

1 **SECTION 149.** 861.35 (1m) (intro.) of the statutes is amended to read:

2 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor
3 children, the court may order an allowance for the support and education of each
4 dependent minor child until he or she reaches a specified age, not to exceed 18, and
5 for the support of the spouse. This allowance may be made whether the estate is
6 testate or intestate. If the decedent is not survived by a spouse, the court also may
7 allot directly to ~~any of the dependent~~ the minor children household furniture,
8 furnishings, and appliances. ~~No~~ The court may not order an allowance may be made
9 under this section if any of the following apply ~~applies~~:

10 **SECTION 150.** 861.35 (1m) (a) of the statutes is amended to read:

11 861.35 (1m) (a) The decedent has amply provided for each minor child and for
12 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~
13 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate
14 assets, or support and education have been provided for by any other means.

15 **SECTION 151.** 861.35 (1m) (b) of the statutes is amended to read:

16 861.35 (1m) (b) In the case of ~~dependent~~ minor children, if the surviving spouse
17 is legally responsible for support and education and has ample means to provide
18 them in addition to his or her own support.

19 **SECTION 152.** 861.35 (1m) (c) of the statutes is amended to read:

20 861.35 (1m) (c) In the case of the surviving spouse, if he or she has ample means
21 to provide for his or her support.

22 **SECTION 153.** 861.35 (2) of the statutes is amended to read:

23 861.35 (2) The court may set aside property to provide an allowance and may
24 appoint a trustee to administer the property, subject to the continuing jurisdiction
25 of the court. If a child dies or reaches the age of 18, or if at any time the property held

1 by the trustee is no longer required for the support of the spouse or the support and
2 education of ~~any dependent~~ the minor child, any remaining property is to be
3 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
4 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
5 unpaid claims of the decedent's estate.

6 **SECTION 154.** 861.35 (3) (a) of the statutes is amended to read:

7 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the
8 needs of the spouse or ~~dependent~~ minor children against the nature of the creditors'
9 claims in setting the amount allowed under this section.

10 **SECTION 155.** 861.35 (4) (intro.) of the statutes is amended to read:

11 861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the
12 surviving spouse, not including any allowance for the support and education of
13 ~~dependent~~ minor children, be applied in satisfaction of any of the following:

14 **SECTION 156.** 861.35 (4) (a) of the statutes is amended to read:

15 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2)
16 853.12.

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17 **SECTION 157.** 863.15 of the statutes is amended to read:

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

25 **SECTION 158.** 863.16 of the statutes is repealed.

***NOTE: This section does not appear in an initial applicability provision.

1 SECTION 159. 863.19 of the statutes is repealed.

***NOTE: This section does not appear in an initial applicability provision.

2 SECTION 160. 865.07 (1) (d) of the statutes is amended to read:

3 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
4 the original will is in the possession of the court or accompanies the application and,
5 contains an attestation clause showing compliance with the requirements of
6 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
7 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

transfers relating to

1WS
43-3

8 SECTION 161. 1997 Wisconsin Act 188, section 233 (1) is amended to read:

9 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to deaths
10 occurring on revocable instruments where the death occurred on or after January 1,
11 1999, except with respect to irrevocable governing instruments executed before that
12 date and to irrevocable instruments that were executed on or after January 1, 1999,
13 or that became irrevocable on or after January 1, 1999.

1WS
43-14

plain

plain

plain

***NOTE: Did you want this treatment to appear in an initial applicability provision?

that this act does not apply to transfers under

score

14 SECTION 162. Initial applicability.

15 (1) The treatment of section 40.02 (8) (a) 2. of the statutes first applies to deaths
16 occurring on the first day of the 10th month beginning after the effective date of this
17 subsection.

18 (2) The treatment of sections 40.18, 700.11 (1), 701.115 (2) and (3), 705.27,
19 766.61 (7), 766.62 (5) (intro.), 852.12, 853.32 (2) (a), 854.03 (5) (h) and (i) and (7),
20 854.05 (5), 854.07 (3), 854.08 (6) (a) 1., 854.12, 854.14 (1), (3m), and (5) (a), (b), and
21 (c), 861.31 (1c), (1m), (2), and (4) (intro.), and 863.15 of the statutes, the renumbering
22 of section 701.115 (1) of the statutes, the renumbering and amendment of sections

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43-18

1 705.04 (2) and 854.08 (5) of the statutes, and the creation of sections 701.115 (1) (a),
2 705.04 (2) (a), (d), (e), and (f), and 854.08 (5) (a) and (d) of the statutes first apply
3 retroactively to deaths occurring on January 1, 1999, except with respect to
4 irrevocable governing instruments executed before that date.

5 (3) The treatment of sections 701.20 (5) (d), 702.03 (1), 767.266 (1) (b), 851.31,
6 851.50, 852.01 (1) (b), 853.03 (2) (intro.), (a), (b), and (c), 853.04 (3), 853.11 (2), (2m),
7 (3), and (6) (c) and (d), 854.03 (2) (b), (3), (4), (5) (g), and (6), 854.04 (1) (a) and (5)
8 (intro.), 854.06 (1) (b) and (4) (a), (am), and (b), 854.08 (6) (a) 2., 854.13 (2) (gm), (7)
9 (a), (8), (9), and (10), 854.15 (1) (e), 854.18 (1) (a) (intro.) and (3), 854.20 (1), (2), (3),
10 (4), and (5), 854.21 (1) (a) (intro.), 1., 2., and 3. and (b), 856.05 (5), 856.15 (1), 856.16,
11 856.17, 861.01 (3) and (4), 861.02 (4), (6), (7) (b), and (8), 861.04 (1) and (2), 861.05
12 (1) (e) and (2m), 861.06 (2) (b) (intro.) and 4. a., 861.07 (2) (intro.), 861.10 (1) and (2),
13 861.11 (2) (a) (intro.) and (b) and (5) (b), 861.17 (3), 861.21 (1) (a) and (4), and 865.07
14 (1) (d), of the statutes, the renumbering of sections 766.62 (4), 853.32 (1), and 854.17
15 of the statutes, the renumbering and amendment of sections 701.24, 852.01 (1) (a)
16 2., 853.32 (2) (b), and 854.01 of the statutes, and the creation of sections 701.24 (2),
17 766.62 (4) (b) and (c), 852.01 (1) (a) 2. b., 853.32 (1) (bm) and (2) (b) 4., 854.01 (1), and
18 854.17 (2) of the statutes first apply to deaths occurring on the effective date of this
19 subsection, except with respect to irrevocable governing instruments executed
20 before that date.

21 (END)

LRB-0349/p2dn

NOTE

This draft is still a preliminary draft. It will have to be
redrafted to be introducible.
Please see the embedded notes ⁱⁿ the draft.
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2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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

****NOTE: I amended this section to be consistent with the treatment of s. 867.03
(1g). OK?

History: 1987 a. 397; 1989 a. 56, 128; 1991 a. 269; 1997 a. 27; 1999 a. 94; 2001 a. 102.

INSERT 3-21

6 **SECTION 2.** 71.05 (6) (a) 16. of the statutes is amended to read:
7 71.05 (6) (a) 16. Any amount recognized as a loss under section 1001 (c) of the
8 internal revenue code Internal Revenue Code if a surviving spouse and a distributee
9 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, s. 13.93 (2) (c).

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

11 71.05 (6) (b) 12. Any amount recognized as a gain under section 1001 (c) of the
12 internal revenue code Internal Revenue Code if a surviving spouse and a distributee
13 exchange their interests in marital property under s. 857.03 (2) 766.31 (3) (b).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, s. 13.93 (2) (c).

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

15 71.05 (12) (d) Property exchanged under s. 857.03 (2) 766.31 (3) (b) shall be
16 treated as if acquired by gift for the determination of basis.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, s. 13.93 (2) (c).

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

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

 ***NOTE: I amended this section to be consistent with the treatment of s. 867.03
(1g). OK?

History: 1999 a. 9, 53, 185; 2001 a. 16, 102.

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

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

History: 1971 c. 164 s. 82; 1973 c. 40, 243; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 141; 1991 a. 125, 239; 1995 a. 338, 421; 1997 a. 27; 1999 a. 94; 2001 a. 102.

 ***NOTE: I amended this section to be consistent with the treatment of s. 867.03
(1g). OK?

INSERT 4-6

11 **SECTION 7.** 700.27 ✓ of the statutes is created to read:

12 **700.27 Disclaimer of transfers during life.** (1) DEFINITIONS. ✓ In this section:

13 (a) "Beneficiary under an inter vivos governing instrument" includes any
14 person who receives or might receive property under the terms or legal effect of an
15 inter vivos governing instrument. ✓

16 (b) "Inter vivos governing instrument" ✓ means a gratuitous deed, inter vivos
17 trust instrument, insurance policy, contract, ^{or} instrument that creates or exercises a
18 power of appointment, any other dispositive, appointive, or nominative instrument



1 that transfers property other than a governing instrument as defined in s. 854.01,
2 or an inter vivos gift that is not subject to a written instrument.

3 (c) Except as used in sub. (2) (e), "power" has the meaning given in s. 702.01
4 (4).

****NOTE: I did not define "extrinsic evidence" because it is not defined in the other chapters, but I think that the meaning is the same here as in the other chapters. So the definition here might imply that the term has a different meaning here than in the other chapters.

****NOTE: See the exception I added to par. (c).

5 (2) RIGHT TO DISCLAIM. (a) *In general.* A person who is a recipient of property
6 or beneficiary under an inter vivos governing instrument, donee of a power created
7 by an inter vivos governing instrument, appointee under a power exercised by an
8 inter vivos governing instrument, taker in default under a power created by an inter
9 vivos governing instrument, or person succeeding to disclaimed property created by
10 an inter vivos governing instrument may disclaim any property, including
11 contingent or future interests or the right to receive discretionary distributions, by
12 delivering a written instrument of disclaimer under this section.

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

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



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

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

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

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

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

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

21 (h) *Disclaimers of transfers at death.* A person who is a recipient of property
22 under a governing instrument, as defined in s. 854.01, may disclaim such property
23 as provided in s. 854.13.

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

25

and



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

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

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

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

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

24 (5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery*. In addition to any
25 requirements imposed by the inter vivos governing instrument, the instrument of



1 disclaimer is effective only if, within the time specified under sub. (4), it is delivered
2 to and received by any of the following:

- 3 1. The transferor of the property disclaimed.
- 4 2. The transferor's legal representative.
- 5 3. The holder of legal title to the property.

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

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

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

16 (7) DEVOLUTION IN GENERAL. (a) Unless the inter vivos governing instrument
17 provides otherwise, either expressly or as construed from extrinsic evidence, the
18 disclaimed property devolves as if the disclaimant had died before the effective date
19 of the transfer under the inter vivos governing instrument. If the disclaimant is an
20 appointee under a power exercised by an inter vivos governing instrument, the
21 disclaimed property devolves as if the disclaimant had died before the effective date
22 of the exercise of the power. If the disclaimant is a taker in default under a power
23 created by an inter vivos governing instrument, the disclaimed property devolves as
24 if the disclaimant had predeceased the donee of the power.

↓

1 (b) A disclaimer relates back for all purposes to the effective date of the transfer
 2 under the inter vivos governing instrument. If the disclaimant is an appointee under
 3 a power exercised under an inter vivos governing instrument, the disclaimer relates
 4 back to the effective date of the exercise of the power. If the disclaimant is a taker
 5 in default under a power created by an inter vivos governing instrument, the
 6 disclaimer relates back to the last possible date for exercise of the power. A
 7 disclaimer of the future right to receive mandatory distributions of income or profits
 8 relates to the period stated in the disclaimer.

9 (c) Unless the transferor of the future interest or donee of the power under
 10 which the future interest was created provided otherwise in an inter vivos governing
 11 instrument, either expressly or as construed from extrinsic evidence, a future
 12 interest limited to take effect in possession or enjoyment after the termination of the
 13 interest that is disclaimed takes effect as if the disclaimant had died before the
 14 effective date of the inter vivos governing instrument or, if the disclaimant is an
 15 appointee under a power exercised by an inter vivos governing instrument, as if the
 16 disclaimant had died before the effective date of the exercise of the power.

17 (8) BAR. (a) Actions that bar disclaimer are as provided in s. 854.13 (11) (a).

18 (b) The effect of the disclaimer on the successors in interest are as provided in
 19 s. 854.13 (11) (b).

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

23 (b) A disclaimer that is not effective under this section may be effective under
 24 s. 854.13 (12) (b).



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(10) CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a irrevocable transfer under an inter vivos governing instrument is the date on which the donor executed the instrument or made the transfer. The effective date of a revocable transfer under an inter vivos governing instrument is the date on which the person with the power to revoke the transfer no longer has that power or the power to transfer the legal or equitable ownership of the property that is the subject of the transfer.

***NOTE: Should this provision be in the initial applicability provision?

Insert 5-20

- b. The creating instrument indicates that par. (a) does not apply.
- (d) Section 701.24 (2) governs the applicability of this statute.

Insert 6-22

***NOTE: I did not create the proposed s. 701.26 (4) which reads: "The recipient of any interest in a trust may disclaim all or part of the interest transferred under an inter vivos governing instrument as provided in s. 700.27 and may disclaim all or part of the interest transferred under a governing instrument as provided in s. 854.13." Section 701.26 (intro.) states that a "person may disclaim, under s. 854.13, any of the following:". I do not understand what the proposed provision means. *

INSERT 7-4

SECTION 8. 702.08 of the statutes is amended to read:

1 **702.08 Disclaimer of powers.** The donee of any power may disclaim all or
2 part of the power as provided under s. 700.27 or 854.13.

History: 1977 c. 309; 1997 a. 188.

INSERT 8-12

3 **SECTION 9.** 705.06 (1) (c) of the statutes is amended to read:

4 705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the
5 P.O.D. beneficiary upon presentation to the financial institution of proof of death
6 showing that the P.O.D. beneficiary survived all persons named as original payees
7 of the account. If more than one P.O.D. beneficiary is named and at least one of them
8 is predeceased, sums in the account may be paid to any surviving P.O.D. beneficiary
9 upon presentation of proof of death of the other beneficiary, without regard to claims
10 by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If none of the named
11 beneficiaries survive, the sums in the account may be paid to the estate of the
12 deceased sole owner or the estate of the owner who was the last to die of multiple
13 owners, without regard to claims by the issue of a predeceased beneficiary under s.
14 705.04 (2) (d).

****NOTE: I did not add "or beneficiaries" after each occurrence of "beneficiary"
because, under s. 990.001 (1), the singular includes the plural, and the plural includes
the singular. Is that fine with you?

History: 1973 c. 291; 1983 a. 186; 1987 a. 27; 1989 a. 331.

15 **SECTION 10.** 705.06 (2) of the statutes is amended to read:

16 705.06 (2) Payment made under this subchapter discharges the financial
17 institution from all claims for amounts so withdrawn. If the institution has reason
18 to believe that a dispute exists as to the rights of the parties to an account or their
19 successors it may, but shall not be required to, refuse to pay funds in the account to

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 History: 1973 c. 291; 1983 a. 186; 1987 a. 27; 1989 a. 331.

SECTION 11. 705.21 (12) (a) of the statutes is amended to read:

10 705.21 (12) (a) A reinvestment account associated with a security, a securities
11 account with a broker, a cash balance in a brokerage account, cash, cash equivalents,
12 interest, earnings, or dividends earned or declared on a security in an account, a
13 reinvestment account, or a brokerage account, whether or not credited to the account
14 before the owner's death.

15 History: 1989 a. 331.

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

16 705.21 (12) (am) An investment agency, investment management, or custody
17 account with a trust company or a trust division of a bank with trust powers,
18 including the securities in the account, a cash balance in the account, and cash, cash
19 equivalents, interest, earnings, or dividends earned or declared on a security in the
20 account, whether or not credited to the account before the owner's death.

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22 Insert 9-3

23 SECTION 13. 766.31 (1) (title) of the statutes is created to read:

24 766.31 (1) (title) GENERAL.

1 SECTION 14. 766.31 (2) (title) of the statutes is created to read:

2 766.31 (2) (title) PRESUMPTION.

3 SECTION 15. 766.31 (3) (title) of the statutes is created to read:

4 766.31 (3) (title) INTEREST.

5 SECTION 16. 766.31 (3) of the statutes is renumbered 766.31 (3) (b) (intro.) and
6 amended to read:

7 766.31 (3) (b) Nonproportional division of marital property at death. (intro.)

8 Each spouse has a present undivided one-half interest in each item of marital
9 property, but the subject to all of the following:

10 (a) Terminable interest in deferred employment benefit plan. The marital
11 property interest of the nonemployee spouse in a deferred employment benefit plan
12 or in assets in an individual retirement account that are traceable to the rollover of
13 a deferred employment benefit plan terminates at the death of the nonemployee
14 spouse if he or she predeceases the employee spouse.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1993 a. 160.

15

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17 Insert 10-1

18 SECTION 17. 766.31 (4) (title) of the statutes is created to read:

19 766.31 (4) (title) INCOME.

20 SECTION 18. 766.31 (5) (title) of the statutes is created to read:

21 766.31 (5) (title) TRANSFER.

22 SECTION 19. 766.31 (6) (title) of the statutes is created to read:

23 766.31 (6) (title) DETERMINATION DATE.

24

Handwritten note in a box: SECTION # CR; 766.31 (7) (title) 766.31 (7) (title) PROPERTY ACQUIRED. (B) (CS)

Insert 10-11
INSERT
10-1 cont ✓

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SECTION 20. 766.31 (7p) (title) of the statutes is created to read:

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

SECTION 21. 766.31 (8) (title) of the statutes is created to read:

766.31 (8) (title) LIMITS OF CHAPTER ENACTMENT. ✓

SECTION 22. 766.31 (9) (title) of the statutes is created to read:

766.31 (9) (title) PROPERTY ACQUIRED BEFORE THE DETERMINATION DATE. ✓

SECTION 23. 766.31 (10) (title) of the statutes is created to read:

766.31 (10) (title) RECLASSIFICATION. ✓

****NOTE: Please review the subsection titles to s. 766.31 (1) to (10). You indicated that you would come up with titles for these subsections so that the paragraphs under s. 766.31 (3) could have titles. So I created these titles as placeholders. (end ins 10-1) ✓

INSERT
10-11

SECTION 24. 766.62 (2) of the statutes is amended to read:

766.62 (2) A deferred employment benefit attributable to employment of a spouse occurring while the spouse is married and partly before and partly after the determination date is mixed property. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit. (end ins 10-11) ✓

History: 1983 a. 186; 1985 a. 37 ss. 128, 187; 1987 a. 393; 1991 a. 301; 1993 a. 160.

Insert 13-14

SECTION 25. 853.03 (2) (bm) of the statutes is created to read:

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

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Insert 15-7

SECTION 26. 853.18 (1) of the statutes is amended to read:

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

History: 1983 a. 186.

Insert 18-8

SECTION 27. 854.035 of the statutes is created to read:

854.035 Provisions regarding survivorship. If a will, trust, or marital property agreement contains a provision regarding survivorship that is intended to apply to transfers under other governing instruments, that provision shall control.



1 Extrinsic evidence may be used to construe the intent of the person who executed the
2 will, trust, or marital property agreement. ✓

3
4 Insert 20-12

5 ²⁰ ~~20~~ the rights of the specific beneficiary shall be determined as though the proceeds
6 were paid to the owner under sub. (2), (3), or (4) ✓

7
8 Insert 20-20

9 ²⁰ ~~20~~ but in such event the rights of the specific beneficiary shall be determined as
10 though the proceeds were paid to the owner under ✓ sub. (2), (3), or (4) ²⁰ ~~20~~

11
12 Insert 23-20

13 **SECTION 28.** 854.13 (2) (i) ✓ of the statutes is created to read:

14 854.13 (2) (i) *Disclaimer of inter vivos transfers.* A person who is a recipient
15 of property under an inter vivos governing instrument, ✓ as defined in s. 700.27 (1) (b),
16 may disclaim the property as provided in s. 700.27.

17
18
19 Insert 24-25

****NOTE: In s. 854.13 (12) (b), I did not change "this section" to "the law of this
state" because I did not know what the change added. Also I was not sure if the new
language would be too broad and have unintended consequences.

20
21 Insert 28-7

22 **SECTION 29.** 854.17 ✓ of the statutes is amended to read:

1 **854.17 Classification; how determined Marital property classification;**
 2 **ownership and division of marital property at death.** ✓ In chs. 851 to 882,
 3 ~~classification~~ Classification of the property of a decedent spouse and surviving
 4 spouse is, and ownership and division of that property at the death of a spouse, are
 5 determined under ch. 766 and s. 861.01. ✓

History: 1985 a. 37; 1997 a. 188 s. 92; Stats. 1997 s. 854.17.

6
7
8 Insert 29-9

9 **SECTION 30.** 854.20 (2) (a) ^x 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 treated as the child of the birth parent whose spouse
 15 adopted the child relationship was not replaced.

History: 1983 a. 447; 1993 a. 486; 1997 a. 188 ss. 96, 175; Stats. 1997 s. 854.20.

16 SECTION #. CR; 854.20 (2) (am) 2. b. and c.
 17

18 Insert 29-15

19 854.20 (2) (am) 2. a. ^{Subdivision}
 20 ^{b. Subd.}

20 2. a. applies only if the adopted person was a minor at the time of
 21 adoption or if the adoptive parent raised the adopted person in a parent-like
 22 relationship beginning on or before the child's 15th birthday and lasting for a
 23 substantial period or until adulthood.

23 c. ~~Subd.~~ ^{Subdivision} 2. a. does not apply if the parental rights of the deceased birth parent
 24 had been terminated.

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Insert 29-24

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

Insert 30-5

****NOTE: The term "this section" includes all of the subparts of the section, so the suggested language "or any of its subparts" is not necessary. ✓

Insert 31-21

****NOTE: I changed the language because some of it seemed redundant now that this provision is not under s. 853.04. Please review it closely. ✓

Insert 32-12

SECTION 31. 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read: ✓

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

1 a. Occur before the final distribution of the estate assets under the governing
2 instrument;

3 History: 1975 c. 331, 421; 1987 a. 393.

3 SECTION 32. 857.03 (2m) of the statutes is created to read:

4 857.03 (2m) The surviving spouse and the personal representative may
5 petition the court to approve an exchange of interests in marital property as provided
6 in s. 766.31 (3) (b).

7
8 Insert 32-23

9 SECTION 33. 861.03 (3m) of the statutes is created to read:

10 861.03 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS. Section 766.31 (7m)
11 determines the rights of a surviving spouse to that part of a personal injury claim
12 that represents future lost earnings of the surviving spouse.

13
14
15 Insert 34-6

16 SECTION 34. 861.04 (2m) of the statutes is created to read:

17 861.04 (2m) When the surviving spouse is treated as the decedent under sub.
18 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
19 (1) (e) or (2m).

****NOTE: I did not add "or any other similar provision" to the end of this subsection because we should include only specific provisions; otherwise, "any other similar provision" may inadvertently include a provision that was not intended to be included. I will look for similar provisions that we should include.

20
21 Insert 35-21

22 SECTION 35. 861.06 (6) of the statutes is created to read:

1 861.06 (6) VALUATION. The value of property used to satisfy the deferred marital
 2 property elective share includes the value of any property transferred outright to the
 3 surviving spouse, the commuted value of any present or future interest in property
 4 transferred to the surviving spouse, and the commuted value of property payable to
 5 the surviving spouse under any trust, life insurance settlement option, annuity
 6 contract, public or private pension, disability compensation, death benefit or
 7 retirement plan, or any similar arrangement.

8
 9
 10 Ins. 37-19

11 SECTION 36. 861.21 (2) of the statutes is amended to read:

12 861.21 (2) ~~IF MARITAL DECEDENT'S~~ PROPERTY INTEREST IN HOME. Subject to subs.
 13 (4) and (5), if a married decedent has a marital property interest in a home, the
 14 decedent's entire interest in the home shall be assigned to the surviving spouse if the
 15 surviving spouse petitions the court requesting such a distribution and if a governing
 16 instrument does not provide a specific transfer of the decedent's interest in the home
 17 to someone other than the surviving spouse. The surviving spouse shall file the
 18 petition within 6 months after the decedent's death, unless the court extends the
 19 time for filing.

20 History: 1997 a. 188.

21 SECTION 37. 861.21 (3) of the statutes is repealed.

22 SECTION 38. 861.21 (4) of the statutes is amended to read:

23 861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in
 24 the home under sub. (2) to the surviving spouse upon payment of the fair market
 value of the decedent's interest in the home that does not pass to the surviving spouse

1 under intestacy or under the a governing instrument. Payment shall be made to the
2 fiduciary holding title to the interest. The surviving spouse may use assets due him
3 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court
4 extends the time, the surviving spouse shall have one year from the decedent's death
5 to pay the value of the assigned interest.

6 History: 1997 a. 188.

6 **SECTION 39.** 861.21 (5) of the statutes is amended to read:

7 861.21 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the
8 surviving spouse or of any interested person that part of the land is not necessary for
9 dwelling purposes and that it would be inappropriate to assign all of the surrounding
10 land as the home under sub. (2), the court may set off for the home as much of the
11 land as is necessary for a dwelling. In determining how much land should be set off,
12 the court shall take into account the use and marketability of the parcels set off as
13 the home and the remaining land.

14 History: 1997 a. 188.

15
16 Insert 42-17

17 **SECTION 40.** 863.08 of the statutes is amended to read:

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

22 History: 1987 a. 393.

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24 Insert 43-3



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SECTION 41. 863.16 of the statutes is repealed and recreated to read:

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

SECTION 42. 863.19 of the statutes is repealed and recreated to read:

863.19 Title. Valuation of property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed by formula or otherwise, is determined by s. 854.115.

Valuation used in distribution of estate assets

Insert 43-14

(B)

SECTION 43. 867.03 (1g) (intro.) of the statutes is amended to read:

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

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94.

SECTION 44. 867.03 (1g) (b) of the statutes is amended to read:

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

3 History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94.

3 **SECTION 45.** 867.035 (1) (a) 4. of the statutes is amended to read:

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

7 History: 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27 ss. 7199y to 7206g, 9126 (19); 1997 a. 27; 1999 a. 9; 2001 a. 16.

8
9 Insert 43-18

10 #
10 (9) The treatment of sections 40.02 (8) (a) 2., 705.06 (1) (c) and (2), 705.27,
11 852.12, 854.08 (6) (a) 1. and 2., 854.115, 854.12, 861.31 (1m), (2), and (4) (intro.) and
12 (a), 861.33 (1) (a) (intro.) and (b), (2), (3), and (4), 861.35 (1m) (intro.), (1m) (a), (b),
13 and (c), (2), (3) (a), and (4) (intro.) and (a), 863.15, 863.16, and 863.19 of the statutes,
14 the renumbering and amendment of sections 705.04 (2), ~~851.02~~² (1) (a) 2., and 854.08
15 (5) of the statutes, and the creation of sections 705.04 (2) (a) and (d), ~~851.02~~² (1) (a)
16 2. b., and 854.08 (5) (a) and (d) of the statutes first apply to transfers related to deaths
17 occurring on the effective date of this subsection except with respect to irrevocable
18 governing instruments executed before that date.

19

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0349/P2dn
CMH:jld:jf

July 12, 2004

This draft is still a preliminary draft. It will have to be redrafted to be introducible.
Please see the embedded notes in the draft.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.state.wi.us