

705.20 Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employe benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection governs a written provision that:

(a) Money or other benefits due, controlled by or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will executed either before or at the same time as the instrument, or later;

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) Any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person whom the decedent designates either in the instrument or in a separate writing, including a will executed either before or at the same time as the instrument, or later.

(2) This section does not limit rights of creditors under other laws of this state.

(3) Chapter 854 applies to transfers at death under this section.

(4) Transfers under this section do not require confirmation in any procedure under Chapter 856, Chapter 865, or ss. 867.01, 867.02, or 867.03. Confirmation of a transfer under this section may be obtained pursuant to ss. 867.046(1m) or (2).

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Committee Note: New sub. (4) clarifies that nonprobate transfers under s. 705.20 do not require the use of formal, informal, or summary probate procedure. No confirmation is required for the transfer to be valid, but confirmation may be obtained via the informal procedures of ss. 867.046(1m) or (2). Under the holding in *Maciolek, v. City of Milwaukee Employes' Retirement System Annuity and Pension Board*, --- N.W.2d ---, 2006 WL 223127 (Wis.), 2006 WI 10, a stakeholder may require the use of ss. 867.046(1m) or (2).

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854.23 Protection of payers and other 3rd parties. (1) Definition. In this section, "governing instrument" includes an instrument described in s. 854.01, a filed verified statement under s. 865.201, a certificate under s. 867.046 (1m) or a confirmation under s. 867.046 (2), and a recorded application under s. 867.046 (5).

Committee Note: Change reverses misinterpretation of the statute by Wisconsin Supreme Court in *Maciolek, v. City of Milwaukee Employes' Retirement System Annuity and Pension Board*, --- N.W.2d ---, 2006 WL 223127 (Wis.), 2006 WI 10.

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867.046 Summary confirmation of interest in property. (1) Definitions. In this section:

(a) "Beneficiary of a marital property agreement" means a designated person, trust or other entity having an interest in property passing by nontestamentary disposition under s. 766.58 (3) (f).

(b) "Survivorship marital property" means property held under s. 766.60 (5) (a).

(1m) Upon death; generally. If a domiciliary of this state dies who immediately prior to death had

an interest in property in this state, including an interest in survivorship marital property or an interest in property passing under s. 705.20(1), or if a person not domiciled in this state dies having an interest in property in this state, including an interest in survivorship marital property or an interest in property passing under s. 705.20(1), upon petition of the decedent's spouse or upon petition of a beneficiary of a marital property agreement, or a beneficiary of a transfer under s. 705.20(1) to the court of the county of domicile of the decedent or, if the decedent was not domiciled in this state, of any county where the property is situated, the court shall issue a certificate under the seal of the court. The certificate shall set forth the fact of the death of the decedent, the termination or transfer of the decedent's interest in the property, the interest of the petitioner in the property and any other facts essential to a determination of the rights of persons interested. The certificate is prima facie evidence of the facts recited, and if the certificate relates to an interest in real property or to a debt secured by an interest in real property, the petitioner shall record a certified copy or duplicate original of the certificate in the office of the register of deeds in each county in this state in which the real property is located.

(2) Upon death; interest in property. As an alternative to sub. (1m), upon the death of any person having an interest in any real property, a vendor's interest in a land contract, an interest in a savings or checking account, an interest in a security or a mortgagee's interest in a mortgage, or an interest in property passing under s. 705.20(1), including an interest in survivorship marital property, the decedent's spouse or a beneficiary of a marital property agreement, or a beneficiary of a transfer under s. 705.20(1) may obtain evidence of the termination of that interest of the decedent and confirmation of the petitioner's interest in the property by providing to the register of deeds of the county in which the property is located the certified death certificate for the decedent and, on applications supplied by the register of deeds for that purpose, all of the following information:

- (a) The name, residence and post-office addresses of the decedent and the applicant.
- (b) The date of decedent's death.

(i) In the case of real property, a copy of the property tax bill for the year preceding the year of the decedent's death and a legal description of the property, which description shall be imprinted on or attached to the application. The register of deeds shall record the bill.

(j) In the case of a joint tenancy or life estate, a copy of the deed that creates the interest.

(k) In the case of a transfer under s. 705.20(1), other than one described in (i) or (j) in this subpart, a copy of the document described in s. 705.20(1).

(2m) Third-party confirmation. If the personal representative, decedent's spouse or a beneficiary of a marital property agreement does not commence proceedings to confirm an interest under this section or s. 863.27 or 865.201 within 90 days after the decedent's death, any interested person may petition or apply under this section.

(3) Completion of application. The register of deeds or other person authorized under s. 706.06 or 706.07 shall complete a statement at the foot of the application, declaring that the applicant or, if the applicant is not an individual, a representative of the applicant appeared before him or her and verified, under oath, the correctness of the information required by sub. (2).

(4) Delivery of application. The register of deeds shall mail or deliver a copy of the application to the circuit court for the county of residence of the decedent, unless the clerk of courts notifies the register of deeds in writing that this procedure is not necessary.

(5) Recording; termination of property interest. Upon the recording, the application constitutes prima facie evidence of the facts recited and constitutes the termination of the property interest, with

the same force and effect as if issued by the court assigned to exercise probate jurisdiction for the county of domicile of the decedent under s. 867.04.

(6) Purchasers from petitioners protected. If an interest in property transferred under this section is acquired from the petitioner by a purchaser or lender in good faith, for value and without actual notice that the transfer was improper, the purchaser or lender takes title free of any claims of the decedent's estate and incurs no personal liability to the estate, whether or not the transfer was proper. Purchasers and lenders have no duty to inquire whether a transfer was proper.

Committee Note: Expands the type of property that can be the subject of a confirmation, and expands the list of parties who can apply for a confirmation. As amended, the list of types of property is somewhat redundant, but the Committee was reluctant to remove anything from the current statute because of the risk of misunderstanding of the Committee's intent to broaden, and not narrow the statute.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0135/2  
CMH:jld:ch

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Toopy  
A/P

2005 BILL

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repeal cut

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), 854.13 (2) (a), 854.15 (5) (intro.) and 854.15 (5) (a), (b), (c), (d) and (e); *to*  
5 *renumber and amend* 701.26, 705.04 (2), 705.28 (3), 766.31 (3), 766.31 (6),  
6 852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.18 (1), 853.25 (2), 853.32 (2) (b),  
7 854.01, 854.03 (5), 854.05 (5), 854.06 (4) (a), 854.06 (4) (b), 854.08 (5), 854.08 (6)  
8 (a) 1., 854.13 (10), 854.13 (11) (a), 854.13 (11) (b), 854.15 (1) (e), 854.15 (5) (f),  
9 854.20 (1), 854.20 (2) (intro.), 854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4),  
10 854.21 (1) (a) (intro.), 857.03 (2) and 861.01 (3); *to consolidate, renumber*  
11 *and amend* 854.08 (6) (a) (intro.) and 2.; *to amend* 30.541 (3) (d) 2. d., 71.05  
12 (6) (a) 16., 71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4.,  
13 700.11 (1), 700.13 (2), 701.06 (7), 701.06 (8), 701.115 (2), 701.115 (3), 701.20 (5)  
14 (c), 701.24 (title) and (1), 701.26 (title), 702.03 (1), 702.08, 705.06 (1) (c), 705.06

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1 (2), 705.27, 766.61 (7), 766.62 (2), 766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1)  
2 (b), 851.31, 851.50, 852.01 (1) (b), 852.05 (title), 852.05 (1) (intro.), 852.05 (2),  
3 852.05 (3), 852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.32 (2) (a), 854.03  
4 (2) (b), 854.04 (1) (a), 854.04 (3) (a), 854.04 (4), 854.04 (5) (intro.), 854.04 (5) (b),  
5 854.04 (6), 854.07 (3), 854.07 (4), 854.09 (3), 854.11 (4), 854.13 (title), 854.13 (2)  
6 (h), 854.13 (4) (c), 854.13 (7) (title), 854.13 (7) (a), 854.13 (8), 854.13 (9), 854.13  
7 (12) (b), 854.14 (5) (a), 854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.),  
8 854.18 (3), 854.20 (5), 854.21 (1) (b), 854.21 (7), 854.22 (4), 856.05 (5), 856.15 (1),  
9 856.17, 859.01, subchapter II (title) of chapter 861 [precedes 861.018], 861.02  
10 (title), 861.02 (2) (b) (intro.), 861.02 (4), 861.02 (6), 861.02 (7) (b), 861.05 (1) (c),  
11 861.05 (2) (title), 861.06 (title), 861.06 (2) (title), 861.06 (2) (b) (intro.), 861.06  
12 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10 (2), 861.11 (2) (a) (intro.), 861.11  
13 (2) (b), 861.11 (5) (b), 861.17 (3), 861.20 (2), 861.21 (1) (a), 861.21 (2), 861.21 (4),  
14 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.), 861.31 (4) (a), 861.33  
15 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2), 861.33 (3), 861.33 (4),  
16 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35 (1m) (b), 861.35 (1m)  
17 (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4) (a), 863.08, 863.15,  
18 865.07 (1) (d), 867.01 (3) (am) 2., 867.02 (2) (am) 3., 867.03 (1g) (intro.), 867.03  
19 (1g) (b), 867.03 (1m) (a), 867.03 (1m) (b), 867.03 (2), 867.035 (1) (a) 4., 867.045  
20 (1) (intro.), 867.045 (2), 867.045 (4) and 879.09; **to repeal and recreate** 701.19  
21 (10), 853.04 (3), 854.08 (5) (title), 854.13 (10) (title), 856.16 and 861.02 (8); **to**  
22 **create** 700.27, 701.06 (6) (b), (c) and (d), 701.115 (1) (a), 701.24 (3), 701.26 (1)  
23 (d), 701.26 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f) and (g),  
24 705.28 (2m), 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title),  
25 766.31 (5) (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p)

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1 (title), 766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b),  
2 766.62 (4) (c), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m),  
3 853.18 (1) (a), (b) and (c), 853.25 (2) (a) 1. and 2., 853.32 (1) (bm), 853.32 (2) (am),  
4 854.01 (1), 854.03 (5) (am) 7., 854.03 (5) (am) 8., 854.03 (5) (bm), 854.06 (4) (a)  
5 1., 854.08 (5) (a), 854.08 (5) (d), 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13  
6 (2) (i), 854.13 (7) (bm) and (c), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b.  
7 and c., 857.03 (2m), 859.02 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04  
8 (2m), 861.05 (1) (e), 861.05 (2m), 861.06 (6), 867.03 (2g), 880.61 (11m) and  
9 880.675 (1m) of the statutes; and *to affect* 1997 Wisconsin Act 188, section 233  
10 (1); **relating to:** miscellaneous remedial modifications to the Wisconsin  
11 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:***

12 **SECTION 1.** 30.541 (3) (d) 2. d. of the statutes is amended to read:  
13 30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
14 proceeds under s. 867.03 (1g) and the total value of the decedent's solely-owned  
15 property subject to administration in the state, including boats transferred under  
16 this subdivision, does not exceed \$20,000 \$50,000.  
17 **SECTION 2.** 71.05 (6) (a) 16. of the statutes is amended to read:

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1           71.05 (6) (a) 16. Any amount recognized as a loss under section 1001 (c) of the  
2 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee  
3 exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

4           **SECTION 3.** 71.05 (6) (b) 12. of the statutes is amended to read:

5           71.05 (6) (b) 12. Any amount recognized as a gain under section 1001 (c) of the  
6 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee  
7 exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

8           **SECTION 4.** 71.05 (12) (d) of the statutes is amended to read:

9           71.05 (12) (d) Property exchanged under s. ~~857.03 (2)~~ 766.31 (3) (b) shall be  
10 treated as if acquired by gift for the determination of basis.

11           **SECTION 5.** 101.9211 (4) (b) 4. of the statutes is amended to read:

12           101.9211 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse  
13 is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~  
14 property subject to administration in the state, including the manufactured homes  
15 transferred under this paragraph, does not exceed ~~\$10,000~~ \$50,000.

16           **SECTION 6.** 342.17 (4) (b) 4. of the statutes is amended to read:

17           342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
18 proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~  
19 property subject to administration in the state, including the vehicles transferred  
20 under this paragraph, does not exceed ~~\$20,000~~ \$50,000.

21           **SECTION 7.** 700.11 (1) of the statutes is amended to read:

22           700.11 (1) If a statute, inter vivos governing instrument, as defined in s. 700.27  
23 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property  
24 is to be distributed to, or a future interest is to be created in, a designated individual's  
25 "heirs", "heirs at law", "next of kin", "relatives" ~~or~~ "family," or a term that has

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1 a similar meaning, or if a class gift in favor of “descendants”, “issue” or “heirs of the  
2 body” does not specify the manner in which the property is to be distributed among  
3 the class members, the property is distributed according to s. 854.22.

4 **SECTION 8.** 700.13 (2) of the statutes is amended to read:

5 700.13 (2) ~~Unless the instrument of transfer manifests a contrary intent, The~~  
6 effect of a renunciation or release of an interest for life or years accelerates  
7 succeeding interests is as provided in ss. 700.27 (8) and 854.13 (10).

8 **SECTION 9.** 700.27 of the statutes is created to read:

9 **700.27 Disclaimer of transfers during life. (1) DEFINITIONS.** In this section:

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

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

14 (c) “Inter vivos governing instrument”:

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

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

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

21 **(2) RIGHT TO DISCLAIM.** (a) *In general.* 1. In this paragraph, “person” includes  
22 a person who is unborn or whose identity is unascertained.

23 2. A person who is a recipient of property or beneficiary under an inter vivos  
24 governing instrument, donee of a power created by an inter vivos governing  
25 instrument, appointee under a power exercised by an inter vivos governing

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1 instrument, taker in default under a power created by an inter vivos governing  
2 instrument, or person succeeding to disclaimed property created by an inter vivos  
3 governing instrument may disclaim any property, including contingent or future  
4 interests or the right to receive discretionary distributions, by delivering a written  
5 instrument of disclaimer under this section.

6 (b) *Partial disclaimer.* Property transferred under an inter vivos governing  
7 instrument may be disclaimed in whole or in part, except that a partial disclaimer  
8 of property passing by an inter vivos governing instrument or by the exercise of a  
9 power may not be made if partial disclaimer is expressly prohibited by the inter vivos  
10 governing instrument or by the instrument exercising the power.

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

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

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

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

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

23 (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property  
24 under an inter vivos governing instrument may disclaim that property on behalf of  
25 the trust if the trust authorizes disclaimer by the trustee. If the trust does not

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1 authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the  
2 approval of the court.

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

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

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

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

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

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1           (c) *Future right to income or principal.* Notwithstanding pars. (a) and (b), an  
2 instrument disclaiming the future right to receive discretionary or mandatory  
3 distributions of income or principal from any source may be executed and delivered  
4 at any time.

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

8           (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person  
9 whose interest in property arises by disclaimer or by default of exercise of a power  
10 created by an inter vivos governing instrument may disclaim at any time not later  
11 than 9 months after the day on which the prior instrument of disclaimer is delivered,  
12 or the date on which the donee's power lapses.

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

- 17           1. The transferor of the property disclaimed.
- 18           2. The transferor's legal representative.
- 19           3. The holder of legal title to the property.

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

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

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

6           **(7) DEVOLUTION.** (a) *In general*. Subject to sub. (8), unless the inter vivos  
7           governing instrument provides otherwise, either expressly or as construed from  
8           extrinsic evidence, the disclaimed property devolves as if the disclaimant had died  
9           before the effective date of the transfer under the inter vivos governing instrument.  
10          If the disclaimed interest is a remainder contingent on surviving to the time of  
11          distribution, the disclaimed interest passes as if the disclaimant had died  
12          immediately before the time for distribution. If the disclaimant is an appointee  
13          under a power exercised by an inter vivos governing instrument, the disclaimed  
14          property devolves as if the disclaimant had died before the effective date of the  
15          exercise of the power. If the disclaimant is a taker in default under a power created  
16          by an inter vivos governing instrument, the disclaimed property devolves as if the  
17          disclaimant had predeceased the donee of the power.

18          (b) *Devolution to issue of the disclaimants*. Unless the inter vivos governing  
19          instrument provides otherwise, either expressly or as construed from extrinsic  
20          evidence, if, by law or under the inter vivos governing instrument, the issue of the  
21          disclaimant would share in the disclaimed interest by any method of representation  
22          had the disclaimant died before the time the disclaimed interest would have taken  
23          effect in possession or enjoyment, the disclaimed interest passes only to the issue of  
24          the disclaimant who survive when the disclaimed interest takes effect in possession  
25          or enjoyment.

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

4           2. If the disclaimed interest is a devisable future interest under the law  
5 governing the transfer, then the disclaimed interest devolves as if it were a  
6 nondevisable future interest.

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

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

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

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

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

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

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

10           **SECTION 10.** 701.06 (6) of the statutes is renumbered 701.06 (6) (a).

11           **SECTION 11.** 701.06 (6) (b), (c) and (d) of the statutes are created to read:

12           **701.06 (6) (b)** A beneficiary of a trust may not be considered a settlor solely  
13 because of a lapse, waiver, or release of any of the following:

14           1. A power described under par. (c).

15           2. The beneficiary's right to withdraw part of the trust property, to the extent  
16 that the value of the property affected by the lapse, waiver, or release in any year does  
17 not exceed the greater of the amount in:

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

19           b. Section 2503 (b), Internal Revenue Code of 1986.

20           (c) A beneficiary of a trust is not a settlor, has not made a voluntary or  
21 involuntary transfer of the beneficiary's interest in the trust, or does not have the  
22 power to make a voluntary or involuntary transfer of the beneficiary's interest in the  
23 trust solely because the beneficiary holds or exercises, in any capacity, any of the  
24 following:

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1           1. A presently exercisable power to consume, invade, appropriate, or distribute  
2 property to or for the benefit of the beneficiary if the power is any of the following:

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

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

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

10          3. A testamentary power of appointment.

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

12          (d) A beneficiary of a trust is not a settlor solely because the beneficiary is  
13 entitled to nondiscretionary distributions from the trust.

14          **SECTION 12.** 701.06 (7) of the statutes is amended to read:

15          701.06 (7) **SUBSEQUENT MODIFICATION OF COURT'S ORDER.** Any order entered by  
16 a court under sub. (4), (5) or (6) (a) is subject to modification upon application of an  
17 interested person.

18          **SECTION 13.** 701.06 (8) of the statutes is amended to read:

19          701.06 (8) **EXEMPT ASSETS.** Assets of a trust, to the extent they are exempt from  
20 claims of creditors under other statutes, shall not be subject to sub. (4), (5), or (6) (a).

21          **SECTION 14.** 701.115 (1) of the statutes is renumbered 701.115 (1) (b).

22          **SECTION 15.** 701.115 (1) (a) of the statutes is created to read:

23          701.115 (1) (a) In par. (b), "revocable trust" means a trust that the grantor, at  
24 the time of death, was alone empowered to change or revoke, by law or under the

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1 instrument creating the trust, regardless of whether the grantor then had the  
2 capacity to exercise the power.

3 **SECTION 16.** 701.115 (2) of the statutes is amended to read:

4 701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

5 **SECTION 17.** 701.115 (3) of the statutes is amended to read:

6 701.115 (3) The rights of the issue of a predeceasing beneficiary under sub. (1)  
7 (b) are governed by s. 854.06.

8 **SECTION 18.** 701.19 (10) of the statutes is repealed and recreated to read:

9 701.19 (10) RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.  
10 (c), a person may not exercise any of the following powers conferred upon him or her  
11 in his or her capacity as trustee:

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

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

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

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

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

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1           2. The terms of the creating instrument specifically limit the scope of the power  
2 to expenditures and distributions of income or principal on the basis of an  
3 ascertainable standard relating to the person's health, maintenance, support, or  
4 education such that the person would not be subject to tax under section 2041 or 2514  
5 of the Internal Revenue Code as a result of having or exercising the power.

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

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

11           (d) Section 701.24 (3) governs the applicability of this statute.

12           **SECTION 19.** 701.20 (5) (c) of the statutes, as affected by 2005 Wisconsin Act 10,  
13 is amended to read:

14           701.20 (5) (c) A fiduciary shall distribute to a beneficiary, including a trustee,  
15 who receives a pecuniary amount not determined by a pecuniary formula interest at  
16 the legal rate set forth in s. 138.04 on any unpaid portion of the pecuniary amount  
17 for the period commencing one year after the decedent's death or after the income  
18 interest in the trust ends. The interest under this paragraph shall be distributed  
19 from net income determined under par. (b) or from principal to the extent that net  
20 income is insufficient. For purposes of this paragraph, the deferred marital property  
21 elective share amount elected by a surviving spouse under s. 861.02 (1) is a bequest  
22 of a specific amount of money not determined by a pecuniary formula.

23           **SECTION 20.** 701.24 (title) and (1) of the statutes, as affected by 2005 Wisconsin  
24 Act 10, are amended to read:

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1           **701.24** (title) **Applicability of ss. 701.01 to 701.23.** (1) Except as otherwise  
2 provided in sub. (3) and s. 701.19 (9) (a) and (10), ss. 701.01 to 701.19, 701.21, 701.22,  
3 and 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust created  
4 after such date, and shall govern trustees acting under such trusts. If application  
5 of any provision of ss. 701.01 to 701.19, 701.21, 701.22 , and 701.23 to a trust in  
6 existence on August 1, 1971, is unconstitutional, it shall not affect application of the  
7 provision to a trust created after that date.

8           **SECTION 21.** 701.24 (3) of the statutes is created to read:

9           **701.24 (3)** Sections 701.06 (6) (b), (c), and (d) and 701.19 (10) are applicable to  
10 a trust existing on the effective date of this subsection .... [revisor inserts date], as  
11 well as a trust created after that date, and shall govern trustees acting under such  
12 trusts. If application of any provision of s. 701.06 (6) (b), (c), or (d) or 701.19 (10) to  
13 a trust in existence on the effective date of this subsection .... [revisor inserts date],  
14 is unconstitutional, it shall not affect application of the provision to a trust created  
15 after that date.

16           **SECTION 22.** 701.26 (title) of the statutes is amended to read:

17           **701.26** (title) **Disclaimers of nonprobate transfers at death.**

18           **SECTION 23.** 701.26 of the statutes is renumbered 701.26 (1) and amended to  
19 read:

20           **701.26 (1)** A ~~person~~ recipient may disclaim, under s. 854.13, any of the  
21 following:

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

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

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

3 **SECTION 24.** 701.26 (1) (d) of the statutes is created to read:

4 701.26 (1) (d) All or part of any other interest transferred under a governing  
5 instrument, as defined in s. 854.01 (2).

6 **SECTION 25.** 701.26 (2) of the statutes is created to read:

7 701.26 (2) A recipient may disclaim, under s. 700.27, all or part of any interest  
8 transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

9 **SECTION 26.** 702.03 (1) of the statutes is amended to read:

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

18 **SECTION 27.** 702.08 of the statutes is amended to read:

19 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or  
20 part of the power as provided under s. 700.27 or 854.13.

21 **SECTION 28.** 705.04 (2) of the statutes is renumbered 705.04 (2) (intro.) and  
22 amended to read:

23 705.04 (2) (intro.) If the account is a P.O.D. account, on the death of the original  
24 payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~  
25 ~~belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more~~

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1 die before the original payee. Payment may be made to a minor P.O.D. beneficiary,  
2 however, only in accordance with a procedure approved in ch. 880. all of the following  
3 apply:

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

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

12 **SECTION 29.** 705.04 (2) (a) of the statutes is created to read:

13 705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she  
14 is entitled to payment of all sums remaining on deposit.

15 **SECTION 30.** 705.04 (2) (d) of the statutes is created to read:

16 705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)  
17 (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or  
18 more original payees, the amount to which the predeceased P.O.D. beneficiary would  
19 have been entitled passes to any of his or her issue who would take under s. 854.06  
20 (3).

21 **SECTION 31.** 705.04 (2) (e) of the statutes is created to read:

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

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1           **SECTION 32.** 705.04 (2) (f) and (g) of the statutes are created to read:

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

4           (g) If the P.O.D. account is a marital account, this section applies only to the  
5 50 percent of the account not owned by the surviving spouse named as a party on the  
6 account.

7           **SECTION 33.** 705.06 (1) (c) of the statutes is amended to read:

8           705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the  
9 P.O.D. beneficiary upon presentation to the financial institution of proof of death  
10 showing that the P.O.D. beneficiary survived all persons named as original payees  
11 of the account. If more than one P.O.D. beneficiary is named and at least one of them  
12 is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary  
13 or beneficiaries upon presentation of proof of death of the other beneficiary, without  
14 regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If  
15 none of the named beneficiaries survive, the sums in the account may be paid to the  
16 estate of the deceased sole owner or the estate of the owner who was the last to die  
17 of multiple owners, without regard to claims by the issue of a predeceased beneficiary  
18 under s. 705.04 (2) (d). If the P.O.D. account is a marital account, this paragraph  
19 applies only to the 50 percent of the account not owned by the surviving spouse  
20 named as a party on the account.

21           **SECTION 34.** 705.06 (2) of the statutes is amended to read:

22           705.06 (2) Payment made under this subchapter discharges the financial  
23 institution from all claims for amounts so withdrawn. If the institution has reason  
24 to believe that a dispute exists as to the rights of the parties to an account or their  
25 successors it may, but shall not be required to, refuse to pay funds in the account to

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1 any persons pending instructions from a court, or it may pay the proceeds to a court.

2 An institution may but need not recognize the authority of an agent, other than one  
3 with continuing authority under s. 705.05 (3), until it knows of the fact of death or  
4 adjudication of incompetence of all parties appointing such agent and has reasonable  
5 opportunity to act.

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

9 **SECTION 35.** 705.27 of the statutes is amended to read:

10 **705.27 Ownership on death of owner.** ~~On~~ Subject to the rights of the  
11 registering entity under s. 705.28 (2m), on the death of a sole owner or the last to die  
12 of multiple owners, ownership of securities registered in beneficiary form passes to  
13 the beneficiary or beneficiaries who survive all owners and to any predeceased  
14 beneficiary's issue who would take under s. 854.06 (3). On proof of death of all owners  
15 and compliance with any applicable requirements of the registering entity, a security  
16 registered in beneficiary form may be reregistered in the name of the ~~beneficiary or~~  
17 ~~beneficiaries who survive the death of all owners~~ successors to the ownership  
18 interest. Until division of the security after the death of all owners, multiple  
19 ~~beneficiaries surviving the death of all owners~~ successors to the ownership interest  
20 hold their interests as tenants in common. If no beneficiary or predeceased  
21 beneficiary's issue who would take under s. 854.06 (3) survives the death of all  
22 owners, the security belongs to the estate of the deceased sole owner or the estate of  
23 the last to die of multiple owners.

24 **SECTION 36.** 705.28 (2m) of the statutes is created to read:

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1           705.28 (2m) If more than one beneficiary is named and at least one beneficiary  
2 is predeceased, a security registered in beneficiary form may be reregistered in the  
3 name of the surviving beneficiary with a proof of death of the other beneficiary,  
4 without regard to claims by the issue of a predeceased beneficiary under s. 705.27  
5 unless the registering entity receives written notice of a claim under sub. (3) (b). If  
6 none of the beneficiaries survive, a security registered in beneficiary form may be  
7 reregistered in the name of the estate of the deceased sole owner or the estate of the  
8 owner who was last to die of multiple owners, without regard to claims by the issue  
9 of a predeceased beneficiary under s. 705.27 unless the registering entity receives  
10 written notice of a claim under sub. (3) (b).

11           **SECTION 37.** 705.28 (3) of the statutes is renumbered 705.28 (3) (a) and  
12 amended to read:

13           705.28 (3) (a) ~~A~~ Subject to par. (b), a registering entity is discharged from all  
14 claims to a security by the estate, creditors, heirs or devisees of the deceased owner  
15 if it registers a transfer of a security in accordance with s. 705.27 and does so in good  
16 faith reliance on the registration, on ss. 705.21 to 705.30, and on information  
17 provided to it by affidavit of the personal representative of the deceased owner, or by  
18 the surviving beneficiary or by the surviving beneficiary's representatives, or other  
19 information available to the registering entity.

20           (b) ~~The protections of ss. 705.21 to 705.30 provided in this subchapter~~ do not  
21 extend to a reregistration or payment made after a registering entity has received  
22 written notice from a claimant to an interest in the security objecting to  
23 implementation of a registration in beneficiary form. No other notice or other  
24 information available to the registering entity affects its right to protection under ss.  
25 ~~705.21 to 705.30~~ this subchapter. If the registering entity has reason to believe that

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1 a dispute exists as to the rights of the parties to a security registered in beneficiary  
2 form or their successors, the registering entity may refuse to reregister the security  
3 pending instructions from a court.

4 **SECTION 38.** 766.31 (1) (title) of the statutes is created to read:

5 766.31 (1) (title) GENERAL.

6 **SECTION 39.** 766.31 (2) (title) of the statutes is created to read:

7 766.31 (2) (title) PRESUMPTION.

8 **SECTION 40.** 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and  
9 amended to read:

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

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

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

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

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

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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 42.** 766.31 (4) (title) of the statutes is created to read:

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

5 **SECTION 43.** 766.31 (5) (title) of the statutes is created to read:

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

7 **SECTION 44.** 766.31 (6) (title) of the statutes is created to read:

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

9 **SECTION 45.** 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 46.** 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.

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

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

6           **SECTION 48.** 766.31 (7p) (title) of the statutes is created to read:

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

8           **SECTION 49.** 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 50.** 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 51.** 766.31 (10) (title) of the statutes is created to read:

14          766.31 (10) (title) RECLASSIFICATION.

15          **SECTION 52.** 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 decedent spouse's marital property interest ~~of the~~  
18 ~~decedent 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 decedent spouse's date of death ~~of the deceased spouse~~.  
22 All other rights of the decedent 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 decedent spouse's death.

25          **SECTION 53.** 766.62 (2) of the statutes is amended to read:

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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 54.** 766.62 (4) of the statutes is renumbered 766.62 (4) (a).

9           **SECTION 55.** 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.

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 been  
21 resolved.

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

23           **SECTION 56.** 766.62 (4) (c) of the statutes is created to read:

24           766.62 (4) (c) The protection afforded a deferred employment benefit plan  
25 administrator under this subsection does not affect the rights of parties or their

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1 successors in disputes concerning the beneficial ownership of deferred employment  
2 benefits.

3 **SECTION 57.** 766.62 (5) (intro.) of the statutes is amended to read:

4 766.62 (5) (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee  
5 spouse predeceases the employee spouse, the marital property interest of the  
6 nonemployee spouse in all of the following terminates at the death of the  
7 nonemployee spouse:

8 **SECTION 58.** 767.266 (1) (b) of the statutes is amended to read:

9 767.266 (1) (b) That one or both spouses will make a particular disposition in  
10 a will or other governing instrument, as defined in s. 854.01 (2).

11 **SECTION 59.** 851.055 (1m) of the statutes is created to read:

12 851.055 (1m) Is not classified as individual property or marital property under  
13 a valid marital property agreement, unless the marital property agreement provides  
14 otherwise.

15 **SECTION 60.** 851.21 (1) (b) of the statutes is amended to read:

16 851.21 (1) (b) ~~A~~ Except as provided in s. 853.32 (2) (e), a beneficiary named  
17 in any document offered for probate as the will of the decedent and includes a person  
18 named or acting as a trustee of any trust, inter vivos or testamentary, named as a  
19 beneficiary.

20 **SECTION 61.** 851.31 of the statutes is amended to read:

21 **851.31 Will.** “Will” Unless the context or subject matter indicates otherwise,  
22 “will” includes a codicil and any document incorporated by reference in a  
23 testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,  
24 unless the copy has been proven as a will under s. 856.17, but “will” does include a  
25 properly executed duplicate original.

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1           **SECTION 62.** 851.50 of the statutes is amended to read:

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

5           **SECTION 63.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.  
6 (intro.) and amended to read:

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

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

11           **SECTION 64.** 852.01 (1) (a) 2. b. of the statutes is created to read:

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

14           **SECTION 65.** 852.01 (1) (b) of the statutes is amended to read:

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

18           **SECTION 66.** 852.05 (title) of the statutes is amended to read:

19           **852.05 (title) Status of nonmarital child born to unmarried parents for**  
20 **purposes of intestate succession.**

21           **SECTION 67.** 852.05 (1) (intro.) of the statutes is amended to read:

22           852.05 (1) (intro.) A ~~nonmarital child~~ born to unmarried parents, or the child's  
23 issue is entitled to take, is treated in the same manner as a marital child by, or the  
24 issue of a child, born to married parents with respect to intestate succession from and

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1 through his ~~or her~~ the child's mother, and from and through his ~~or her~~ the child's  
2 father if any of the following applies:

3 **SECTION 68.** 852.05 (2) of the statutes is amended to read:

4 852.05 (2) Property of a ~~nonmarital~~ child born to unmarried parents passes in  
5 accordance with s. 852.01 except that the father or the father's kindred can inherit  
6 only if the father has been adjudicated to be the father in a paternity proceeding  
7 under ch. 767 or by final order or judgment of a court of competent jurisdiction in  
8 another state or has been determined to be the father under s. 767.62 (1) or a  
9 substantially similar law of another state.

10 **SECTION 69.** 852.05 (3) of the statutes is amended to read:

11 852.05 (3) (a) This section does not apply to a child who becomes a marital child  
12 by the subsequent marriage of the child's parents under s. 767.60.

13 (b) The status of a ~~nonmarital~~ child born to unmarried parents who is legally  
14 adopted is governed by s. 854.20.

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

16 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12  
17 governs the treatment of that debt shall be charged against the intestate share of the  
18 debtor, regardless of whether the debt has been discharged in bankruptcy. If the  
19 debtor fails to survive the decedent, the debt shall not be taken into account in  
20 computing the intestate shares of the debtor's issue.

21 **SECTION 71.** 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and  
22 amended to read:

23 853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom at least~~  
24 2 witnesses who signed within a reasonable time after ~~witnessing~~ any of the  
25 following:

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

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

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

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

9           853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the  
10 signing or acknowledgement under par. (am) 1. to 3. at different times.

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

12           853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the  
13 form under sub. (1) or (2) is as provided in s. 856.16.

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

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

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

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

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

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

7 **(4) PRIORITY AND ABATEMENT.** (intro.) In satisfying the share provided by this  
8 ~~subsection~~ section:

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

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

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

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

16 853.11 **(3)** ~~FORMER TRANSFER TO FORMER SPOUSE.~~ The effect of a ~~The effect of a~~ A transfer under  
17 a will to a former spouse is governed by s. 854.15.

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

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

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

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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,

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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 thereunder  
3 upon the death of another, or any assignment of rights under any of the foregoing.

4 **SECTION 81.** 853.25 (2) of the statutes is renumbered 853.25 (2) (a) (intro.) and  
5 amended to read:

6 853.25 (2) (a) (intro.) Except as provided in sub. (5), if clear and convincing  
7 evidence proves that the testator failed to provide in the testator's will for a child  
8 living at the time of making of the will, or for the issue of any then deceased child,  
9 by mistake or accident, including the mistaken belief that the child or issue of a  
10 deceased child was dead at the time the will was executed, the child or issue is  
11 entitled to receive a share in the estate of the testator, ~~as provided under sub. (1), as~~  
12 if the child or issue was born or adopted after the execution of the will, as follows:

13 (b) Failure to mention a child or issue in the will is not in itself evidence of  
14 mistake or accident.

15 **SECTION 82.** 853.25 (2) (a) 1. and 2. of the statutes are created to read:

16 853.25 (2) (a) 1. If no children were included in the will but some or all of those  
17 children were omitted by mistake, then sub. (1) (b) provides for the share of any child  
18 or issue omitted by mistake.

19 2. If some children were included in the will but other children were omitted  
20 by mistake, then sub. (1) (c) provides for the share of any child or issue omitted by  
21 mistake.

22 **SECTION 83.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

23 **SECTION 84.** 853.32 (1) (bm) of the statutes is created to read:

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1           853.32 (1) (bm) A writing or document is incorporated into a will under par.  
2 (am) even if the writing or document is not executed in compliance with s. 853.03 or  
3 853.05.

4           **SECTION 85.** 853.32 (2) (a) of the statutes is amended to read:

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

11           **SECTION 86.** 853.32 (2) (am) of the statutes is created to read:

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

17           **SECTION 87.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)  
18 and amended to read:

19           853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of  
20 the following applies:

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

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1           **SECTION 88.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended  
2 to read:

3           **854.01 Definition Definitions.** (intro.) In this chapter, “governing:

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

10           **SECTION 89.** 854.01 (1) of the statutes is created to read:

11           854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible  
12 under the common law parole evidence rule or a similar doctrine because the  
13 evidence is not contained in the governing instrument to which it relates.

14           **SECTION 90.** 854.03 (2) (b) of the statutes is amended to read:

15           854.03 (2) (b) Except as provided in sub. (5), if property is transferred under  
16 a governing instrument that establishes 2 or more co-owners with right of  
17 survivorship, and if it is ~~not established that~~ at least one of the co-owners ~~survived~~  
18 did not survive the others by at least 120 hours, the property is transferred to the  
19 co-owners in proportion to their ownership interests.

20           **SECTION 91.** 854.03 (5) of the statutes is renumbered 854.03 (5) (am), and  
21 854.03 (5) (am) 4., as renumbered, is amended to read:

22           854.03 (5) (am) 4. The imposition of a 120-hour survival requirement would  
23 cause a nonvested property interest or a power of appointment to fail to be valid, or  
24 to be invalidated, under s. 700.16 or under the rule against perpetuities of the  
25 applicable jurisdiction.

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1           **SECTION 92.** 854.03 (5) (am) 7. of the statutes is created to read:

2           854.03 (5) (am) 7. The statute or governing instrument specifies that this  
3 statute, or one similar to it, does not apply.

4           **SECTION 93.** 854.03 (5) (am) 8. of the statutes is created to read:

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

8           **SECTION 94.** 854.03 (5) (bm) of the statutes is created to read:

9           854.03 (5) (bm) If the transfer is made under a governing instrument and the  
10 person who executed the governing instrument had an intent contrary to any  
11 provision in this section, then that provision is not applicable to the transfer.  
12 Extrinsic evidence may be used to construe the intent.

13           **SECTION 95.** 854.03 (7) of the statutes is repealed.

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

15           854.04 (1) (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 "by representation", "by right of representation," or "per  
18 stirpes", the property is divided into equal shares for the designated person's  
19 surviving children of the designated person and for the designated person's deceased  
20 children who left surviving issue. Each surviving child and each deceased child who  
21 left surviving issue are allocated one share.

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

23           854.04 (3) (a) Except as provided in subs. (5) and (6), if a statute or a governing  
24 instrument calls for property to be distributed to the issue or descendants of a  
25 designated person "per capita at each generation", the property is divided into

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1 equal shares at the generation nearest to the designated person that contains one or  
2 more surviving issue. Each survivor in that generation is and each deceased person  
3 in that generation who left surviving issue are allocated one share, ~~and the~~. The  
4 shares of the deceased persons in that same generation who left surviving issue are  
5 combined for ~~distribution~~ allocation under par. (b).

6 **SECTION 98.** 854.04 (4) of the statutes is amended to read:

7 854.04 (4) PER CAPITA. Except as provided in sub. (6), if a statute or governing  
8 instrument calls for property to be distributed to a group or class “per capita”, the  
9 property is divided into as many shares as there are surviving members of the group  
10 or class, and each member ~~receives~~ is allocated one share.

11 **SECTION 99.** 854.04 (5) (intro.) of the statutes is amended to read:

12 854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of ~~this~~  
13 ~~section~~ subs. (1) to (3), all of the following apply:

14 **SECTION 100.** 854.04 (5) (b) of the statutes is amended to read:

15 854.04 (5) (b) An individual who has a surviving ancestor who is an issue of the  
16 designated person is not ~~entitled to~~ allocated a share.

17 **SECTION 101.** 854.04 (6) of the statutes is amended to read:

18 854.04 (6) CONTRARY INTENT. ~~This section does not apply if~~ If the transfer is  
19 made under a governing instrument and ~~there is a finding of contrary intent of the~~  
20 person who executed the governing instrument had an intent contrary to any  
21 provision in this section, then that provision is not applicable to the transfer.  
22 Extrinsic evidence may be used to construe ~~that~~ the intent.

23 **SECTION 102.** 854.05 (5) of the statutes is renumbered 854.05 (5) (a) and  
24 amended to read:

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1           854.05 (5) (a) ~~This section does not apply to the extent that a~~ If the person who  
2 executed the governing instrument, either expressly or as construed from extrinsic  
3 had an intent contrary to any provision in this section, then that provision is not  
4 applicable to the transfer. Extrinsic evidence, provides otherwise may be used to  
5 construe the intent.

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

8           **SECTION 103.** 854.06 (1) (b) of the statutes is repealed.

9           **SECTION 104.** 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (a) (intro.)  
10 and amended to read:

11           854.06 (4) (a) (intro.) ~~This section~~ Subsection (3) does not apply if there is a  
12 finding of contrary intent of the decedent any of the following applies:

13           **(bm)** If the person who executed the governing instrument had an intent  
14 contrary to any provision in this section, then that provision is not applicable to the  
15 transfer. Extrinsic evidence may be used to construe that the intent.

16           **SECTION 105.** 854.06 (4) (a) 1. of the statutes is created to read:

17           854.06 (4) (a) 1. The governing instrument provides that a transfer to a  
18 predeceased beneficiary lapses.

19           **SECTION 106.** 854.06 (4) (b) of the statutes is renumbered 854.06 (4) (a) 2. and  
20 amended to read:

21           854.06 (4) (a) 2. If the The governing instrument designates one or more  
22 persons, classes, or groups of people as contingent transferees, in which case those  
23 transferees take in preference to those under sub. (3). But if none of the contingent  
24 transferees survives, sub. (3) applies to the first group in the sequence of contingent

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1 transferees that has one or more transferees specified in sub. (2) who left surviving  
2 issue.

3 **SECTION 107.** 854.07 (3) of the statutes is amended to read:

4 854.07 (3) If a governing instrument other than a will does not effectively  
5 dispose of an asset that is governed by the instrument, that asset shall be paid or  
6 distributed to the decedent's transferor's probate estate.

7 **SECTION 108.** 854.07 (4) of the statutes is amended to read:

8 854.07 (4) ~~This section does not apply if there is a finding of contrary intent of~~  
9 If the person who executed the governing instrument had an intent contrary to any  
10 provision in this section, then that provision is inapplicable to the transfer. Extrinsic  
11 evidence may be used to construe ~~that~~ the intent.

12 **SECTION 109.** 854.08 (5) (title) of the statutes is repealed and recreated to read:

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

15 **SECTION 110.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and  
16 amended to read:

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

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

9           **SECTION 111.** 854.08 (5) (a) of the statutes is created to read:

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

12           **SECTION 112.** 854.08 (5) (d) of the statutes is created to read:

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

18           **SECTION 113.** 854.08 (6) (a) (intro.) and 2. of the statutes are consolidated,  
19 renumbered 854.08 (6) (ag) and amended to read:

20           854.08 (6) (ag) This section is inapplicable if ~~any of the following applies:~~ 2.  
21 ~~The~~ the person who executed the governing instrument gives property during the  
22 person's lifetime to the specific beneficiary with the intent of satisfying the specific  
23 gift. ~~Extrinsic evidence may be used to construe that intent and the requirement~~  
24 under s. 854.09 (1) is satisfied.