

1 SECTION 99. 854.04 (6) of the statutes is amended to read:

2 854.04 (6) CONTRARY INTENT. ~~This section does not apply if the transfer is made~~
3 ~~under a governing instrument and there is a finding of contrary intent of~~ If the
4 person who executed the governing instrument had an intent contrary to any
5 provision in this section, then that provision is not applicable to the transfer.
6 Extrinsic evidence may be used to construe that the intent.

7 SECTION 100. 854.05 (5) of the statutes is renumbered 854.05 (5) (a) and
8 amended to read:

9 854.05 (5) (a) ~~This section does not apply to the extent that a~~ If the person who
10 executed the governing instrument, either expressly or as construed from extrinsic
11 had an intent contrary to any provision in this section, then that provision is not
12 applicable to the transfer. Extrinsic evidence, provides otherwise may be used to
13 construe the intent.

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

16 SECTION 101. 854.06 (1) (b) of the statutes is repealed.

17 SECTION 102. 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (a) (intro.) and
18 amended to read:

19 854.06 (4) ~~CONTRARY INTENT~~ (intro.) This section ~~Subsection (3)~~ does not apply
20 if there is a finding of any of the following applies:

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

****NOTE: Is this language fine or do you want some form of the "intent contrary to any provision in this section" language?

23 SECTION 103. 854.06 (4) (am) of the statutes is created to read:

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restructured this section.*

*an intent contrary to
any provision in this
section, then that
provision is not
applicable to
the transfer*

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854.06 (4) (am) ^{1.} The governing instrument provides that a transfer to a predeceased beneficiary lapses.

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SECTION 104. 854.06 (4) (b) of the statutes is amended to read:

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

SECTION 105. 854.07 (3) of the statutes is amended to read:

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

SECTION 106. 854.07 (4) of the statutes is amended to read:

854.07 (4) ~~This section does not apply if there is a finding of contrary intent of~~ If the person who executed the governing instrument had an intent contrary to any provision in this section, then that provision is inapplicable to the transfer. Extrinsic evidence may be used to construe that the intent.

SECTION 107. 854.08 (5) (title) of the statutes is repealed and recreated to read:

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

SECTION 108. 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and amended to read:

854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the subject of a specific gift is sold or mortgaged by a guardian ~~or~~, conservator, or agent

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1 of the person who executed the governing instrument, or if a condemnation award
2 or insurance proceeds are paid to a guardian ~~or~~, conservator, or agent, the specific
3 beneficiary has the right to a general pecuniary transfer equivalent to the proceeds
4 of the sale ~~or the~~, mortgage, condemnation award, or the insurance proceeds, reduced
5 by any amount expended or incurred to restore or repair the property or to reduce
6 the indebtedness on the mortgage, if the funds are available under the governing
7 instrument. ~~This provision~~

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

16 **SECTION 109.** 854.08 (5) (a) of the statutes is created to read:

17 854.08 (5) (a) In this subsection, “agent” means an agent under a durable power
18 of attorney, as defined in s. 243.07 (1) (a).

19 **SECTION 110.** 854.08 (5) (d) of the statutes is created to read:

20 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent if the
21 person who executed the governing instrument is competent at the time of the sale,
22 mortgage, award, or receipt of insurance proceeds but in such event the rights of the
23 specific beneficiary shall be determined as though the proceeds were paid to the
24 owner under sub. (2), (3), or (4).

25 **SECTION 111.** 854.08 (6) (a) 1. of the statutes is amended to read:

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

5 **SECTION 112.** 854.08 (6) (a) 2. of the statutes is amended to read:

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

10 ~~**SECTION 113.** 854.09 (3) of the statutes is amended to read:~~ ← keep

11 854.09 (3) If the transferee fails to survive the person who executed the
12 governing instrument, ~~the gift is treated as a full or partial satisfaction of the~~
13 ~~transfer and his or her issue take a substitute transfer under intestacy or under a~~
14 ~~governing instrument, the issue receive the same transfer that the named transferee~~
15 ~~would have received had the transferee survived, unless the transferor has declared~~
16 otherwise in a document, either expressly or as construed from extrinsic evidence.

17 **SECTION 114.** 854.11 (4) of the statutes is amended to read:

18 854.11 (4) ~~CONTRARY INTENT. This section does not apply if there is a finding of~~
19 ~~contrary intent of~~ If the person who executed the governing instrument had an intent
20 contrary to any provision in this section, then that provision is inapplicable to the
21 transfer. Extrinsic evidence may be used to construe that the intent.

22 **SECTION 115.** 854.115 of the statutes is created to read:

23 **854.115 Valuation of distributed assets. (1) VALUATION OF IN-KIND**
24 **DISTRIBUTIONS AS OF DATE OF DISTRIBUTION.** A distribution of property in kind to a
25 distributee who receives a pecuniary transfer, a dollar amount fixed by formula or

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1 otherwise, or a fractional share in a group of assets shall be made on the basis of the
2 fair market value of the property on the date of distribution. This subsection applies
3 to distributions under a governing instrument or under a statute, except that
4 distributions under a governing instrument are subject to subs. (2) and (3).

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

11 (3) CONTRARY INTENT. (a) This section does not apply if the distribution is made
12 under a governing instrument and ^{IF} the person who executed the governing
13 instrument had a contrary intent. Extrinsic evidence may be used to construe the
14 contrary intent. *to any provision in this section, then that*
provision is inapplicable to the transfer

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

19 SECTION 116. 854.12 of the statutes is created to read:

20 **854.12 Debt to transferor. (1) HEIR UNDER INTESTACY.** (a) If an heir owes a
21 debt to the decedent, the amount of the indebtedness shall be offset against the
22 intestate share of the debtor heir.

23 (b) In contesting an offset under par. (a), the debtor heir shall have the benefit
24 of any defense that would be available to the debtor heir in a direct proceeding by the
25 personal representative for the recovery of the debt, except that the debtor heir may

1 not defend on the basis that the debt was discharged in bankruptcy or on the basis
2 that the relevant statute of limitations has expired. If the debtor fails to survive the
3 decedent, the court may not include the debt in computing any intestate shares of the
4 debtor's issue.

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

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

19 (c) Paragraph (a) or (b) does not apply if the person who executed the governing
20 instrument had ^{an} ~~a~~ ^{move} contrary intent. Extrinsic evidence may be used to construe ^{of the} ~~that~~
21 intent.

to any provision in this subsection, then that provision is not applicable to the transfer

22 SECTION 117. 854.13 (title) of the statutes is amended to read:

23 **854.13 (title) Disclaimer of transfers at death.**

24 SECTION 118. 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

25 SECTION 119. 854.13 (2) (a) 1. of the statutes is created to read:

1 854.13 (2) (a) 1. In this paragraph, “person” includes a person who is unborn
2 or whose identity is unascertained.

3 **SECTION 120.** 854.13 (2) (gm) of the statutes is created to read:

4 854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a
5 recipient of property under a governing instrument may disclaim that property on
6 behalf of the trust if the trust authorizes disclaimer by the trustee. If the trust does
7 not authorize disclaimer by the trustee, the trustee’s power to disclaim is subject to
8 the approval of the court.

9 **SECTION 121.** 854.13 (2) (h) of the statutes is amended to read:

10 854.13 (2) (h) *After death.* A person’s right to disclaim survives the person’s
11 death and may be exercised by the person’s personal representative or special
12 administrator upon receiving approval from the court having jurisdiction of the
13 person’s estate after hearing upon notice to all persons interested in the disclaimed
14 property, if the personal representative or special administrator has not taken any
15 action ~~which~~ that would bar the right to disclaim under sub. (11) (11g).

16 **SECTION 122.** 854.13 (2) (i) of the statutes is created to read:

17 854.13 (2) (i) *Disclaimer of inter vivos transfers.* A person who is a recipient
18 of property under an inter vivos governing instrument, as defined in s. 700.27 (1) (c),
19 may disclaim the property as provided in s. 700.27.

20 **SECTION 123.** 854.13 (7) (title) of the statutes is amended to read:

21 854.13 (7) (title) ~~DEVOLUTION IN GENERAL.~~

22 **SECTION 124.** 854.13 (7) (a) of the statutes is amended to read:

23 854.13 (7) (a) *In general.* ~~Unless the transferor of the property or donee of the~~
24 ~~power has otherwise provided~~ Subject to subs. (8), (9), and (10), unless the governing
25 instrument provides otherwise, either expressly or as construed from extrinsic

pars. (bm) and (c) and ✓

1 evidence, the disclaimed property devolves as if the disclaimant had died before the
2 decendent or before the effective date of the transfer under the governing instrument.

3 If the disclaimant is an appointee under a power exercised by a governing
4 instrument, the disclaimed property devolves as if the disclaimant had died before
5 the effective date of the exercise of the power. If the disclaimant is a taker in default
6 under a power created by a governing instrument, the disclaimed property devolves
7 as if the disclaimant had predeceased the donee of the power. This paragraph is
8 subject to subs. (8), (9) and (10).

9 SECTION 125. 854.13 (7) (b) of the statutes is repealed.

10 SECTION 126. 854.13 (7) (bm) and (c) of the statutes are created to read:

11 854.13 (7) (bm) *Devolution to ^{issue} descendants of the disclaimants.* Unless the
12 governing instrument provides otherwise, either expressly or as construed from
13 extrinsic evidence, if, by law or under the governing instrument, the ^{issue} descendants of
14 the disclaimant would share in the disclaimed interest by any method of
15 representation had the disclaimant died before the time the disclaimed interest
16 would have taken effect in possession or enjoyment, the disclaimed interest passes
17 only to the ^{issue} descendants of the disclaimant who survive when the disclaimed interest
18 takes effect in possession or enjoyment.

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

21 SECTION 127. 854.13 (8) of the statutes is amended to read:

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

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if the decedent 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 of distribution

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1 **SECTION 128.** 854.13 (9) of the statutes is amended to read:

2 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL
3 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,
4 either expressly or as construed from extrinsic evidence, a disclaimed interest in
5 survivorship marital property passes to the decedent's probate estate.

6 **SECTION 129.** 854.13 (10) (title) of the statutes is repealed and recreated to
7 read:

8 854.13 (10) (title) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING
9 INTEREST IS DISCLAIMED.

10 **SECTION 130.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and
11 amended to read:

12 854.13 (10) (a) Subsequent interest not held by disclaimant. Unless the
13 governing instrument creating the future interest manifests a contrary intent
14 provides otherwise, either expressly or as construed from extrinsic evidence, a future
15 upon the disclaimer of a preceding interest, a subsequent interest not held by the
16 disclaimant and limited to take effect in possession or enjoyment after the
17 termination of the interest which that is disclaimed takes accelerates to take effect
18 as if the disclaimant had died immediately before the effective date of the governing
19 instrument time when the disclaimed interest would have taken effect in possession
20 or enjoyment or, if the disclaimant is an appointee under a power exercised by a
21 governing instrument power of appointment, as if the disclaimant had died before
22 the effective date of the exercise of the power.

23 **SECTION 131.** 854.13 (10) (b) of the statutes is created to read:

24 854.13 (10) (b) Subsequent interest held by the disclaimant. Unless the
25 governing instrument provides otherwise, either expressly or as construed from

1 extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest
2 held by the disclaimant does not accelerate.

3 SECTION 132. 854.13 (11) (title) of the statutes is repealed.

4 SECTION 133. 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and
5 854.13 (11g) (title) and (a), as renumbered, are amended to read:

6 **854.13 (11g) (title) ACTIONS THAT BAR DISCLAIMER BAR.** *(intro.)* *There may be bars to*
7 *a person's right to disclaim property is barred by including, but not limited to, any of the following.*
8 (a) The person's assignment, conveyance, encumbrance, pledge, or transfer of
9 the property or a contract therefor for the assignment, conveyance, encumbrance,
10 pledge, or transfer of the property.

11 SECTION 134. 854.13 (11) (b) of the statutes is renumbered 854.13 (11p), and
12 854.13 (11p) (title), as renumbered, is amended to read:

13 854.13 (11p) (title) EFFECT UPON SUCCESSORS IN INTEREST OF DISCLAIMER OR
WAIVER.

****NOTE: I removed the provision that read "Any statute or common law that bars the right to disclaim." If a statute bars the right or the right is barred by common law, we should list the specific statute or perhaps codify the common law. We try to avoid phrases that state or mean "except as otherwise provided in the statutes" or "notwithstanding the statutes" and instead create precise provisions. So please let me know the specific statutes for the next version of the bill. *Please read the introduction to see if it accomplishes what you intend.*

14 SECTION 135. 854.13 (12) (b) of the statutes is amended to read:
15 854.13 (12) (b) Any disclaimer that meets the requirements of section 2518 of
16 the Internal Revenue Code, or the requirements of any other federal law relating to
17 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

18 SECTION 136. 854.14 (1) of the statutes is repealed.

19 SECTION 137. 854.14 (3m) of the statutes is created to read:

20 854.14 (3m) EFFECT IF DEATH CAUSED BY SPOUSE. (a) *Definitions.* In this
21 subsection:

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1 1. “Owner” means a person appearing on the records of the policy issuer as the
2 person having the ownership interest, or means the insured if no person other than
3 the insured appears on those records as a person having that interest. In the case
4 of group insurance, the “owner” means the holder of each individual certificate of
5 coverage under the group plan and does not include the person who contracted with
6 the policy issuer on behalf of the group, regardless of whether that person is listed
7 as the owner on the contract.

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

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

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

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

23 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured
24 spouse unlawfully and intentionally kills a noninsured spouse, the ownership
25 interest at death of the decedent spouse in any policy with a marital property

1 component that designates the surviving spouse as the owner and insured is a
2 fractional interest equal to one-half of the portion of the policy that was marital
3 property immediately before the death of the decedent spouse.

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

12 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
13 spouse unlawfully and intentionally kills the decedent spouse, the estate of the
14 decedent shall have the right to elect no more than 50 percent of the augmented
15 deferred marital property estate, as determined under s. 861.02 (2), as though the
16 decedent spouse were the survivor and the surviving spouse were the decedent. The
17 court shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the
18 intent of this paragraph.

****NOTE: I did not add as an intro. to sub. (3m) the following language "In addition to sub. (3), all of the following apply if the decedent was unlawfully and intentionally killed by the surviving spouse." In specifying that sub. (3) applies, the language implies that the other subsections do not apply, but that is not your intention, correct? And the other language is already in each paragraph so I do not know what it would add. OK?

19 **SECTION 138.** 854.14 (5) (a) of the statutes is amended to read:

20 854.14 (5) (a) A final judgment establishing criminal accountability for the
21 unlawful and intentional killing of the decedent conclusively establishes the

1 convicted individual as the decedent's killer for purposes of this section and s. 861.02
2 (8).

3 **SECTION 139.** 854.14 (5) (b) of the statutes is amended to read:

4 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
5 and intentional killing of the decedent conclusively establishes the adjudicated
6 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

7 **SECTION 140.** 854.14 (5) (c) of the statutes is amended to read:

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

13 **SECTION 141.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and
14 amended to read:

15 854.01 (3) "Revocable", with respect to a disposition, provision, or
16 nomination, means one under which the decedent, at the time of ~~the divorce,~~
17 ~~annulment or similar event~~ referred to, was alone empowered, by law or under the
18 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
19 ~~former spouse's relative,~~ change or revoke, regardless of whether ~~or not~~ the decedent
20 was then empowered to designate himself or herself in place of ~~the a former spouse~~
21 ~~or the former spouse's relative~~ designee, and regardless of whether ~~or not~~ the
22 decedent then had the capacity to exercise the power.

23 **SECTION 142.** 854.17 of the statutes is amended to read:

24 **854.17 Classification; how determined Marital property classification;**
25 **ownership and division of marital property at death.** In chs. 851 to 882,

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1 ~~classification~~ Classification of the property of a decedent spouse and surviving
2 spouse ~~is, and ownership and division of that property at the death of a spouse, are~~
3 determined under ch. 766 and s. 861.01.

4 **SECTION 143.** 854.18 (1) (a) (intro.) of the statutes is amended to read:

5 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
6 ~~share of the surviving spouse who elects to take an elective share in deferred marital~~
7 ~~property~~ deferred marital property elective share amount of a surviving spouse who
8 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11
9 ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of
10 distributees abate, without any preference or priority as between real and personal
11 property, in the following order:

12 **SECTION 144.** 854.18 (3) of the statutes is amended to read:

13 854.18 (3) If the governing instrument expresses an order of abatement, or if
14 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
15 transfer, as expressed, implied, or determined through extrinsic evidence, would be
16 defeated by the order of abatement under sub. (1), the shares of the distributees
17 abate as necessary to give effect to the intention of the transferor.

****NOTE: Is "determined" okay here? Howie was careful to ensure that any "to show" became "to construe."

18 **SECTION 145.** 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and
19 amended to read:

20 854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is
21 treated as a birth child of the person's adoptive parents and the adoptive parents are
22 treated as the birth parents of the adoptive child for purposes of ~~intestate succession~~
23 transfers at death by, through, and from the adopted person and for purposes of any

to

adopted person

1 statute or other rule conferring rights upon children, issue, or relatives in connection
2 with the law of intestate succession or governing instruments.

3 **SECTION 146.** 854.20 (2) (intro.) of the statutes is renumbered 854.20 (2) (am)
4 (intro.) and amended to read:

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

9 **SECTION 147.** 854.20 (2) (a) of the statutes is renumbered 854.20 (2) (am) 1. and
10 amended to read:

11 854.20 (2) (am) 1. ~~If a birth parent marries or remarries and the parent-child~~
12 relationship between the child is adopted by the stepparent, and one birth parent is
13 replaced by adoption, but the relationship to the other birth parent is not replaced,
14 then for all purposes the child is continues to be treated as the child of the birth
15 parent whose spouse ~~adopted the child~~ relationship was not replaced.

16 **SECTION 148.** 854.20 (2) (am) 2. b. and c. of the statutes are created to read:

17 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
18 at the time of adoption or if the adoptive parent raised the adopted person in a
19 parent-like relationship beginning on or before the child's 15th birthday and lasting
20 for a substantial period or until adulthood.

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

23 **SECTION 149.** 854.20 (2) (b) of the statutes is renumbered 854.20 (2) (am) 2. a.
24 and amended to read:

born to married parents

1 854.20 (2) (am) 2. a. If Subject to subd. 2. b. and c., if a birth parent of a marital
 2 child dies and the other birth parent subsequently remarries and the child is adopted
 3 by the stepparent, the child is continues to be treated as the child of the deceased
 4 birth parent for purposes of inheritance transfers at death through that parent and
 5 for purposes of any statute or other rule conferring rights upon children, issue or
 6 relatives of that parent under the law of intestate succession or governing
 7 instruments.

NOTE: Please note my change to "marital child" Δ Δ = = OK?

8 **SECTION 150.** 854.20 (3) of the statutes is renumbered 854.20 (2) (bm) and
 9 amended to read:

10 854.20 (2) (bm) ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive
 11 parent dies or his or her parental rights are terminated in a legal proceeding and the
 12 adopted child is subsequently adopted by another person, the former adoptive parent
 13 is considered to be a birth parent for purposes of this section subsection.

14 **SECTION 151.** 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20
 15 (1) (b) (intro.) and 3., as renumbered, are amended to read:

16 854.20 (1) (b) ~~Applicability.~~ (intro.) ~~Subsections (1), (2) and (3) apply~~ Subject
 17 to sub. (5), par. (a) applies only if at least one of the following applies:

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

22 **SECTION 152.** 854.20 (5) of the statutes is amended to read:

23 854.20 (5) **CONTRARY INTENT.** ~~This section does not apply if the transfer is made~~
 24 ~~under a governing instrument and there is a finding of contrary intent of~~ If the
 25 person who executed the governing instrument had an intent contrary to any

1 provision in this section, then that provision is not applicable to the transfer.

2 Extrinsic evidence may be used to construe ~~that~~ ^{the} intent.

3 **SECTION 153.** 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)
4 and amended to read:

5 854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a
6 governing instrument to a class of persons described as “issue,” “lawful issue,”
7 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”
8 “distributees,” or the like includes a person adopted by a person whose birth child
9 would be a member of the class, and issue of the adopted person, if the conditions for
10 membership in the class are otherwise satisfied and ~~any of the following applies:~~ at
11 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

12 **SECTION 154.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

13 **SECTION 155.** 854.21 (1) (b) of the statutes is amended to read:

14 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of property by~~
15 a governing instrument to a class of persons described as “issue,” “lawful issue,”
16 “children,” “grandchildren,” “descendants,” “heirs,” “heirs of the body,” “next of kin,”
17 “distributees,” or the like excludes a birth child and his or her issue otherwise within
18 the class if the birth child has been adopted and would cease to be treated as a child
19 of the birth parent under s. 854.20 (2).

20 **SECTION 156.** 854.21 (7) of the statutes is amended to read:

21 854.21 (7) **CONTRARY INTENT.** ~~This section does not apply if the transfer is made~~
22 ~~under a governing instrument and there is a finding of contrary intent of~~ If the
23 person who executed the governing instrument had an intent contrary to any
24 provision in this section, then that provision is inapplicable to the transfer. Extrinsic
25 evidence may be used to construe ~~that~~ the intent.

1 **SECTION 157.** 854.22 (4) of the statutes is amended to read:

2 854.22 (4) CONTRARY INTENT. ~~This section does not apply if the transfer is made~~
3 ~~under a governing instrument and there is a finding of contrary intent of~~ If the
4 ~~person who executed the governing instrument~~ had an intent contrary to any
5 provision in this section, then that provision is inapplicable to the transfer. Extrinsic
6 evidence may be used to construe that the intent.

7 **SECTION 158.** 856.05 (5) of the statutes is amended to read:

8 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~
9 ~~documents incorporated by reference under s. 853.32 (1) or (2) and information~~
10 ~~needed for proof of a lost~~ missing will under s. 856.17.

11 **SECTION 159.** 856.15 (1) of the statutes is amended to read:

12 856.15 (1) GENERALLY. The court may grant probate of an uncontested will on
13 the execution in open court by one of the subscribing witnesses of a sworn statement
14 that the will was executed as required by the statutes and that the testator was of
15 sound mind, of full age, and not acting under any restraint at the time of the
16 execution thereof. If an uncontested will contains an attestation clause showing
17 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
18 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
19 probate without any testimony or other evidence.

20 **SECTION 160.** 856.16 of the statutes is repealed and recreated to read:

21 **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in
22 connection with the affidavit, if a will includes an affidavit in substantially the form
23 under s. 853.04 (1) or (2), all of the following apply:

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

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

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

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

7 **SECTION 161.** 856.17 of the statutes is amended to read:

8 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
9 accident ~~or~~, destroyed without the testator's consent, unavailable but revived under
10 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
11 and validity of the will and to establish the same. The petition for the probate of the
12 will shall set forth the provisions ~~thereof~~ of the will.

13 **SECTION 162.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and
14 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

15 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a
16 successor in interest to all or part of the decedent's one-half interest in marital
17 property may petition the court to approve an exchange of interests in the marital
18 property authorized under subd. 1. or 2., but court approval of the exchange is not
19 required for the agreement under subd. 1. or 2. to be effective. If the court approves
20 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall
21 exchange their respective interests in 2 or more items of marital property and
22 distribute the items in a manner to conform with the exchange. The exchange shall:

23 a. Occur before the final distribution of the estate assets under the governing
24 instrument;

25 **SECTION 163.** 857.03 (2m) of the statutes is created to read:

1 857.03 (2m) The surviving spouse and the personal representative may
2 petition the court to approve an exchange of interests in marital property as provided
3 in s. 766.31 (3) (b) 3.

4 **SECTION 164.** 859.01 of the statutes is amended to read:

5 **859.01 Time for filing claims.** When an application for administration is
6 filed, the court, or the probate registrar under informal administration proceedings,
7 shall by order set a date as the deadline for filing a claim against the decedent's
8 estate. The date shall be not less than 3 nor more than 4 months from the date of the
9 order. If a claim is not filed by the deadline, the consequences provided in s. 859.02
10 apply.

11 **SECTION 165.** 859.02 (2m) of the statutes is created to read:

12 859.02 (2m) (a) A claim based on a tort is subject to s. 859.45.

13 (b) A claim of a creditor without notice is subject to s. 859.48.

14 **SECTION 166.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and
15 amended to read:

16 **766.31 (7m) PERSONAL INJURY DAMAGES; LOST EARNINGS.** To the extent that
17 marital property includes damages for loss of future income arising from a personal
18 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as
19 individual property that portion of the award that represents an income substitute
20 after the death of the other spouse.

21 **SECTION 167.** 861.01 (3m) of the statutes is created to read:

22 **861.01 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS.** Section 766.31 (7m)
23 determines the rights of a surviving spouse to that part of a personal injury claim
24 that represents future lost earnings of the surviving spouse.

25 **SECTION 168.** 861.01 (4) of the statutes is created to read:

1 **SECTION 175.** 861.02 (8) of the statutes is repealed and recreated to read:

2 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)
3 (d) applies to election of deferred marital property if the decedent's surviving spouse
4 unlawfully and intentionally killed the decedent.

5 **SECTION 176.** 861.04 (2) of the statutes is repealed.

6 **SECTION 177.** 861.04 (2m) of the statutes is created to read:

7 861.04 (2m) When the surviving spouse is treated as the decedent under sub.
8 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
9 (1) (e) or (2m).

10 **SECTION 178.** 861.05 (1) (c) of the statutes is amended to read:

11 861.05 (1) (c) Transfers of deferred marital property to persons other than the
12 surviving spouse who did not make the transfer, with the written joinder or written
13 consent of ~~the surviving~~ that spouse.

14 **SECTION 179.** 861.05 (1) (e) of the statutes is created to read:

15 861.05 (1) (e) The deferred marital property component of any deferred
16 employment benefit plan, or of assets in an individual retirement account that are
17 traceable to the rollover of a deferred employment benefit plan, held by the surviving
18 spouse that would have terminated under s. 766.62 (5) had it been marital property.

19 **SECTION 180.** 861.05 (2) (title) of the statutes is amended to read:

20 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

21 **SECTION 181.** 861.05 (2m) of the statutes is created to read:

22 861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The
23 surviving spouse's property included in the augmented deferred marital property
24 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's

1 property included in the augmented deferred marital property estate is valued under
2 sub. (2), subject to the following:

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

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

10 SECTION 182. 861.06 (title) of the statutes is amended to read:

11 **861.06 (title) Satisfaction of deferred marital property elective share**
12 **amount.**

13 SECTION 183. 861.06 (2) (title) of the statutes is amended to read:

14 861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE
15 SHARE AMOUNT.

16 SECTION 184. 861.06 (2) (b) (intro.) of the statutes is amended to read:

17 861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred
18 individual property, transferred to the surviving spouse, including any beneficial
19 interest in property transferred in trust:

20 SECTION 185. 861.06 (2) (b) 4. a. of the statutes is amended to read:

21 861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent
22 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

23 SECTION 186. 861.06 (6) of the statutes is created to read:

24 861.06 (6) VALUATION. The value of property used to satisfy the deferred marital
25 property elective share includes the value of any property transferred outright to the

1 surviving spouse, the commuted value of any present or future interest in property
2 transferred to the surviving spouse, and the commuted value of property payable to
3 the surviving spouse under any trust, life insurance settlement option, annuity
4 contract, public or private pension, disability compensation, death benefit or
5 retirement plan, or any similar arrangement.

6 **SECTION 187.** 861.07 (2) (intro.) of the statutes is amended to read:

7 861.07 (2) PERSONS LIABLE. (intro.) The following persons are liable to make
8 a prorated contribution toward satisfaction of the surviving spouse's deferred
9 marital property elective share amount:

10 **SECTION 188.** 861.10 (1) of the statutes is amended to read:

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

17 **SECTION 189.** 861.10 (2) of the statutes is amended to read:

18 861.10 (2) WAIVER OF "ALL RIGHTS", Unless the waiver provides otherwise, a
19 waiver of "all rights", or equivalent language, in the property or estate of a present
20 or prospective spouse, or in a complete property settlement entered into because of
21 separation or divorce, is a waiver of all rights in the deferred marital property
22 elective share amount.

23 **SECTION 190.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

24 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other
25 3rd party who has received satisfactory proof of the decedent's death and who has not

1 received written notice that the surviving spouse or his or her representative intends
2 to file a petition for the deferred marital property elective share amount or that a
3 petition for the election has been filed is not liable for any of the following:

4 **SECTION 191.** 861.11 (2) (b) of the statutes is amended to read:

5 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other
6 actions taken after receipt of written notice of the intent to file a petition for the
7 elective share amount or written notice that a petition for the elective share amount
8 has been filed.

9 **SECTION 192.** 861.11 (5) (b) of the statutes is amended to read:

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

19 **SECTION 193.** 861.17 (3) of the statutes is amended to read:

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

1 **SECTION 194.** 861.21 (1) (a) of the statutes is amended to read:

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

3 **SECTION 195.** 861.21 (2) of the statutes is amended to read:

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

12 **SECTION 196.** 861.21 (3) of the statutes is repealed.

13 **SECTION 197.** 861.21 (4) of the statutes is amended to read:

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

22 **SECTION 198.** 861.21 (5) of the statutes is amended to read:

23 861.21 (5) ~~SEVERANCE OF HOME FROM SURROUNDING LAND.~~ On petition of the
24 surviving spouse or of any interested person that part of the land is not necessary for
25 dwelling purposes and that it would be inappropriate to assign all of the surrounding

1 land as the home under sub. (2), the court may set off for the home as much of the
2 land as is necessary for a dwelling. In determining how much land should be set off,
3 the court shall take into account the use and marketability of the parcels set off as
4 the home and the remaining land.

5 **SECTION 199.** 861.31 (1c) of the statutes is repealed.

6 **SECTION 200.** 861.31 (1m) of the statutes is amended to read:

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

14 **SECTION 201.** 861.31 (2) of the statutes is amended to read:

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

21 **SECTION 202.** 861.31 (4) (intro.) of the statutes is amended to read:

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

1 spouse. The court may ~~direct~~ order that the allowance for support of the surviving
2 spouse, not including any allowance for support of dependent minor children of the
3 decedent, be applied in satisfaction of any of the following:

4 **SECTION 203.** 861.31 (4) (a) of the statutes is amended to read:

5 861.31 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
6 853.12.

7 **SECTION 204.** 861.33 (title) of the statutes is amended to read:

8 **861.33 (title) Selection of personalty by surviving spouse ~~or children~~.**

9 **SECTION 205.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

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

15 **SECTION 206.** 861.33 (1) (b) of the statutes is amended to read:

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

22 **SECTION 207.** 861.33 (1) (c) of the statutes is repealed.

23 **SECTION 208.** 861.33 (2) of the statutes is amended to read:

24 861.33 (2) If it appears that claims may not be paid in full, the court may, upon
25 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~

1 under this section to items not exceeding \$5,000 in aggregate inventory value until
2 ~~such time as~~ the claims are paid in full or the court otherwise orders, or the court
3 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
4 the option of the spouse ~~or children~~, pay the excess in value over this amount.

5 SECTION 209. 861.33 (3) of the statutes is amended to read:

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

11 SECTION 210. 861.33 (4) of the statutes is amended to read:

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

18 SECTION 211. 861.35 (title) of the statutes is amended to read:

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

21 SECTION 212. 861.35 (1c) of the statutes is repealed.

22 SECTION 213. 861.35 (1m) (intro.) of the statutes is amended to read:

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

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

6 **SECTION 214.** 861.35 (1m) (a) of the statutes is amended to read:

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

11 **SECTION 215.** 861.35 (1m) (b) of the statutes is amended to read:

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

15 **SECTION 216.** 861.35 (1m) (c) of the statutes is amended to read:

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

18 **SECTION 217.** 861.35 (2) of the statutes is amended to read:

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

1 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
2 unpaid claims of the decedent's estate.

3 **SECTION 218.** 861.35 (3) (a) of the statutes is amended to read:

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

7 **SECTION 219.** 861.35 (4) (intro.) of the statutes is amended to read:

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

11 **SECTION 220.** 861.35 (4) (a) of the statutes is amended to read:

12 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2)
13 853.12.

14 **SECTION 221.** 863.08 of the statutes is amended to read:

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

19 **SECTION 222.** 863.15 of the statutes is amended to read:

20 **863.15 ~~Right of retention Debts to estate.~~** ~~When If~~ a distributee of an estate
21 is indebted to the estate, the amount of the indebtedness if due, or the present worth
22 of the indebtedness, if not due, shall be treated as an offset by the personal
23 representative against property of the estate to which the distributee is entitled. In
24 contesting the offset the distributee shall have the benefit of any defense which

1 ~~would be available to the distributee in a direct proceeding by the personal~~
2 ~~representative for the recovery~~ treatment of the debt is governed by s. 854.12.

3 SECTION 223. 863.16 of the statutes is repealed and recreated to read:

4 **863.16 Valuation used in distribution of fractional shares.** Valuation of
5 property distributed in satisfaction of a fractional share is determined by s. 854.115.

6 SECTION 224. 863.19 of the statutes is repealed and recreated to read:

7 **863.19 Valuation used in distribution of estate assets.** Valuation of
8 property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed
9 by formula or otherwise, is determined by s. 854.115.

10 SECTION 225. 865.07 (1) (d) of the statutes is amended to read:

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

16 SECTION 226. 867.03 (1g) (intro.) of the statutes is amended to read:

17 867.03 (1g) GENERALLY. (intro.) When a decedent leaves ~~solely-owned~~ property
18 subject to administration in this state which does not exceed \$20,000 \$50,000 in
19 value, any heir of the decedent or person who was guardian of the decedent at the
20 time of the decedent's death may collect any money due the decedent, receive the
21 property of the decedent, and have any evidence of interest, obligation to, or right of
22 the decedent transferred to the affiant if the heir or guardian provides to the person
23 owing the money, having custody of the property, or acting as registrar or transfer
24 agent of the evidences of interest, obligation to, or right, or, if the property is an
25 interest in or lien on real property, provides to the register of deeds preliminary to

1 the recording required under sub. (2m), proof of prior mailed notice under sub. (1m)
2 if applicable and an affidavit in duplicate showing all of the following:

3 **SECTION 227.** 867.03 (1g) (b) of the statutes is amended to read:

4 867.03 (1g) (b) The total value of the decedent's property subject to
5 administration in this state at the date of decedent's death.

6 **SECTION 228.** 867.035 (1) (a) 4. of the statutes is amended to read:

7 867.035 (1) (a) 4. The value of the ~~solely-owned~~ property subject to
8 administration in this state left by the decedent, after payment of burial costs, does
9 not exceed the amount under s. 867.03 (1g) (intro.).

10 **SECTION 229.** 880.61 (11m) of the statutes is created to read:

11 880.61 (11m) "Qualified minor's trust" means any trust, including a trust
12 created by the custodian, that satisfies the requirements of section 2503 (c) of the
13 Internal Revenue Code and the regulations implementing that section.

14 **SECTION 230.** 880.675 (1m) of the statutes is created to read:

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

18 **SECTION 231.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

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

23 **SECTION 232. Initial applicability.**

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

1 (b), and (c), (2), (3), and (4), 861.35 (1c), (1m) (intro.), (a), (b), and (c), (2), (3) (a), and
2 (4) (intro.) and (a), 863.15, 863.16, and 863.19 of the statutes, the renumbering and
3 amendment of sections 705.04 (2), 852.01 (1) (a) 2., and 854.08 (5) of the statutes, and
4 the creation of sections 705.04 (2) (a) and (d), 852.01 (1) (a) 2. b., and 854.08 (5) (a)
5 and (d) of the statutes first apply to transfers related to deaths occurring on the
6 effective date of this subsection but do not apply to transfers under governing
7 instruments that were irrevocable before that date.

8

(END)

**** Note: This "renumbering and amendment of
section 852.01(1)(a)2." ^{either} has to appear in its entirety
or has to be deleted. It cannot read just the
renumbering because no bill Section ^(b) just
renumbers the provision.

1 Insert 10-15

2 (c) *Disclaimer of a future interest.* 1. In this [✓] paragraph, “devisable future
3 interest” is a future interest that can be passed under the will of the person who holds
4 the future interest.

5 2. If the disclaimed interest is a devisable future interest under the law
6 governing the transfer, then the disclaimed interest devolves as if it were not a
7 devisable future interest. [✓]

8 (8) ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING INTEREST IS
9 DISCLAIMED. [✓] (a) *Subsequent interest not held by disclaimant.* Unless the [✓] inter vivos
10 governing instrument provides otherwise, either expressly or as construed from
11 extrinsic evidence, [✓] upon the disclaimer of a preceding interest, a subsequent interest
12 not held by the disclaimant and limited to take effect in possession or enjoyment after
13 the termination of the interest that is disclaimed accelerates to take effect as if the
14 disclaimant had died immediately before the time when the disclaimed interest
15 would have taken effect in possession or enjoyment or, if the disclaimant is an
16 appointee under a power exercised by a power of appointment, as if the disclaimant
17 had died before the effective date of the exercise of the power.

18 (b) *Subsequent interest held by disclaimant.* [✓] Unless the inter vivos governing
19 instrument provides otherwise, either expressly or as construed from extrinsic
20 evidence, upon the disclaimer of a preceding interest, a subsequent interest held by
21 the disclaimant does not accelerate.

22 (end ins 10-15)
23

1 Insert 26-4

2 SECTION 1. 852.05 (title) of the statutes is amended to read:

3 852.05 (title) Status of ~~nonmarital~~ child born to unmarried parents for
4 purposes of intestate succession.

***NOTE: See change to this title ~~OK?~~ ^{=m}

History: 1979 c. 32 s. 92 (2); 1979 c. 352; 1981 c. 391; 1983 a. 447; 1993 a. 486; 1997 a. 188, 191.

5

6

7 Insert 26-9

8 SECTION 2. 852.05 (2) of the statutes is amended to read:

9 852.05 (2) Property of a ~~nonmarital~~ child born to unmarried parents passes in
10 accordance with s. 852.01 except that the father or the father's kindred can inherit
11 only if the father has been adjudicated to be the father in a paternity proceeding
12 under ch. 767 or by final order or judgment of a court of competent jurisdiction in
13 another state or has been determined to be the father under s. 767.62 (1) or a
14 substantially similar law of another state.

***NOTE: See my change to "nonmarital" ~~OK?~~ ^{=m}

History: 1979 c. 32 s. 92 (2); 1979 c. 352; 1981 c. 391; 1983 a. 447; 1993 a. 486; 1997 a. 188, 191.

15

SECTION 3. 852.05 (3) of the statutes is amended to read:

16 852.05 (3) This section does not apply to a child who becomes a marital child
17 by the subsequent marriage of the child's parents under s. 767.60. The status of a
18 ~~nonmarital~~ child born to unmarried parents who is legally adopted is governed by
19 s. 854.20.

***NOTE: See my change to "nonmarital" ~~OK?~~ ^{=m} I did not know how to change
"marital" in this provision.

History: 1979 c. 32 s. 92 (2); 1979 c. 352; 1981 c. 391; 1983 a. 447; 1993 a. 486; 1997 a. 188, 191.

20

21

needed to be changed ✓

1 Insert 37-10

2 SECTION 4. 854.08 (6) (a) (intro.) and 2. of the statutes are consolidated,
3 renumbered 854.08 (6) (ag) and amended to read:

4 854.08 (6) (ag) (intro.) This section is inapplicable if any of the following
5 applies: 2. The the person who executed the governing instrument gives property
6 during the person's lifetime to the specific beneficiary with the intent of satisfying
7 the specific gift. Extrinsic evidence may be used to construe that intent and the
8 requirement under s. 854.09 (1) is satisfied.

History: 1997 a. 188.

9 SECTION 5. 854.08 (6) (a) 2. of the statutes is renumbered 854.08 (6) (ar) and
10 amended to read:

11 854.08 (6) (ar) 1. ^{INS A} ~~The If the person who executed the governing instrument gives~~
12 ~~property during the person's lifetime to the specific beneficiary with the intent of~~
13 ~~satisfying the specific gift had an intent contrary to any provision in this section, then~~
14 ~~that provision is inapplicable to the transfer. Extrinsic evidence may be used to~~
15 ~~construe that the intent.~~

***NOTE: Please review how I restructured this provision.

History: 1997 a. 188.

16
17
18 Insert 41-21

19 (c) Disclaimer of a future interest. 1. In this paragraph, "devisable future
20 interest" is a future interest that can be passed under the will of the person who holds
21 the future interest.



1 2. If the disclaimed interest is a devisable future interest under the law
2 governing the transfer, then the disclaimed interest devolves as if it were not a
3 devisable future interest. ✓
4

5

6

Insert 46-23

7

8

SECTION 6. 854.15 (5) (intro.) ✓ of the statutes is renumbered 854.15 (5) (am)
(intro.).

9

10

SECTION 7. 854.15 (5) (a), (b), (c), (d) and (e) ✓ of the statutes are renumbered
854.15 (5) (am) 1., 2., 3., 4. and 5. ✓

11

12

SECTION 8. 854.15 (5) (f) ✓ of the statutes is renumbered 854.15 (5) (bm) and
amended to read:

13

14

15

854.15 (5) (bm) ~~There is a finding of the decedent's contrary~~ If the person who
executed the governing instrument had an intent contrary to any provision in this
section, then that provision is inapplicable to the transfer. Extrinsic evidence may

16

be used to construe ~~that~~ the intent.

If the person who executed the

INS A
TO INSERT 37-10

Strike ~~854.08(b)(a)1~~

~~(1) The governing instrument, either expressly or as construed from extrinsic evidence, shows the intent that a transfer fail under the particular circumstances.~~

contrary to any provision in this section, then that provision is inapplicable to the

had an

↓ Extrinsic evidence may be used to construe the intent

(end insert A TO INS 37-10)