer  
24 of property passing by an inter vivos governing instrument or by the exercise of a

1 power may not be made if partial disclaimer is expressly prohibited by the inter vivos  
2 governing instrument or by the instrument exercising the power.

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

6 (d) *Disclaimer by a guardian or conservator.* A guardian of the estate or a  
7 conservator appointed under ch. 880 may disclaim on behalf of his or her ward, with  
8 court approval, if the ward is entitled to disclaim under this section.

9 (e) *Disclaimer by an agent under power of attorney.* An agent under a power  
10 of attorney may disclaim on behalf of the person who granted the power of attorney  
11 if all of the following apply:

12 1. The person who granted the power of attorney is entitled to disclaim under  
13 this section.

14 2. The power of attorney specifically grants the power to disclaim.

15 (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property  
16 under an inter vivos governing instrument may disclaim that property on behalf of  
17 the trust if the trust authorizes disclaimer by the trustee. If the trust does not  
18 authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the  
19 approval of the court.

20 (g) *After death.* A person's right to disclaim survives the person's death and  
21 may be exercised by the person's personal representative or special administrator  
22 upon receiving approval from the court having jurisdiction of the person's estate after  
23 hearing upon notice to all persons interested in the disclaimed property, if the  
24 personal representative or special administrator has not taken any action that would  
25 bar the right to disclaim under sub. (9).

1           (h) *Disclaimers of transfers at death.* A person who is a recipient of property  
2 under a governing instrument, as defined in s. 854.01 (2), may disclaim the property  
3 as provided in s. 854.13.

4           (3) INSTRUMENT OF DISCLAIMER. The instrument of disclaimer must meet the  
5 provisions of subs. (4) and (5) and s. 854.13 (3) (a) to (c).

6           (4) TIME FOR EFFECTIVE DISCLAIMER. (a) *Present interest.* An instrument  
7 disclaiming a present interest shall be executed and delivered not later than 9  
8 months after the effective date of the transfer under the inter vivos governing  
9 instrument. For cause shown, the period may be extended by a court of competent  
10 jurisdiction, either within or after the 9-month period, for such additional time as  
11 the court considers just.

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

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

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

24           (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person  
25 whose interest in property arises by disclaimer or by default of exercise of a power

1 created by an inter vivos governing instrument may disclaim at any time not later  
2 than 9 months after the day on which the prior instrument of disclaimer is delivered,  
3 or the date on which the donee's power lapses.

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

- 8 1. The transferor of the property disclaimed.
- 9 2. The transferor's legal representative.
- 10 3. The holder of legal title to the property.

11 (b) *Delivery to trustee*. If the trustee of any trust to which the interest or power  
12 relates does not receive the instrument of disclaimer under par. (a), a copy shall also  
13 be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer  
14 to the trustee within the time specified under sub. (4) does not affect the validity of  
15 any disclaimer.

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

19 (6) PROPERTY NOT VESTED. The property disclaimed under this section shall be  
20 considered not to have been vested in, created in, or transferred to the disclaimant.

21 (7) DEVOLUTION. (a) *In general*. <sup>Subject to sub. (8),</sup> Unless the inter vivos governing instrument  
22 provides otherwise, either expressly or as construed from extrinsic evidence, the  
23 disclaimed property devolves as if the disclaimant had died before the effective date  
24 of the transfer under the inter vivos governing instrument. If the disclaimant is an  
25 appointee under a power exercised by an inter vivos governing instrument, the

<sup>NO</sup> If the disclaimed interest is a remainder contingent on surviving  
to the time of distribution, the disclaimed interest passes as if  
the disclaimant had died immediately before the time for distribution.

1 disclaimed property devolves as if the disclaimant had died before the effective date  
2 of the exercise of the power. If the disclaimant is a taker in default under a power  
3 created by an inter vivos governing instrument, the disclaimed property devolves as  
4 if the disclaimant had predeceased the donee of the power.

\*\*\*NOTE: I removed the text "Subject to sub. (8)," which used to begin what is now  
paragraph (7)(a) - OK?

5 (b) *Devolution to <sup>issue</sup> descendants of the disclaimants.* Unless the inter vivos  
6 governing instrument provides otherwise, either expressly or as construed from  
7 extrinsic evidence, if, by law or under the inter vivos governing instrument, the  
8 <sup>issue</sup> descendants of the disclaimant would share in the disclaimed interest by any method  
9 of representation had the disclaimant died before the time the disclaimed interest  
10 would have taken effect in possession or enjoyment, the disclaimed interest passes  
11 only to the <sup>issue</sup> descendants of the disclaimant who survive when the disclaimed interest  
12 takes effect in possession or enjoyment.

13 (c) *Applicable to present and future interests.* This section applies to the  
14 disclaimer of present interests and future interests.

15 (9) BAR. Actions that bar disclaimer are as provided in s. 854.13 (11g).

16 (10) EFFECT OF DISCLAIMER OR WAIVER. The effect of the disclaimer on the  
17 disclaimant and any successors in interest is as provided in s. 854.13 (11p).

18 (11) NONEXCLUSIVENESS OF REMEDY. (a) This section does not affect the right of  
19 a person to waive, release, disclaim, or renounce property under any other statute  
20 or the common law, or as provided in the creating instrument.

21 (b) Any disclaimer that meets the requirements of section 2518 of the Internal  
22 Revenue Code, or the requirements of any other federal law relating to disclaimers,  
23 constitutes an effective disclaimer under this section or s. 854.13.

NOTE: <sup>m</sup> My punctuation change differs from your suggestion  
to remove "or" before "the common law."  
(CS)

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1           (12) CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a  
2 transfer under an inter vivos governing instrument is the date on which the transfer  
3 is a completed gift for federal gift tax purposes.

4           SECTION 12. 701.06 (6) of the statutes is renumbered 701.06 (6) (a).

5           SECTION 13. 701.06 (6) (b), (c) and (d) of the statutes are created to read:

6           701.06 (6) (b) A beneficiary of <sup>a</sup>the trust may not be considered a settlor due only  
7 to a lapse, waiver, or release of any of the following:

8           1. A power described under par. (c).  
9           2. The beneficiary's right to withdraw part of the trust property, to the extent  
10 that the value of the property affected by the lapse, waiver, or release in any year does  
11 not exceed the greater of the amount in:

12           a. Section 2041 (b) (2) or 2514 (e), Internal Revenue Code of 1986.  
13           b. Section 2503 (b), Internal Revenue Code of 1986.

14           (c) A beneficiary of <sup>a</sup>the trust is not a settlor, has not made a voluntary or  
15 involuntary transfer of the beneficiary's interest in the trust, or does not have the  
16 power to make a voluntary or involuntary transfer of the beneficiary's interest in the  
17 trust just <sup>solely</sup> because the beneficiary holds or exercises, in any capacity, any of the  
18 following:

19           1. A presently exercisable power to consume, invade, appropriate, or distribute  
20 property to or for the benefit of the beneficiary if the power is: <sup>any of the following</sup>

21           a. Exercisable only on consent of another person holding an interest adverse  
22 to the beneficiary's interest.

23           b. Limited by an ascertainable standard, such as health, education, support,  
24 or maintenance of the beneficiary.

✓  
solely  
because  
of

1           2. A presently exercisable power to appoint any property of the trust to or for  
2 the benefit of a person other than the beneficiary, a creditor of the beneficiary, the  
3 beneficiary's estate, or a creditor of the beneficiary's estate.

4           3. A testamentary power of appointment.

5           4. A presently exercisable right described in par. (b) 2.

6           (d) A beneficiary of <sup>a</sup>the trust is not a settlor ~~just~~ <sup>of solely</sup> because the beneficiary is  
7 entitled to nondiscretionary distributions from the trust.

8           **SECTION 14.** 701.06 (7) of the statutes is amended to read:

9           701.06 (7) SUBSEQUENT MODIFICATION OF COURT'S ORDER. Any order entered by  
10 a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an  
11 interested person.

\*\*\*\*NOTE: I amended the cross-reference in this section because this bill renumbers  
sub. (6) to be sub. (6) (a). Do you agree?

12           **SECTION 15.** 701.06 (8) of the statutes is amended to read:

13           701.06 (8) EXEMPT ASSETS. Assets of a trust, to the extent they are exempt from  
14 claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

\*\*\*\*NOTE: I amended the cross-reference in this section because this bill renumbers  
sub. (6) to be sub. (6) (a). Do you agree?

15           **SECTION 16.** 701.115 (1) of the statutes is renumbered 701.115 (1) (b).

16           **SECTION 17.** 701.115 (1) (a) of the statutes is created to read:

17           701.115 (1) (a) In par. (b), "revocable trust" means a trust that the grantor, at  
18 the time of death, was alone empowered to change or revoke, by law or under the  
19 instrument creating the trust, regardless of whether the grantor then had the  
20 capacity to exercise the power.

21           **SECTION 18.** 701.115 (2) of the statutes is amended to read:

22           701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

1           **SECTION 19.** 701.115 (3) of the statutes is amended to read:

2           701.115 (3) The rights of the issue of a predeceasing beneficiary under sub. (1)  
3           (b) are governed by s. 854.06.

4           **SECTION 20.** 701.19 (10) of the statutes is repealed and recreated to read:

5           701.19 (10) RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.  
6           (c), a person may not exercise any of the following powers conferred upon him or her  
7           in his or her capacity as trustee:

8           1. The power to make discretionary distributions of trust principal or income  
9           if the distributions are to himself or herself or for the discharge of his or her legal  
10          obligations.

11          2. The power to make discretionary allocations of receipts or expenses as  
12          between principal and income if the allocations are in his or her favor.

13          (b) If a power under par. (a) is conferred upon more than one person as trustee,  
14          a person who is not disqualified to act under par. (a) may exercise the power for the  
15          benefit of the person who is disqualified to act, unless the creating instrument  
16          expressly provides otherwise. A special trustee appointed by a court may exercise  
17          a power under par. (a) for the benefit of the disqualified person if no other trustee is  
18          qualified to exercise the power.

19          (c) Paragraph (a) does not apply if any of the following applies:

20          1. The person is also the settlor of the trust, and the trust may be revoked or  
21          amended by the settlor.

22          2. The terms of the creating instrument specifically limit the scope of the power  
23          to expenditures and distributions of income or principal on the basis of an  
24          ascertainable standard relating to the person's health, maintenance, support, or

1 education such that the person would not be subject to tax under section 2041 or 2514  
2 of the Internal Revenue Code as a result of having or exercising the power.

3 3. The person is the spouse, widow, or widower of the settlor of the trust, and  
4 a marital deduction has been allowed for federal gift or estate tax purposes with  
5 respect to the trust property that is subject to the power.

6 4. The creating instrument negates the application of par. (a) with respect to  
7 the power or indicates that provisions that are similar to par. (a) do not apply.

8 (d) Section 701.24 (2) governs the applicability of this statute.

9 **SECTION 21.** 701.20 (5) (d) of the statutes is amended to read:

10 701.20 (5) (d) A legatee, including a trustee, of a specific amount of money not  
11 determined by a pecuniary formula shall not be paid any part of the income of the  
12 estate but shall receive interest on any unpaid portion of the legacy for the period  
13 commencing one year after decedent's death at the legal rate set forth in s. 138.04.  
14 For purposes of this paragraph, the deferred marital property elective share amount  
15 elected by a surviving spouse under s. 861.02 (1) is a bequest of a specific amount of  
16 money not determined by a pecuniary formula.

17 **SECTION 22.** 701.24 (title) of the statutes is amended to read:

18 **701.24 (title) Applicability of ss. 701.01 to 701.23.**

19 **SECTION 23.** 701.24 of the statutes is renumbered 701.24 (1) and amended to  
20 read:

21 701.24 (1) Except as otherwise provided in sub. (2) and s. 701.19 (9) (a) and (10),  
22 ss. 701.01 to 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust  
23 created after such date, and shall govern trustees acting under such trusts. If  
24 application of any provision of ss. 701.01 to 701.23 to a trust in existence on August

1 1, 1971, is unconstitutional, it shall not affect application of the provision to a trust  
2 created after that date.

3 **SECTION 24.** 701.24 (2) of the statutes is created to read:

4 701.24 (2) Sections 701.06 (6) (b), (c), and (d) and 701.19 (10) are applicable to  
5 a trust existing on the effective date of this subsection ... [revisor inserts date], as  
6 well as a trust created after that date, and shall govern trustees acting under such  
7 trusts. If application of any provision of s. 701.06 (6) (b), (c), or (d) or 701.19 (10) to  
8 a trust in existence on the effective date of this subsection ... [revisor inserts date],  
9 is unconstitutional, it shall not affect application of the provision to a trust created  
10 after that date.

11 **SECTION 25.** 701.26 (title) of the statutes is amended to read:

12 **701.26 (title) Disclaimers of nonprobate transfers at death.**

13 **SECTION 26.** 701.26 of the statutes is renumbered 701.26 (1) and amended to  
14 read:

15 701.26 (1) A ~~person~~ recipient may disclaim, under s. 854.13, any of the  
16 following:

17 (a) ~~An~~ All or part of an interest in a joint tenancy, upon the death of another  
18 joint tenant.

19 (b) ~~An~~ All or part of an interest in survivorship marital property, upon the death  
20 of the other spouse.

21 (c) ~~An~~ All or part of an interest that is created by a nontestamentary instrument  
22 and transferred at death, upon the death that causes the transfer.

23 **SECTION 27.** 701.26 (1) (d) of the statutes is created to read:

24 701.26 (1) (d) All or part of any other interest transferred under a governing  
25 instrument, as defined in s. 854.01 (2).

1           **SECTION 28.** 701.26 (2) of the statutes is created to read:

2           701.26 (2) A recipient may disclaim, under s. 700.27, all or part of any interest  
3 transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

4           **SECTION 29.** 702.03 (1) of the statutes is amended to read:

5           702.03 (1) Unless the person who executed it had a contrary intention is found,  
6 if a governing instrument, as defined in s. 854.01, ~~creating (2), or an inter vivos~~  
7 governing instrument, as defined in s. 700.27 (1) (c), creates a power of appointment  
8 that expressly requires that the power be exercised by any type of reference to the  
9 power or its source, it is presumed that the donor's intention in requiring the  
10 reference was is presumed to be to prevent an inadvertent exercise of the power.  
11 Extrinsic evidence may be used to show contrary construe the intent.

\*\*\*NOTE: I don't think "extrinsic evidence" has been defined for this provision.  
Should it be?

✓ as defined in s. 854.01 (1), ←

Scored text

12           **SECTION 30.** 702.08 of the statutes is amended to read:

13           **702.08 Disclaimer of powers.** The donee of any power may disclaim all or  
14 part of the power as provided under s. 700.27 or 854.13.

15           **SECTION 31.** 705.04 (2) of the statutes is renumbered 705.04 (2) (intro.) and  
16 amended to read:

17           705.04 (2) (intro.) If the account is a P.O.D. account, on the death of the original  
18 payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~  
19 ~~belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~  
20 ~~die before the original payee. Payment may be made to a minor P.O.D. beneficiary,~~  
21 ~~however, only in accordance with a procedure approved in ch. 880. all of the following~~  
22 apply:

1           **(b)** ~~If there are 2 or more P.O.D. beneficiaries and they all survive, they shall~~  
2           be are entitled to payment of the sums on deposit in accordance with such any written  
3           instructions as may have been that the owner filed with the financial institution, ~~and~~  
4           or, if none the owner left no written instructions, to payment in equal shares. ~~There~~

5           **(c)** If 2 or more persons succeed to ownership of the account, there is no further  
6           right of survivorship ~~in the event of the death of one of 2 or more P.O.D. beneficiaries~~  
7           ~~after their entitlement to payment has matured~~ unless the terms of the account  
8           expressly provide for survivorship or for the account's continuance as a joint account.

9           **SECTION 32.** 705.04 (2) (a) of the statutes is created to read:

10           705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she  
11           is entitled to payment of all sums remaining on deposit.

12           **SECTION 33.** 705.04 (2) (d) of the statutes is created to read:

13           705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)  
14           (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or  
15           more original payees, the amount to which the predeceased P.O.D. beneficiary would  
16           have been entitled passes to any of his or her issue who would take under s. 854.06  
17           (3).

18           **SECTION 34.** 705.04 (2) (e) of the statutes is created to read:

19           705.04 (2) (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue  
20           who would take under s. 854.06 (3) survives the death of all owners, the account  
21           belongs to the estate of the deceased sole owner or the estate of the last to die of  
22           multiple owners.

23           **SECTION 35.** 705.04 (2) (f) of the statutes is created to read:

24           705.04 (2) (f) Payment may be made to a minor P.O.D. beneficiary only in  
25           accordance with a procedure approved under ch. 880.

1           **SECTION 36.** 705.06 (1) (c) of the statutes is amended to read:

2           705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the  
3 P.O.D. beneficiary upon presentation to the financial institution of proof of death  
4 showing that the P.O.D. beneficiary survived all persons named as original payees  
5 of the account. If more than one P.O.D. beneficiary is named and at least one of them  
6 is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary  
7 or beneficiaries upon presentation of proof of death of the other beneficiary, without  
8 regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If  
9 none of the named beneficiaries survive, the sums in the account may be paid to the  
10 estate of the deceased sole owner or the estate of the owner who was the last to die  
11 of multiple owners, without regard to claims by the issue of a predeceased beneficiary  
12 under s. 705.04 (2) (d).

13           **SECTION 37.** 705.06 (2) of the statutes is amended to read:

14           705.06 (2) Payment made under this subchapter discharges the financial  
15 institution from all claims for amounts so withdrawn. If the institution has reason  
16 to believe that a dispute exists as to the rights of the parties to an account or their  
17 successors it may, but shall not be required to, refuse to pay funds in the account to  
18 any persons pending instructions from a court, or it may pay the proceeds to a court.  
19 An institution may but need not recognize the authority of an agent, other than one  
20 with continuing authority under s. 705.05 (3), until it knows of the fact of death or  
21 adjudication of incompetence of all parties appointing such agent and has reasonable  
22 opportunity to act.

23           **(3)** The protection provided by this section shall have no bearing on the rights  
24 of parties or their successors in disputes concerning the beneficial ownership of funds  
25 in or withdrawn from an account.

1           **SECTION 38.** 705.21 (12) (a) of the statutes is amended to read:

2           705.21 (12) (a) A reinvestment account associated with a security, a securities  
3           account with a broker, a cash balance in a brokerage account, cash, cash equivalents,  
4           interest, earnings, or dividends earned or declared on a security in an account, a  
5           reinvestment account, or a brokerage account, whether or not credited to the account  
6           before the owner's death.

7           **SECTION 39.** 705.21 (12) (am) of the statutes is created to read:

8           705.21 (12) (am) An investment agency, investment management, or custody  
9           account with a trust company or a trust division of a bank with trust powers,  
10          including the securities in the account, a cash balance in the account, and cash, cash  
11          equivalents, interest, earnings, or dividends earned or declared on a security in the  
12          account, whether or not credited to the account before the owner's death.

13          **SECTION 40.** 705.27 of the statutes is amended to read:

14          **705.27 Ownership on death of owner.** On death of a sole owner or the last  
15          to die of multiple owners, ownership of securities registered in beneficiary form  
16          passes to the beneficiary or beneficiaries who survive all owners and to any  
17          predeceased beneficiary's issue who would take under s. 854.06 (3). On proof of death  
18          of all owners and compliance with any applicable requirements of the registering  
19          entity, a security registered in beneficiary form may be reregistered in the name of  
20          the ~~beneficiary or beneficiaries who survive the death of all owners~~ successors to the  
21          ownership interest. Until division of the security after the death of all owners,  
22          multiple ~~beneficiaries surviving the death of all owners~~ successors to the ownership  
23          interest hold their interests as tenants in common. If no beneficiary or predeceased  
24          beneficiary's issue who would take under s. 854.06 (3) survives the death of all

1 owners, the security belongs to the estate of the deceased sole owner or the estate of  
2 the last to die of multiple owners.

3 **SECTION 41.** 766.31 (1) (title) of the statutes is created to read:

4 766.31 (1) (title) GENERAL.

5 **SECTION 42.** 766.31 (2) (title) of the statutes is created to read:

6 766.31 (2) (title) PRESUMPTION.

7 **SECTION 43.** 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and  
8 amended to read:

9 766.31 (3) SPOUSE'S INTEREST IN MARITAL PROPERTY. (intro.) Each spouse has a  
10 present undivided one-half interest in each item of marital property, but the subject  
11 to all of the following:

12 (a) Terminable interest in deferred employment benefit plan. As provided in s.  
13 766.62 (5), the marital property interest of the nonemployee spouse in a deferred  
14 employment benefit plan or in assets in an individual retirement account that are  
15 traceable to the rollover of a deferred employment benefit plan terminates at the  
16 death of the nonemployee spouse if he or she predeceases the employee spouse.

17 **SECTION 44.** 766.31 (3) (b) of the statutes is created to read:

18 766.31 (3) (b) *Division based on aggregate value at death.* 1. Spouses may  
19 provide in a marital property agreement that at the death of a spouse some or all of  
20 their marital property will be divided based on aggregate value rather than divided  
21 item by item. However, at the death of a spouse, a marital property agreement is not  
22 necessary for a division of marital property that is not item by item.

23 2. The surviving spouse and the successor in interest to the decedent's share  
24 of marital property may enter into an agreement providing that some or all of the

1 marital property in which each has an interest will be divided based on aggregate  
2 value rather than divided item by item.

3 SECTION 45. 766.31 (4) (title) of the statutes is created to read:

4 766.31 (4) (title) CLASSIFICATION OF INCOME.

5 SECTION 46. 766.31 (5) (title) of the statutes is created to read:

6 766.31 (5) (title) TRANSFER TO A TRUST.

7 SECTION 47. 766.31 (6) (title) of the statutes is created to read:

8 766.31 (6) (title) PROPERTY OWNED AT DETERMINATION DATE.

9 SECTION 48. 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and  
10 amended to read:

11 766.31 (6) (a) Date of marriage same as determination date. Property owned  
12 at a If the date of marriage which occurs after 12:01 a.m. on January 1, 1986, is the  
13 same as the determination date, the property owned at the determination date is  
14 individual property of the owning spouse if, ~~at the marriage, both spouses are~~  
15 ~~domiciled in this state.~~

16 SECTION 49. 766.31 (6) (b) of the statutes is created to read:

17 766.31 (6) (b) Date of marriage prior to determination date. If the date of  
18 marriage precedes the determination date, the property owned at the determination  
19 date is not classified by this chapter but is subject to all of the following:

- 20 1. Subsections (8) and (9) govern property owned at the time of marriage.
- 21 2. Subsections (8) and (9) govern property acquired while the spouses were  
22 married but before the determination date if the property would have been  
23 individual property had it been acquired after the determination date.

1           3. Subsections (8) and (9) and s. 861.02 govern property acquired while the  
2 spouses were married but before the determination date if the property would have  
3 been marital property had it been acquired after the determination date.

4           **SECTION 50.** 766.31 (7) (title) of the statutes is created to read:

5           766.31 (7) (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

6           **SECTION 51.** 766.31 (7p) (title) of the statutes is created to read:

7           766.31 (7p) (title) UNILATERAL STATEMENT.

8           **SECTION 52.** 766.31 (8) (title) of the statutes is created to read:

9           766.31 (8) (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

10          **SECTION 53.** 766.31 (9) (title) of the statutes is created to read:

11          766.31 (9) (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION  
12 DATE.

13          **SECTION 54.** 766.31 (10) (title) of the statutes is created to read:

14          766.31 (10) (title) RECLASSIFICATION.

15          **SECTION 55.** 766.61 (7) of the statutes is amended to read:

16          766.61 (7) If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse  
17 predeceases an insured spouse, the decendent spouse's marital property interest of ~~the~~  
18 ~~decendent spouse~~ in a policy ~~which~~ that designates the surviving spouse as the owner  
19 and insured is limited to a dollar amount equal to one-half of the marital property  
20 interest in the interpolated terminal reserve and in the unused portion of the term  
21 premium of the policy on the decendent spouse's date of death of ~~the deceased spouse~~.  
22 All other rights of the decendent spouse in the ownership interest or proceeds of the  
23 policy, other than the marital property interest described in this subsection,  
24 terminate at the decendent spouse's death.

25          **SECTION 56.** 766.62 (2) of the statutes is amended to read:

1           766.62 (2) A deferred employment benefit attributable to employment of a  
 2 spouse occurring ~~while the spouse is married and~~ partly before and partly after the  
 3 determination date is mixed property. The marital property component of that mixed  
 4 property is the amount which results from multiplying the entire benefit by a  
 5 fraction, the numerator of which is the period of employment giving rise to the benefit  
 6 that occurred after the determination date and during marriage and the  
 7 denominator of which is the total period of employment giving rise to the benefit.

8           **SECTION 57.** 766.62 (4) of the statutes is renumbered 766.62 (4) (a).

9           **SECTION 58.** 766.62 (4) (b) of the statutes is created to read:

10           766.62 (4) (b) If a deferred employment benefit plan administrator has reason  
 11 to believe that a dispute exists as to the rights of parties, or their successors, to a  
 12 deferred employment benefit, the deferred employment benefit plan administrator  
 13 may do any of the following:

14           1. Deposit the benefit funds with a court having jurisdiction of the proceedings.  
 15 The court shall hold the funds and, upon determination of the owner, shall order  
 16 disbursement in accordance with the determination. Property deposited with the  
 17 court discharges the deferred employment benefit plan administrator from all claims  
 18 for the benefit funds.

\*\*\*\*NOTE: Please review this language carefully to ensure it is consistent with your intent.

19           2. Refuse to transfer any funds from the plan to any person until the  
 20 administrator receives from a court written documentation that the dispute has <sup>been</sup>  
 21 resolved.

22           **SECTION 59.** 766.62 (4) (c) and (d) of the statutes <sup>is</sup> are created to read:

3. Make a payment under par. (a).

1 766.62 (4) (c) A deferred employment benefit plan administrator is not liable  
2 for having transferred any funds from the plan to any person designated in a  
3 governing instrument who is not entitled to the funds or for having taken any other  
4 action in reliance on the person's apparent entitlement under the terms of a  
5 governing instrument, regardless of whether the administrator received written  
6 notice of a claimed lack of entitlement.

\*\*\*NOTE: Please review this language carefully to ensure it is consistent with your  
intent.

7 YJC  
8 (d) The protection afforded a deferred employment benefit plan administrator  
9 under this subsection does not affect the rights of parties or their successors in  
10 disputes concerning the beneficial ownership of deferred employment benefits.

11 SECTION 60. 766.62 (5) (intro.) of the statutes is amended to read:

12 766.62 (5) (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee  
13 spouse predeceases the employee spouse, the marital property interest of the  
14 nonemployee spouse in all of the following terminates at the death of the  
15 nonemployee spouse:

16 SECTION 61. 767.266 (1) (b) of the statutes is amended to read:

17 767.266 (1) (b) That one or both spouses will make a particular disposition in  
18 a will or other governing instrument, as defined in s. 854.01 (2).

19 SECTION 62. 851.055 (1m) of the statutes is created to read:

20 851.055 (1m) Is not classified as individual property or marital property under  
21 a valid marital property agreement, unless the marital property agreement provides  
22 otherwise.

SECTION 63. 851.21 (1) (b) of the statutes is amended to read:

1           851.21 (1) (b) -A Except as provided in s. 853.32 (2) (e), a beneficiary named in  
2           any document offered for probate as the will of the decedent and includes a person  
3           named or acting as a trustee of any trust, inter vivos or testamentary, named as a  
4           beneficiary.

5           **SECTION 64.** 851.31 of the statutes is amended to read:

6           **851.31 Will.** “Will” Unless the context or subject matter indicates otherwise,  
7           “will” includes a codicil and any document incorporated by reference in a  
8           testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,  
9           unless the copy has been proven as a will under s. 856.17, but “will” does include a  
10          properly executed duplicate original.

11          **SECTION 65.** 851.50 of the statutes is amended to read:

12          **851.50 Status of adopted persons.** The status of adopted persons for  
13          purposes of inheritance and transfers under wills or other governing instruments,  
14          as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

15          **SECTION 66.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.  
16          (intro.) and amended to read:

17          852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are  
18          not issue of the surviving spouse, one-half of decedent’s property other than the  
19          following property:

20          a. The decedent’s interest in marital property.

21          **SECTION 67.** 852.01 (1) (a) 2. b. of the statutes is created to read:

22          852.01 (1) (a) 2. b. The decedent’s interest in property held equally and  
23          exclusively with the surviving spouse as tenants in common.

24          **SECTION 68.** 852.01 (1) (b) of the statutes is amended to read:

*or the issue of a child,*  
LRB-0135/P4  
CMH:jld:jf

SECTION 68

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

✓  
WJ  
26-4

SECTION 69. 852.05 (1) (intro.) of the statutes is amended to read:

4 852.05 (1) (intro.) A nonmarital child <sup>✓</sup> born to unmarried parents or the child's  
5 issue is entitled to take <sup>2</sup> is treated in the same manner as a marital child by born to  
6 married parents with respect to intestate succession from and through his or her  
7 mother, and from and through <sup>the child's</sup> his or her father if any of the following applies:  
8

\*\*\*\*NOTE: Some of the revisions I received changed "marital" and some did not. I changed "marital" — OK? Should other instances of "nonmarital" or "marital" be changed too — especially those in this section?

✓  
WJ  
26-9

SECTION 70. 852.12 of the statutes is amended to read:

10 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12  
11 governs the treatment of that debt shall be charged against the intestate share of the  
12 debtor, regardless of whether the debt has been discharged in bankruptcy. If the  
13 debtor fails to survive the decedent, the debt shall not be taken into account in  
14 computing the intestate shares of the debtor's issue.

15 SECTION 71. 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and  
16 amended to read:

17 853.03 (2) (am) It must be signed by 2 or more witnesses, each of whom at least  
18 2 witnesses who signed within a reasonable time after witnessing any of the  
19 following:

- 20 1. The signing of the will as provided under sub. (1), in the conscious presence  
21 of the witness.

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

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

6           **SECTION 72.** 853.03 (2) (bm) of the statutes is created to read:

7           853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the  
8 signing or acknowledgement under par. (am) 1. to 3. at different times.

9           **SECTION 73.** 853.04 (3) of the statutes is repealed and recreated to read:

10          853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the  
11 form under sub. (1) or (2) is as provided in s. 856.16.

12          **SECTION 74.** 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1),  
13 (2) (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended  
14 to read:

15          853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (e)~~ sub. (3), if the  
16 testator married the surviving spouse after the testator executed his or her will, the  
17 surviving spouse is entitled to a share of the probate estate.

18          (2) VALUE OF SHARE. (intro.) The value of the share under ~~par. (a)~~ sub. (1) is the  
19 value of the share that the surviving spouse would have received had the testator  
20 died with an intestate estate equal to the value of the testator's net estate of the  
21 decedent less, but the value of the net estate shall first be reduced by the value of all  
22 of the following:

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

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

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

5 (4) PRIORITY AND ABATEMENT. (intro.) In satisfying the share provided by this  
6 ~~subsection~~ section:

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

9 SECTION 75. 853.11 (2m) of the statutes is created to read:

10 853.11 (2m) PREMARITAL WILL. Entitlements of a surviving spouse under a  
11 decedent's will that was executed before marriage to the surviving spouse are  
12 governed by s. 853.12.

13 SECTION 76. 853.11 (3) of the statutes is amended to read:

14 853.11 (3) ~~FORMER TRANSFER TO FORMER SPOUSE. The effect of a~~ A transfer under  
15 a will to a former spouse is governed by s. 854.15.

16 SECTION 77. 853.11 (6) (c) of the statutes is amended to read:

17 853.11 (6) (c) If a subsequent will that wholly or partly revoked a previous will  
18 is itself revoked by another, later will, the previous will or its revoked part remains  
19 revoked, unless it or its revoked part is revived. The previous will or its revoked part  
20 is revived to the extent that it appears from the terms of the later will, or from the  
21 testator's contemporary or subsequent declarations, that the testator intended the  
22 previous will or its revoked part to take effect.

23 SECTION 78. 853.11 (6) (d) of the statutes is amended to read:

1           853.11 (6) (d) In the absence of an original valid will, establishment of the  
2 execution and validity of the revived will or part ~~is governed by~~ may be established  
3 as provided in s. 856.17.

4           **SECTION 79.** 853.18 (1) of the statutes is renumbered 853.18 (1) (intro.) and  
5 amended to read:

6           853.18 (1) (intro.) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch.  
7 766, no written designation in accordance with the terms of any insurance, annuity  
8 or endowment contract, or in any agreement issued or entered into by an insurance  
9 company in connection therewith, supplemental thereto or in settlement thereof,  
10 and no written designation made under a contract, plan, system or trust providing  
11 for pension, retirement, deferred compensation, stock bonus, profit-sharing or death  
12 benefits, or an employment or commission contract, of any person to be a beneficiary,  
13 payee or owner of any right, title or interest thereunder upon the death of another,  
14 or any assignment of rights under any of the foregoing, none of the following is  
15 subject to or defeated or impaired by any statute or rule of law governing the transfer  
16 of property by will, gift, or intestacy, even though that the designation or assignment  
17 is revocable or the rights of that the beneficiary, payee, owner, or assignee are  
18 otherwise subject to defeasance.;

19           **SECTION 80.** 853.18 (1) (a), (b) and (c) of the statutes are created to read:

20           853.18 (1) (a) A written designation in accordance with the terms of any  
21 insurance, annuity, or endowment contract.

22           (b) Any agreement issued or entered into by an insurance company  
23 supplemental to or in settlement of any insurance, annuity, or endowment contract.

24           (c) Any written designation made under a contract, plan, system, or trust  
25 providing for pension, retirement, deferred compensation, stock bonus,

1 profit-sharing, or death benefits, or an employment or commission contract, of any  
2 person to be a beneficiary, payee, or owner of any right, title, or interest, <sup>there</sup> under the  
3 ~~contract~~ upon the death of another, or any assignment of rights under any of the  
4 foregoing.

\*\*\*NOTE: Before I received your latest changes and par. (c) was divided into pars  
(c) and (d), I changed "thereunder" to "under the contract" to modernize the terminology  
— is that still okay now? Could we revise "foregoing" too?

5 **SECTION 81.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

6 **SECTION 82.** 853.32 (1) (bm) of the statutes is created to read:

7 853.32 (1) (bm) A writing or document is incorporated into a will under par.  
8 (am) even if the writing or document is not executed in compliance with s. 853.03 or  
9 853.05.

10 **SECTION 83.** 853.32 (2) (a) of the statutes is amended to read:

11 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996~~, to another  
12 document that lists tangible personal property not otherwise specifically disposed of  
13 in the will disposes of that property if the other document describes the property and  
14 the distributees with reasonable certainty and is signed and dated by the decedent.  
15 The court may enforce a document that is not dated but that fulfills all of the other  
16 requirements under this paragraph.

17 **SECTION 84.** 853.32 (2) (am) of the statutes is created to read:

18 853.32 (2) (am) Another document under par. (a) is valid if it was signed in  
19 compliance with s. 853.03 (1) or with the law of the place where the document was  
20 signed, or where the testator resided, was domiciled, or was a national at the time  
21 the document was signed or at the time of death, even if it was not otherwise executed  
22 in compliance with s. 853.03 (2) or 853.05.

1           **SECTION 85.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)  
2 and amended to read:

3           853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of  
4 the following applies:

5           1. The document does not exist when the will is executed, ~~even if it.~~

6           2. The document is changed after the will is executed ~~and even if it.~~

7           3. The document has no significance except for its effect on the disposition of  
8 property by the will.

9           **SECTION 86.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended  
10 to read:

11           **854.01 Definition Definitions.** (intro.) In this chapter, ~~“governing~~:

12           (2) “Governing instrument” means a will; a deed; a trust instrument; an  
13 insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or  
14 similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a  
15 beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an  
16 instrument that creates or exercises a power of appointment; or any other  
17 dispositive, appointive, or nominative instrument that transfers property at death.

18           **SECTION 87.** 854.01 (1) of the statutes is created to read:

19           854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible  
20 under the common law parol evidence rule or a similar doctrine because the evidence  
21 is not contained in the governing instrument to which it relates.

22           **SECTION 88.** 854.03 (2) (b) of the statutes is amended to read:

23           854.03 (2) (b) Except as provided in sub. (5), if property is transferred under  
24 a governing instrument that establishes 2 or more co-owners with right of  
25 survivorship, and if ~~it is not established that~~ at least one of the co-owners survived

SECTION 7. 854.03 (5) of the statutes is renumbered 854.03 (5) (am) and 854.03 (5) (am) 4., as renumbered, is amended to read:

1 did not survive the others by at least 120 hours, the property is transferred to the  
2 co-owners in proportion to their ownership interests.

3 SECTION 89. 854.03 (5) (d) of the statutes is amended to read:

4 854.03 (5) (d) (am 4.) The imposition of a 120-hour survival requirement would cause  
5 a nonvested property interest or a power of appointment to fail to be valid, or to be  
6 invalidated, under s. 700.16 or under the rule against perpetuities of the applicable  
7 jurisdiction.

8 SECTION 90. 854.03 (5) (g) (am 7.) of the statutes is created to read:

9 854.03 (5) (g) The statute or governing instrument specifies that this statute,  
10 or one similar to it, does not apply.

11 SECTION 91. 854.03 (5) (h) (am 8.) of the statutes is created to read:

12 854.03 (5) (h) The transfer is under a governing instrument and the transfer  
13 is controlled by a provision regarding survivorship that is included in a will, trust,  
14 or marital property agreement executed by the transferor and that is intended to  
15 apply to transfers under other governing instruments.

16 SECTION 92. 854.03 (5) (i) (bm) of the statutes is created to read:

17 854.03 (5) (i) The transfer is under a governing instrument and the person who  
18 executed the governing instrument had a contrary intent. Extrinsic evidence may  
19 be used to construe that intent.

20 SECTION 93. 854.03 (5) (j) (am 9., am 9.) of the statutes is created to read:

21 854.03 (5) (j) The imposition of a 120-hour survival requirement would be  
22 administratively cumbersome and would not change the identity of the ultimate  
23 beneficiaries of the property or the property that each beneficiary would receive.

24 SECTION 94. 854.03 (7) of the statutes is repealed.

25 SECTION 95. 854.035 of the statutes is created to read:

\*\*\*Note: Please review how I restructured s. 854.03 (5).  
CS

NO to any provision in this section, then that provision is not applicable to the transfer.

MOVE

1           **854.035 Provision regarding survivorship.** If a will, trust, or marital  
2 property agreement contains a provision regarding survivorship that is intended to  
3 apply to transfers under other governing instruments, that provision shall control.  
4 Extrinsic evidence may be used to construe the intent of the person who executed the  
5 will, trust, or marital property agreement.

6           **SECTION 96.** 854.04 (1) (a) of the statutes is amended to read:

7           854.04 (1) (a) Except as provided in subs. (5) and (6), if a statute or a governing  
8 instrument calls for property to be distributed to the issue or descendants of a  
9 designated person “by representation”<sup>3,2</sup> “by right of representation,” or “per  
10 stirpes”<sup>3,2</sup> the property is divided into equal shares for the designated person’s  
11 surviving children of the designated person and for the designated person’s deceased  
12 children who left surviving issue. Each surviving child and each deceased child who  
13 left surviving issue are allocated one share.

14           **SECTION 97.** 854.04 (3) (a) of the statutes is amended to read:

15           854.04 (3) (a) Except as provided in subs. (5) and (6), if a statute or a governing  
16 instrument calls for property to be distributed to the issue or descendants of a  
17 designated person “per capita at each generation”<sup>3,2</sup> the property is divided into  
18 equal shares at the generation nearest to the designated person that contains one or  
19 more surviving issue. Each survivor in that generation is and each deceased person  
20 in that generation who left surviving issue are allocated one share, ~~and the.~~ The  
21 shares of the deceased persons in that same generation who left surviving issue are  
22 combined for distribution under par. (b).

23           **SECTION 98.** 854.04 (5) (intro.) of the statutes is amended to read:

24           854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of this  
25 section subs. (1) to (3), all of the following apply: