

1983 Assembly Bill 200

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1983 Wisconsin Act 186

AN ACT *to repeal* 72.76 (1) (title), 766.15 (title), 767.36, 851.61, 852.01 (1) (a) 2, 861.03, 861.05, 861.07, 861.11, 861.13 and 861.15; *to renumber* 72.76 (1) (exc. 72.76 (1) (title)) and 241.02; *to renumber and amend* 766.15 (exc. 766.15 (title)) and 852.01 (1) (a) 3; *to amend* subchapter I (title) of chapter 861, 11.26 (5) and (10), 32.19 (3) (b) 2. b, 45.53 (1) (d), 49.10 (2) (a) and (b) and (8), 71.02 (2) (f) and (gp) 6, 71.05 (1) (g), 71.05 (1) (k), 71.08 (1), 71.09 (1b) (intro.), (4) (a) and (6p) (d) 2, 71.20 (2m), 71.53 (1) (c), 72.01 (13), 72.16 (4), 72.82 (1) (b), 178.21 (3) (e), 180.99 (6), 182.004 (6), 631.02, 700.19 (1) and (2), 705.01 (4) and (8) to (10), 705.02 (3), 705.03 (1), 705.06 (1) (intro.), 706.09 (1) (e), 765.001 (2), 815.19 (2), 815.20 (1), 815.56, 840.01, 851.55 (4), 852.01 (1) (a) 1, 853.11 (2) (b), 853.15 (1), 853.18 (1), 853.40 (2) (a), 857.01, 858.01, 859.25 (title), 859.33, 861.17 (title), (1) and (3), 861.35, 861.41 (3) and 863.11 (1); *to repeal and recreate* chapter 766 (exc. 766.15) and 49.10 (1); and *to create* 52.01 (1m), 59.51 (18), 71.03 (7), 71.05 (1) (a) 25 and (b) 8, 71.09 (1c), (1d), (2c) and (7m), 71.10 (19), 71.11 (2), 71.21 (20), 71.65 (1) (fm), 138.20 (1m), 241.02 (2), 427.104 (2) 705.01 (4m), 705.02 (1) (d) and (e), 705.03 (3), 705.04 (2m) and (4), 705.06 (1) (d), 706.095, 767.255 (5e), 851.55 (3m), 857.04, 857.35, 859.18, 859.25 (3), 861.01, 861.17 (1) (b) and (3m), 865.201, 867.046

and 880.173 of the statutes, *relating to* establishing a system of marital property shared by husband and wife and providing penalties.

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

SECTION 1. 11.26 (5) and (10) of the statutes are amended to read:

11.26 (5) The contribution limits provided in subs. (1) and (4) do not apply to a candidate who makes any contribution or contributions to his or her own campaign for office from ~~such individual's~~ the candidate's personal funds or property or the personal funds or property which are owned jointly or as marital property with the ~~individual's~~ candidate's spouse, with respect to any contribution or contributions made to that candidate's campaign only. A candidate's personal contributions shall be deposited in his or her campaign depository and reported in the normal manner.

(10) Except as authorized in s. 11.50 (2) (i), no candidate for state office who files a sworn statement and application to receive a grant from the Wisconsin election campaign fund and who receives and accepts any such grant may make contributions of more than 200% of the amounts specified in sub. (1) to the candidate's own campaign from ~~such individual's~~ the candidate's personal funds or property or the personal funds or property which are owned jointly or as marital property with the ~~individual's~~ candidate's spouse. The contribution limit of sub. (4) applies to amounts contributed by such a candidate personally to the candidate's own campaign and to other campaigns, except that a candidate may exceed the limitation if authorized under this subsection to contribute more than the amount specified to the candidate's own campaign, up to the amount of the limitation.

SECTION 2. 32.19 (3) (b) 2. b of the statutes is amended to read:

32.19 (3) (b) 2. b. Is not part of a commercial enterprise having at least one other establishment, not being acquired by the condemnor which is engaged in the same or similar business. For the purpose of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before payment of federal, state and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the condemnor determines to be more equitable for establishing such earnings. "Average annual net earnings" includes any compensation paid by the business or farm operation to the owner, ~~his or the owner's~~ spouse or ~~his~~ dependents during such 2-year period. To be eligible for the payment authorized by this subsection, the business or farm operation shall make its state and federal income tax returns available and its financial statements and accounting records available for audit to determine the payment authorized by this subsection.

SECTION 3. 45.53 (1) (d) of the statutes is amended to read:

45.53 (1) (d) "Interest and penalties" ~~shall~~ mean interest and penalties accruing on taxes during the period of military service and 6 months thereafter. In case property is owned jointly by several owners, other than property held jointly or as marital property with the spouse of the person in military service, interest and penalties shall mean the proportionate share of the total interest and penalties commensurate with the equity in the property of such person in military service.

SECTION 4. 49.10 (1) of the statutes is repealed and recreated to read:

49.10 (1) Each married individual acquires his or her own legal settlement in the same manner as other individuals under this section.

SECTION 5. 49.10 (2) (a) and (b) and (8) of the statutes are amended to read:

49.10 (2) (a) Legitimate minor children ~~have the settlement status of their father if living, or of the mother if their father is deceased, or if their mother has acquired settlement in her own right under sub. (1) and has actual custody of the children; if the parents~~

~~are divorced, the children~~ have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal custody is made, the children have the settlement status of the parent having actual physical custody ~~but if custody is awarded to other than a parent, such children have no settlement.~~

(b) ~~Children who are not legitimate born out of wedlock~~ have the settlement of their mother. If her settlement is lost, theirs is lost, unless legal custody is awarded to the father.

(8) Where a divorce has been granted, the date from which a new settlement may be acquired by ~~a married woman~~ the former spouse is the day on which the divorce is granted ~~and not the termination of the period when the divorce judgment becomes final.~~

SECTION 6. 52.01 (1m) of the statutes is created to read:

52.01 (1m) Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and chs. 48 and 49.

SECTION 7. 59.51 (18) of the statutes is created to read:

59.51 (18) Record and index marital property agreements under s. 766.58.

SECTION 8. 71.02 (2) (f) and (gp) 6 of the statutes are amended to read:

71.02 (2) (f) "Itemized deductions" means deductions from federal adjusted gross income allowable under the internal revenue code in determining federal taxable income, other than the federal standard deduction, low-income allowance and deductions for personal exemptions; but with respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state in the calendar year 1972 or corresponding fiscal year or thereafter, "itemized deductions" are limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons "itemized deductions" are limited to such fraction of the amount so determined as ~~combined their~~ Wisconsin adjusted gross income is of ~~combined or joint their~~ federal adjusted gross income. In addition, for taxable year 1979 and thereafter, "itemized deductions" excludes deductions for taxes allowable under section 164 of the internal revenue code. In addition, "itemized deductions" includes contributions to the community development finance authority under s. 233.03, minus any credit received under s. 71.09 (12m).

(gp) 6. With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state, in 1973 and thereafter, the low-income allowance authorized under this paragraph is limited by such fraction of that amount as Wisconsin adjusted gross income is of federal adjusted gross income, for unmarried persons, and as ~~combined their~~ Wisconsin adjusted gross income is of ~~combined or joint their~~ federal adjusted gross income for married persons.

SECTION 9. 71.03 (7) of the statutes is created to read:

71.03 (7) CONVERSIONS OF MARITAL AND INDIVIDUAL PROPERTY. No capital gain or loss may be recognized solely by reason of the conversion of individual property to marital property or of marital property to individual property, except that if a gain or loss is recognized for federal income tax purposes because of an unequal division of marital property upon divorce that amount of gain or loss shall be recognized for the purposes of this chapter. If no gain is recognized upon a transfer under this subsection, the basis of the property immediately before the transfer is the basis of the property immediately after the transfer.

SECTION 10. 71.05 (1) (a) 25 and (b) 8 of the statutes are created to read:

71.05 (1) (a) 25. Any capital loss not recognized under s. 71.03 (7).

(b) 8. Any capital gain recognized because of the conversion of individual property of a spouse to marital property or the conversion of marital property to individual property if the gain is not recognized under s. 71.03 (7).

SECTION 11. 71.05 (1) (g) of the statutes is amended to read:

71.05 (1) (g) Add or subtract from federal adjusted gross income, as appropriate, on sale, exchange, abandonment or other disposition in a transaction in which gain or loss is recognized to the owner of property acquired from a decedent, as described in section 1014 of the internal revenue code in effect on December 31, 1975, ~~by inheritance~~, exclusive of property constituting income under section 102 (b) of the internal revenue code, the difference between the federal basis and the Wisconsin basis. The Wisconsin basis of property acquired from a decedent ~~by inheritance~~ shall be determined under the internal revenue code in effect on December 31, 1975, but the value used for property is the value properly ~~includible~~ includable for Wisconsin inheritance tax purposes instead of the value of property ~~includible~~ includable for federal estate tax purposes. In this paragraph, the ~~exemption~~ exclusion under s. 72.12 (6) (b) shall not be deemed property properly ~~includible~~ includable for inheritance tax purposes, but the transfer of property exempt under s. 72.15 (5) shall be deemed property properly ~~includible~~ includable for inheritance tax purposes and, if at least 50% of the marital property held by a decedent and the decedent's surviving spouse at the time of the decedent's death is includable for purposes of computing the federal estate tax on the decedent's estate, all of the decedent's and the decedent's spouse's marital property and all of the decedent's individual property shall be deemed property properly includable for inheritance tax purposes.

SECTION 12. 71.05 (1) (k) of the statutes is amended to read:

71.05 (1) (k) For purposes of determining the amount of taxable unemployment compensation to be included in Wisconsin adjusted gross income, married persons reporting income under section 85 of the internal revenue code (relating to unemployment compensation) may elect to combine their federal adjusted gross incomes and compute the includable amount as persons filing a joint federal return, but if the spouses file separately each spouse shall include in Wisconsin adjusted gross income her or his share of the taxable unemployment compensation.

SECTION 13. 71.08 (1) of the statutes is amended to read:

71.08 (1) The tax imposed by this chapter on individuals and the rates under s. 71.09 (1c) shall apply to the Wisconsin taxable income of estates or trusts and that tax shall be paid by the fiduciary.

SECTION 14. 71.09 (1b) (intro.), (4) (a) and (6p) (d) 2 of the statutes are amended to read:

71.09 (1b) (intro.) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1979 and corresponding fiscal years, and for calendar and fiscal years thereafter to 1984 if 1983 Wisconsin Act (this act) is published in 1983 or to 1985 if 1983 Wisconsin Act (this act) is published in 1984, shall be computed at the following rates:

(4) (a) Commencing with the calendar year 1965 and with fiscal years ending after December 31, 1965, natural persons whose total income is not in excess of \$10,000 and consists entirely of wages subject to withholding for Wisconsin tax purposes and not more than \$200 total of dividends, interest and other wages not subject to Wisconsin withholding, and who have elected the Wisconsin standard deduction and have not claimed either the credit for homestead property tax relief or deductions for expenses incurred in earning such income, shall, at their election, not be required to record on their income tax returns the amount of the tax imposed on their Wisconsin taxable income. Married persons shall be permitted this election only if the ~~combined~~ joint income

of the husband and wife does not exceed \$10,000, if both report their incomes on the same ~~combined~~ joint income tax return form, and if both make this election.

(6p) (d) 2. With respect to nonresident persons, personal exemptions shall be limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons personal exemptions shall be limited to such fraction of the amount so determined as ~~combined~~ their Wisconsin adjusted gross income is of ~~combined~~ their federal adjusted gross income, but the total deduction for all personal exemptions shall not be less than \$5.

SECTION 15. 71.09 (1c), (1d), (2c) and (7m) of the statutes are created to read:

71.09 (1c) The tax to be assessed, levied and collected upon taxable incomes of all fiduciaries and single individuals for the calendar year 1985 and the corresponding fiscal year if 1983 Wisconsin Act (this act) is published in 1983, or 1986 if 1983 Wisconsin Act (this act) is published in 1984, and for calendar and fiscal years thereafter shall be computed at the following rates:

- (a) On all taxable income from \$0 to \$3,000, 3.4%.
- (b) On all taxable income exceeding \$3,000 but not exceeding \$6,000, 5.3%.
- (c) On all taxable income exceeding \$6,000 but not exceeding \$9,000, 7%.
- (d) On all taxable income exceeding \$9,000 but not exceeding \$12,000, 8.2%.
- (e) On all taxable income exceeding \$12,000 but not exceeding \$15,000, 8.7%.
- (f) On all taxable income exceeding \$15,000 but not exceeding \$20,000, 9.1%.
- (g) On all taxable income exceeding \$20,000 but not exceeding \$40,000, 9.6%.
- (h) On all taxable income exceeding \$40,000, 10%.

(1d) The tax to be assessed, levied and collected upon taxable incomes of all married persons for the calendar year 1985 and the corresponding fiscal year if 1983 Wisconsin Act (this act) is published in 1983, or 1986 if 1983 Wisconsin Act (this act) is published in 1984, and for calendar and fiscal years thereafter shall be computed at the following rates:

- (a) For joint returns:
 1. On all taxable income from \$0 to \$4,000, 3.4%.
 2. On all taxable income exceeding \$4,000 but not exceeding \$8,000, 5.3%.
 3. On all taxable income exceeding \$8,000 but not exceeding \$12,000, 7%.
 4. On all taxable income exceeding \$12,000 but not exceeding \$16,000, 8.2%.
 5. On all taxable income exceeding \$16,000 but not exceeding \$20,000, 8.7%.
 6. On all taxable income exceeding \$20,000 but not exceeding \$26,667, 9.1%.
 7. On all taxable income exceeding \$26,667 but not exceeding \$53,334, 9.6%.
 8. On all taxable income exceeding \$53,334, 10%.
- (b) For married persons filing separately:
 1. On all taxable income from \$0 to \$2,000, 3.4%.
 2. On all taxable income exceeding \$2,000 but not exceeding \$4,000, 5.3%.
 3. On all taxable income exceeding \$4,000 but not exceeding \$6,000, 7%.
 4. On all taxable income exceeding \$6,000 but not exceeding \$8,000, 8.2%.
 5. On all taxable income exceeding \$8,000 but not exceeding \$10,000, 8.7%.
 6. On all taxable income exceeding \$10,000 but not exceeding \$13,333, 9.1%.
 7. On all taxable income exceeding \$13,333 but not exceeding \$26,667, 9.6%.
 8. On all taxable income exceeding \$26,667, 10%.

(2c) Annually, the computation under sub. (2) shall be applied to the brackets under subs. (1c) and (1d). For years after 1979 and before the year of the effective date of this subsection (1983), the computation shall be made as if the brackets under subs. (1c) and (1d) were in effect in 1979. Computations during and after the year of the effective date of this subsection (1983), shall take account of all adjustments made under this subsection before the effective date of this subsection (1983).

(7m) Married persons filing a joint return may claim as a credit against, but not to exceed the amount of, Wisconsin net income taxes otherwise due, an amount equal to 1.5% of the earned income of the spouse with the lower earned income, but not more than \$450. In this subsection, "earned income" means wages, salaries, tips, other employe compensation and net earnings from self-employment. Earned income is computed notwithstanding the fact that each spouse owns an undivided one-half interest in the whole of the marital property. Earned income is reduced by any amount of net loss from self-employment. Earned income does not include amounts received as a pension or annuity or income to which section 871 (a) of the internal revenue code applies.

SECTION 16. 71.10 (19) of the statutes is created to read:

71.10 (19) Married persons who file a joint return for federal income tax purposes under section 6013 of the internal revenue code may file a joint return for state income tax purposes.

SECTION 17. 71.11 (2) of the statutes is created to read:

71.11 (2) JOINT RETURNS. Persons filing a joint return are jointly and severally liable for the penalties under this section applicable to the return. A person may be relieved of liability in regard to a joint return in the manner specified in section 6013 (e) of the internal revenue code.

SECTION 18. 71.20 (2m) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

71.20 (2m) The department shall from time to time adjust the withholding tables to reflect any changes in income tax rates, any applicable surtax or any changes in dollar amounts in s. 71.09 (1b), ~~(1c) or (1d)~~ resulting from statutory changes. On January 1, 1987, and on each January 1 thereafter the department shall adjust the tables to reflect changes under s. 71.09 (2). No adjustment of the withholding tables is required unless the adjustment under s. 71.09 (2) is 4% or more. The tables shall be extended to cover from zero to 10 withholding exemptions, shall assume that the payment of wages in each pay period will, when multiplied by the number of pay periods in a year, reasonably reflect the annual wage of the employe from the employer and shall be based on the further assumption that the annual wage will be reduced for allowable deductions from gross income. The department may determine the length of the tables and a reasonable span for each bracket. In preparing the tables the department shall adjust all withholding amounts not an exact multiple of 10 cents to the next highest figure that is a multiple of 10 cents. The department shall also provide instructions with the tables for withholding with respect to quarterly, semiannual and annual pay periods.

SECTION 19. 71.21 (20) of the statutes is created to read:

71.21 (20) Married couples may file a joint declaration of estimated tax. If they do, the provisions under this section applicable to individuals are applicable to the couple jointly. If a married couple files separate returns for a taxable year for which they have filed a joint declaration of estimated tax, they may allocate the payments of estimated tax between themselves as they choose.

SECTION 20. 71.53 (1) (c) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

71.53 (1) (c) "Property taxes" means real and personal property taxes, exclusive of special assessments, delinquent interest and charges for service, paid by a claimant on the claimant's principal dwelling during the taxable year for which credit under this section is claimed, less any property taxes paid which are properly ~~includible~~ includable as a trade or business expense under section 162 of the internal revenue code. If the principal dwelling on which the taxes were paid is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned by spouses as marital property, "property taxes" is that part of property taxes paid that reflects the ownership percentage of the claimant. If the principal dwelling is sold during the taxable year the "property taxes" for the seller and buyer shall be the amount of the tax prorated to each in the closing agreement pertaining to the sale or, if not so provided for in the closing agreement, the tax shall be prorated between the seller and buyer in proportion to months of their respective ownership. "Property taxes" includes monthly parking permit fees in respect to a principal dwelling collected under s. 66.058 (3) (c).

SECTION 21. 71.65 (1) (fm) of the statutes is created to read:

71.65 (1) (fm) Married persons' credit under s. 71.09 (7m).

SECTION 22. 72.01 (13) of the statutes is amended to read:

72.01 (13) "The intestate laws of this state" include ~~a surviving spouse's right to dower~~, statutory rights and allowances to a child and to a surviving spouse and any other rights of a surviving spouse acquired by contract in lieu of ~~dower or other~~ any statutory rights.

SECTION 23. 72.16 (4) of the statutes is amended to read:

72.16 (4) Class D consists of all distributees in any other degree of collateral consanguinity to the decedent than stated above, strangers in blood and other persons, but does not include a surviving spouse.

SECTION 24. 72.76 (1) (exc. 72.76 (1) (title)) of the statutes is renumbered 72.76.

SECTION 25. 72.76 (1) (title) of the statutes is repealed.

SECTION 26. 72.82 (1) (b) of the statutes is amended to read:

72.82 (1) (b) To all ~~other~~ class A donees, property of a clear market value of \$10,000;

SECTION 27. 138.20 (1m) of the statutes is created to read:

138.20 (1m) DEFINITION. In this section, to "discriminate in the granting or extension of any form of loan or credit" includes but is not limited to any violation of s. 766.56.

SECTION 28. 178.21 (3) (e) of the statutes is amended to read:

178.21 (3) (e) A partner's right in specific partnership property is not subject to ~~dower~~ ~~or~~ allowances to surviving spouses, heirs, or next of kin.

SECTION 29. 180.99 (6) of the statutes is amended to read:

180.99 (6) PARTICIPANTS; CONFLICT OF INTEREST. Except as permitted in sub. (7), all shareholders, directors and officers of a service corporation must at all times be persons licensed, certified or registered by a state agency. No individual not so licensed, certified or registered ~~shall may~~ have any part in the ownership, or control of such corporation, except that the nonparticipant spouse of a married individual has the rights of ownership provided under ch. 766; nor may any proxy to vote any shares of such corporation be given to a person who is not so licensed, certified or registered. If any shareholder, director, officer or employe of a corporation organized under this section becomes legally disqualified to render professional or other personal services, consultation or advice within this state for which he or she was licensed, certified or registered, or accepts employment or is elected to a public office which pursuant to existing law places restrictions or limitations upon his or her rendering of the services for which he or she was licensed, certified or registered, he or she shall sever all employment with, and financial interest in, such corporation forthwith. A corporation's failure to require prompt com-

pliance with this provision ~~shall be~~ is a ground for the suspension or forfeiture of its franchise.

SECTION 30. 182.004 (6) of the statutes is amended to read:

182.004 (6) Stock may be issued and leases made to husband and wife, and to the survivor of them, in which event title ~~thereto~~ shall descend the same as in like conveyances of real property; ~~otherwise~~ subject to ch. 766. Otherwise, title to the stock and lease shall descend to the persons to whom a homestead of ~~such~~ the stockholder would descend except as provided in ch. 766. The interest of a tenant in ~~such~~ the lease and stock shall be exempt from execution to the same extent as a homestead in real estate.

SECTION 31. 241.02 of the statutes is renumbered 241.02 (1).

SECTION 32. 241.02 (2) of the statutes is created to read:

241.02 (2) Subsection (1) does not apply to a marital property agreement complying with ch. 766.

SECTION 32m. 427.104 (2) of the statutes is created to read:

427.104 (2) If a debt collector is not otherwise in violation of sub. (1) (j) with respect to a consumer credit transaction with a debtor, it is not a violation of this section to send a billing statement or other notice of account to, or to collect the amount due on the account from, the spouse of that debtor, if notice to the debtor's spouse is provided under s. 766.56.

SECTION 33. 631.02 of the statutes is amended to read:

631.02 Definition. "Interest of the insured", when used in an insurance policy, includes the interest of the named insured and of any other person with whom the named insured holds the insured property in joint tenancy or as marital property.

SECTION 34. 700.19 (1) and (2) of the statutes are amended to read:

700.19 (1) **GENERALLY.** The creation of a joint tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale. Any of the following constitute an expression of intent to create a joint tenancy: "as joint tenants", "as joint owners", "jointly", "or the survivor", "with right of survivorship" or any similar phrase except a phrase similar to "survivorship marital property".

(2) **HUSBAND AND WIFE.** If persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are described in the document, instrument or bill of sale as husband and wife, or are in fact husband and wife, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument or bill of sale. This subsection applies to property acquired before the effective date of this subsection (1983).

SECTION 35. 705.01 (4) and (8) to (10) of the statutes are amended to read:

705.01 (4) "Joint account" means an account, other than a marital account, payable on request to one or more of 2 or more parties whether or not mention is made of any right of survivorship. "Joint account" also means any account established with the right of survivorship on or after the effective date of this subsection (1983), by 2 parties who claim to be husband and wife, which is payable on request to either or both of the parties.

(8) "P.O.D. Account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. beneficiaries, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. beneficiaries. It includes an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It includes a marital account for which a party named one or more P.O.D. beneficiaries for that party's interest.

(9) "P.O.D. Beneficiary" means a person designated on a P.O.D. account as one to whom all or part of the account is payable on request after the death of one or more parties.

(10) "Request" means a proper request for withdrawal, or a check or other order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. Unless the signature card, passbook, contract or instrument evidencing the account clearly provides to the contrary, a request by all parties to a joint or marital account is required for payment if the account is designated with their names conjunctively joined by the word "and". If the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

SECTION 36. 705.01 (4m) of the statutes is created to read:

705.01 (4m) "Marital account" means an account established without the right of survivorship on or after the effective date of this subsection (1983), by 2 parties who claim to be husband and wife, which is payable on request to either or both of the parties and which is designated as a marital account. An account established by those parties with the right of survivorship under s. 766.58 (3) (f) or 766.60 is a joint account.

SECTION 37. 705.02 (1) (d) and (e) of the statutes are created to read:

705.02 (1) (d) Marital account: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED AS A MARITAL ACCOUNT BY THE PARTIES NAMED HEREON. UPON THE DEATH OF EITHER OF THEM, THE SURVIVOR OWNS 50% OF THE SUMS ON DEPOSIT."

(e) Marital account with P.O.D. beneficiaries: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED AS A MARITAL ACCOUNT BY THE PARTIES NAMED HEREON. UPON THE DEATH OF EITHER OF THEM, 50% OF THE SUMS ON DEPOSIT ARE OWNED BY THE SURVIVOR AND 50% ARE OWNED BY THE P.O.D. BENEFICIARY(IES) NAMED HEREON BY THE DECEASED PARTY."

SECTION 38. 705.02 (3) of the statutes is amended to read:

705.02 (3) Any deposit made to an account created on or after July 1, 1975, and within the scope of this chapter, which account is not evidenced by an agreement containing language in substantial conformity with this section, signed by the depositor in accordance with s. 705.01 (1), shall nonetheless be deemed to create either a single-party relationship, with agency, or a joint or P.O.D. relationship, with or without the designation of one or more agents, or a marital relationship if the account is created after the effective date of this subsection (1983), in accordance with whatever competent evidence is available concerning the depositor's intent at the time the account was created. Such relationship may differ from that established by any other depositor. A deposit which is made in conformity with the language and signature requirements of this section and s. 705.01 (1) shall be deemed to create an account in accordance with this chapter, with respect to such deposit and all other deposits by the same person, notwithstanding whatever relationships may be established by other depositors.

SECTION 39. 705.03 (1) of the statutes is amended to read:

705.03 (1) A joint account belongs, during the lifetime of all parties, to the parties without regard to the proportion of their respective contributions to the sums on deposit and without regard to the number of signatures required for payment. The application of any sum withdrawn from a joint account by a party thereto shall not be subject to inquiry by any person, including any other party to the account and notwithstanding such other party's minority or other disability, except that the spouse of one of the par-

ties may recover under s. 766.70. No financial institution is liable to the spouse of a married person who is a party to a joint account for any sum withdrawn by any party to the account unless the financial institution violates a court order.

SECTION 40. 705.03 (3) of the statutes is created to read:

705.03 (3) A marital account belongs, during the lifetime of both parties, to the parties without regard to the proportion of their respective contributions to the sums on deposit or to the number of signatures required for payment. A party to a marital account may name one or more P.O.D. beneficiaries for that party's interest. No person may inquire about the application of any sums withdrawn from a marital account by a party to the account, except that if the parties are married to one another the other party to the account may recover under s. 766.70.

SECTION 41. 705.04 (2m) and (4) of the statutes are created to read:

705.04 (2m) Unless a marital property agreement under s. 766.58 provides otherwise, after deducting all payments and certifications made under s. 404.405 50% of the sums remaining on deposit at the death of a party to a marital account belongs to and may, upon the maturity of the account, be withdrawn by the surviving spouse and 50% belongs to and may, upon the maturity of the account, be withdrawn by the decedent's estate. No financial institution is liable for any amount withdrawn under this subsection by a party who falsely claims to be the decedent's spouse.

(4) As to any deposit made on or after the effective date of this subsection (1983), a surviving spouse who is not a party to the account may recover under s. 766.70 (7).

SECTION 42. 705.06 (1) (intro.) of the statutes is amended to read:

705.06 (1) (intro.) In accordance with the terms of an account, and subject to this chapter, ch. 112 and s. 72.29 and unless otherwise ordered by a court of competent jurisdiction:

SECTION 43. 705.06 (1) (d) of the statutes is created to read:

705.06 (1) (d) Any sums in a marital account may be paid, on request, to either party without regard to whether the other party is under legal disability or is deceased, unless the financial institution receives actual notice that the other party is deceased. After receipt of actual notice of the death of one party to a marital account, the financial institution may pay on request not more than 50% of the sums on deposit to the surviving party, and 50% of that amount, less any amount required to be withheld under s. 72.29, to the personal representative of the deceased party or if applicable to any P.O.D. beneficiary of the deceased party's interest, unless before payment is made the financial institution receives a verified statement under s. 865.201 or a certified copy of a certificate or recorded application concerning survivorship rights under s. 867.046, in which case the financial institution shall make payment as provided in that document.

SECTION 44. 706.09 (1) (e) of the statutes is amended to read:

706.09 (1) (e) *Marital interests.* ~~Dower or homestead~~ Homestead of the spouse of any transferor of an interest in real estate, ~~where~~ if the recorded conveyance purporting to transfer the ~~same~~ homestead states that the person executing it is single, unmarried or widowed; or fails to indicate the marital status of ~~such~~ the transferor, and ~~where such~~ if the conveyance has, in either case, appeared of record for 5 years. This paragraph ~~shall~~ does not apply to the interest of a married person who is described of record as a holder in joint tenancy or of marital property with such that transferor.

SECTION 45. 706.095 of the statutes is created to read:

706.095 Interspousal remedies. Nothing in this chapter limits a spouse's remedy against the other spouse under ch. 766 for misuse of marital property.

SECTION 46. 765.001 (2) of the statutes is amended to read:

765.001 (2) INTENT. It is the intent of chs. 765 to 768 to promote the stability and best interests of marriage and the family. It is the intent of the legislature to recognize the valuable contributions of both spouses during the marriage and at termination of the marriage by dissolution or death. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned. Under the laws of this state, marriage is a legal relationship between 2 equal persons, a husband and wife, who owe to each other mutual responsibility and support. Each spouse has an equal obligation in accordance with his or her ability to contribute money or services or both which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse. No spouse may be presumed primarily liable for support expenses under this subsection.

SECTION 47. Chapter 766 (exc. 766.15) of the statutes is repealed and recreated to read:

CHAPTER 766
PROPERTY RIGHTS OF MARRIED
PERSONS; MARITAL PROPERTY

766.001 Liberal construction. This chapter is remedial in nature and shall be liberally construed, consistent with s. 766.96.

766.01 Definitions. In this chapter:

(1) "Acquiring" property includes reducing indebtedness on encumbered property and obtaining a lien on or security interest in property.

(2) "Appreciation" means a realized or unrealized increase in the value of property.

(3) "Decree" means a judgment or other order of a court.

(3m) "Deferred employment benefit" means a benefit from a deferred employment benefit plan.

(4) (a) "Deferred employment benefit plan" means a plan, fund, program or other arrangement under which compensation or benefits from employment are expressly, or as a result of surrounding circumstances, deferred to a later date or the happening of a future event. "Deferred employment benefit plan" includes but is not limited to a pension, profit sharing or stock-bonus plan, an employe stock-ownership or stock-purchase plan, a savings or thrift plan, an annuity plan, a qualified bond-purchase plan, a self-employed retirement plan, a simplified employe pension and a deferred compensation agreement or plan.

(b) "Deferred employment benefit plan" does not include life, health, accident or other insurance or a plan, fund, program or other arrangement providing benefits similar to insurance benefits, except to the extent that benefits under the plan:

1. Have a present value that is immediately realizable in cash at the option of the employe;

2. Constitute an unearned premium for the coverage;

3. Represent a right to compensation for loss of income during disability; or

4. Represent a right to payment of expenses incurred before time of valuation.

(5) "Determination date" means the last to occur of the following:

(a) Marriage.

- (b) 12:01 a.m. on the date of establishment of a marital domicile in this state.
- (c) 12:01 a.m. on the effective date of this chapter (1983).
- (6) "Disposition at death" means transfer of property by will, intestate succession, nontestamentary transfer or other means that takes effect at the transferor's death.
- (7) "Dissolution" means termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity or entry of a decree of legal separation or separate maintenance.
- (8) "During marriage" means a period that begins at marriage and ends at dissolution or at the death of a spouse.
- (9) Property is "held" by a person only if a document of title to the property is registered, recorded or filed in a public office in the name of the person or a writing that customarily operates as a document of title to the type of property is issued for the property in the person's name.
- (10) "Income" means any of the following:
 - (a) Any wages, salary, commission, bonus, gratuity, payment in kind, deferred employment benefit or proceeds other than death benefits of any health, accident or disability insurance policy or of any plan, fund, program or other arrangement providing benefits similar to those forms of insurance.
 - (b) An economic benefit having value attributable to the effort of a spouse.
 - (c) Dividends, interest or income from trusts.
 - (d) Net rents and other net returns attributable to investment, rental, licensing or other use of property, unless attributable to a return of capital or to appreciation.
- (11) "Management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding or otherwise deal with property as if it were property of an unmarried person.
- (12) "Marital property agreement" means an agreement that complies with s. 766.58.
- (13) A person has "notice" of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to the person.
- (14) "Presumption" or a "presumed" fact means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed condition or fact is more probable than its existence.
- (15) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.
- (16) "Written consent" means a document signed by a person against whose interests it is sought to be enforced.

766.15 Responsibility between spouses. (1) Each spouse shall act in good faith with respect to the other spouse in matters involving marital property or other property of the other spouse. This obligation may not be varied by a marital property agreement.

(2) Management and control by a spouse of that spouse's property that is not marital property in a manner that limits, diminishes or fails to produce income from that property does not violate sub. (1).

766.17 Variation by marital property agreement. Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 766.58 (2), a marital property agreement may vary the effect of this chapter.

766.31 Classification of property of spouses. (1) All property of spouses is marital property except that which is classified otherwise by this chapter.

- (2) All property of spouses is presumed to be marital property.
 - (3) Each spouse has a present undivided 50% interest in marital property, but the marital property interest of the nonemploye spouse in a deferred employment benefit plan terminates at the death of the nonemploye spouse if he or she predeceases the employe spouse.
 - (4) Income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.
 - (5) Marital property transferred to a trust remains marital property.
 - (6) Property owned by a spouse at a marriage after the determination date is individual property.
 - (7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:
 - (a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution from a trust created by a 3rd person to one spouse is the individual property of that spouse.
 - (b) In exchange for or with the proceeds of other individual property of the spouse.
 - (c) From appreciation of the spouse's individual property except to the extent that the appreciation is classified as marital property under s. 766.63.
 - (d) By a decree, marital property agreement, written consent or reclassification under sub. (10) designating it as the individual property of the spouse.
 - (e) As a recovery for damage to property under s. 766.70, except as specifically provided otherwise in a decree, marital property agreement or written consent.
 - (f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied from marital property and except for the amount attributable to loss of income during marriage.
 - (8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date.
 - (9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.
 - (10) Spouses may reclassify their property by gift or marital property agreement.
- 766.51 Management and control of property of spouses.** (1) Except as provided in sub. (1m), a spouse acting alone may manage and control:
- (a) That spouse's property that is not marital property.
 - (am) Except as provided in subs. (2) and (3), marital property held in that spouse's name alone or not held in the name of either spouse.
 - (b) Marital property held in the names of both spouses in the alternative, including marital property held in a form designating the holder by the words "(name of one spouse) or (name of other spouse)".
 - (d) A policy of insurance if that spouse is designated as the owner on the records of the policy issuer.
 - (e) Any right of an employe under a deferred employment benefit plan that accrues as a result of that spouse's employment.
 - (f) A claim for relief vested in that spouse by other law.

(1m) Only for the purpose of incurring an obligation resulting from an extension of credit under s. 766.56, each spouse may manage and control all of the marital property, except for marital property described in s. 766.70 (3) (a) to (d).

(2) Spouses may manage and control marital property held in the names of both spouses other than in the alternative only if they act together.

(3) The right to manage and control marital property transferred to a trust is determined by the terms of the trust.

(4) The right to manage and control marital property permits gifts of that property only to the extent provided in s. 766.53.

(5) The right to manage and control marital property does not determine the classification of property of the spouses and does not rebut the presumption under s. 766.31 (2).

(6) The enactment of this chapter does not affect the right to manage and control any property of either or both spouses acquired before the determination date.

(7) A court may appoint a conservator or guardian under ch. 880 to exercise a disabled spouse's right to manage and control marital property.

766.53 Gifts of marital property to 3rd persons. (1) A spouse acting alone may give to a 3rd person marital property that the spouse has the right to manage and control only if the value of the marital property given to the 3rd person does not aggregate more than either \$500 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses. Any other gift of marital property to a 3rd person is subject to sub. (2) unless both spouses act together in making the gift.

(2) If a gift of marital property by a spouse does not comply with sub. (1), the other spouse may bring an action to recover the property or a compensatory judgment equal to the amount by which the gift exceeded the limit under sub. (1). The other spouse may bring the action against the donating spouse, the gift recipient or both. The other spouse must commence the action within the earlier of either one year after he or she has notice of the gift or 3 years after the gift. If the recovery occurs during marriage, it is marital property. If the recovery occurs after a dissolution or the death of either spouse, it is limited to 50% of the value of the gift and is individual property.

766.55 Obligations of spouses. (1) An obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family.

(2) After the determination date all of the following apply:

(a) A spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from all marital property and all other property of the obligated spouse.

(b) An obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from all marital property and all other property of the incurring spouse.

(c) An obligation incurred by a spouse before or during marriage that is attributable to an obligation arising before marriage or to an act or omission occurring before marriage may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the marriage.

(d) Any other obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not marital property and from that spouse's interest in marital property, in that order.

(2m) Unless the decree of annulment, legal separation or divorce or any amendment to the decree so provides, no income of a nonincurring spouse is available for satisfaction of an obligation under sub. (2) (b) after entry of the decree. Marital property assigned to each spouse under that decree is available for satisfaction of such an obligation to the extent of the value of the marital property at the date of the decree.

(3) This chapter does not alter the relationship between spouses and their creditors with respect to any property or obligation in existence on the determination date.

(4) Any written consent signed by a creditor which diminishes the rights of the creditor provided in this section is binding on the creditor.

(4m) No provision of a marital property agreement adversely affects the interest of a creditor unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred. The effect of this subsection may not be varied by a marital property agreement.

(5) This chapter does not affect the exemption of any property of spouses from availability for satisfaction of an obligation, provided by other law.

766.56 Credit transactions with married persons. (1) When a spouse applies for credit based on marital property, a credit grantor shall consider the applicant spouse's rights of management and control of marital property under s. 766.51 (1m) in the same manner that the credit grantor evaluates creditworthiness based upon an applicant's rights of management and control of his or her other property. Any financial organization or any other credit-granting commercial institution that violates this paragraph is subject to the penalties under s. 138.20.

(2) (a) No marital property agreement recorded under s. 59.51 (18) constitutes actual or constructive notice to 3rd parties.

(b) When a person applies for credit, the creditor may inquire whether the person is married or legally separated and shall inquire whether there exists any document which affects or alters the ownership or management and control rights to property of the spouses. The person applying for credit shall provide accurate and complete information about any such document.

(c) If the spouse applying for credit discloses the existence of a currently effective document and provides a copy of it, the creditor is bound by any property classification, characterization of an obligation, or management and control right contained in the document.

(4) If a creditor extends credit to an applicant spouse and the extension of credit results in or may result in an obligation under s. 766.55 (2) (b), the spouse may direct the creditor to extend the credit in his or her name or, if the creditor regularly extends credit in the names of both spouses to a marriage, in the names of both spouses. If the credit is extended in the names of both spouses, but only one spouse applies for the credit, no additional liability is incurred by the nonapplicant spouse and no additional property is subject to satisfaction of the obligation.

(5) (a) Except as provided in par. (b), if a creditor extends credit to an applicant spouse and the extension of credit results in or may result in an obligation under s. 766.55 (2) (b), the creditor shall give the nonapplicant spouse written notice of the extension of credit before any payment is due. The notice shall describe the nature of the credit extended and state whether an obligation under s. 766.55 (2) (b) is or may be incurred by the extension of credit. The notice requirement may be satisfied by providing a copy of the instrument, document, agreement, contract or required credit disclosure which is signed by or given to the applicant spouse, or by providing a separate writing briefly describing the nature of the credit extended. Notice is considered given on the date it is mailed to the address of the nonapplicant spouse provided to the creditor by the appli-

cant spouse. If the spouses live at the same address, the notice may be enclosed in an envelope addressed to the nonapplicant spouse or both spouses.

(b) Notice is considered given under par. (a) if the nonapplicant spouse has actual knowledge that the credit is extended or waives the notice requirement in a signed writing.

766.57 Protection of bona fide purchasers dealing with spouses. (1) In this section:

(a) "Bona fide purchaser" means a purchaser of property for value who was not knowingly a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse and acted in the transaction in good faith.

(b) "Purchase" means to acquire property by sale, lease, discount, negotiation, mortgage, pledge or lien, or otherwise to deal with property in a voluntary transaction other than a gift.

(c) A purchaser gives "value" for property acquired in return for a binding commitment to extend credit, as security for or in total or partial satisfaction of a preexisting claim, by accepting delivery pursuant to a preexisting contract for purchase, or, generally, in return for any consideration sufficient to support a simple contract.

(2) Notice of the existence of a marital property agreement, a marriage or a dissolution does not affect the status of a purchaser as a bona fide purchaser.

(3) Marital property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under s. 766.51 is acquired free of any claim of the other spouse. The effect of this subsection may not be varied by a marital property agreement.

766.58 Marital property agreements. (1) A marital property agreement shall be a document signed by both spouses. It is enforceable without consideration.

(2) A marital property agreement may not adversely affect the right of a child to support.

(3) Except as provided in ss. 766.15, 766.55 (4m) and 766.57 (3), and in sub. (2), in a marital property agreement spouses may agree with respect to any of the following:

(a) Rights in and obligations with respect to any of either or both spouses' property whenever and wherever acquired or located.

(b) Management and control of any of either or both spouses' property.

(c) Disposition of any of either or both spouses' property upon dissolution or death or upon the occurrence or nonoccurrence of any other event.

(d) Modification or elimination of spousal support, except as provided in sub. (9).

(e) Making a will, trust or other arrangement to carry out the marital property agreement.

(f) Providing that upon the death of either spouse any of either or both spouses' property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition.

(g) Choice of law governing construction of the marital property agreement.

(h) Any other matter affecting either or both spouses' property not in violation of public policy or a statute imposing a criminal penalty.

(4) A marital property agreement may be amended or revoked only by a later marital property agreement.

(5) Persons intending to marry each other may enter into a marital property agreement as if married, but the marital property agreement becomes effective only upon their marriage.

(6) A marital property agreement executed before or during marriage is not enforceable if the spouse against whom enforcement is sought proves any of the following:

- (a) The marital property agreement was unconscionable when made.
- (b) That spouse did not execute the marital property agreement voluntarily.
- (c) Before execution of the marital property agreement, that spouse:

1. Did not receive fair and reasonable disclosure of the other spouse's property or financial obligations;

2. Did not voluntarily and expressly waive in a written consent any right to disclosure of the other spouse's property or financial obligations beyond that actually provided, or did waive the right to disclosure of the general categories of the other spouse's assets at approximate fair market value less general categories of the other spouse's liabilities at approximate fair market value; and

3. Did not have notice of the other spouse's property or financial obligations.

(8) The issue of whether a marital property agreement is unconscionable is for the court to decide as a matter of law. In the event that legal counsel is retained in connection with a marital property agreement the fact that each party to a marital property agreement is not represented by independent counsel does not by itself make a marital property agreement unconscionable or otherwise affect its enforceability, if each spouse waived independent representation in writing.

(9) (a) Modification or elimination of spousal support during the marriage may not result in a spouse having less than necessary and adequate support, taking into consideration all sources of support.

(b) If a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance upon or after dissolution of the marriage, the court may require the other spouse to provide support necessary to avoid that eligibility, notwithstanding the marital property agreement.

(10) If the spouses agree in writing to arbitrate any controversies arising under this chapter or a marital property agreement, the arbitration agreement is enforceable under ch. 788.

(11) Married persons or persons intending to marry each other may record a marital property agreement in the county register of deeds office under s. 59.51 (18).

(12) This chapter does not affect a document that was signed before the effective date of this chapter (1983), by spouses or unmarried persons who subsequently married each other, affects the property of either of them and is enforceable by either of them without reference to this chapter, unless the spouses provide otherwise in a marital property agreement made after the determination date.

766.60 Optional forms of holding property; survivorship ownership. (1) Spouses may hold marital property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as marital property".

(2) Spouses may hold marital property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as marital property".

(3) A spouse may hold individual property in a form that designates the holder of it by the words "(name of spouse) as individual property".

(4) Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership.

(5) If the words "survivorship marital property" are used instead of the words "marital property" in the form described in sub. (1) or (2), the marital property so held is survivorship marital property. On the death of a spouse, the ownership rights of that spouse in the property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse may not dispose at death of any interest in survivor-

ship marital property. Holding marital property in a form described in sub. (1) or (2) does not alone establish survivorship ownership between the spouses with respect to the property held.

766.605 Classification of homestead. A homestead acquired after the determination date exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer.

766.61 Classification of life insurance policies and proceeds. (1) In this section:

(a) "Owner" means a person appearing on the records of the policy issuer as the person having the ownership interest, or means the insured if no person other than the insured appears on those records as a person having that interest.

(b) "Ownership interest" means the rights of an owner under a policy.

(c) "Policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death.

(d) "Proceeds" means the death benefit from a policy and all other economic benefits from it, whether they accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

(2) If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of those payments or actions unless, at the time of the payments or actions, it had actual knowledge of an inconsistent decree or marital property agreement or of an adverse claim by a spouse, former spouse, surviving spouse or person claiming under a deceased spouse's disposition at death.

(3) Except as provided in subs. (4) to (6):

(a) The ownership interest and proceeds of a policy issued after the determination date which designates the insured as the owner are marital property, regardless of the classification of property used to pay premiums on the policy.

(b) The ownership interest and proceeds of a policy issued before the determination date which designates the insured as the owner are mixed property if a premium on the policy is paid from marital property after the determination date, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(c) The ownership interest and proceeds of a policy issued during marriage which designates the spouse of the insured as the owner are individual property of its owner, regardless of the classification of property used to pay premiums on the policy.

(d) This chapter does not affect the ownership interest and proceeds of a policy that designates a person other than either spouse as the owner, if no premium on the policy is paid from marital property after the determination date. If a premium on the policy is paid from marital property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part marital property of the spouses, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(e) A spouse who provides in a written consent the designation of another person as the beneficiary of policy proceeds relinquishes his or her interest in the ownership interest and proceeds of the policy, regardless of the classification of property used by a spouse or another to pay premiums on that policy.

(f) Unless the spouses provide otherwise in a marital property agreement, designation of a trust as the beneficiary of the proceeds of a policy with a marital property component does not reclassify that component.

(4) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned or payable to the creditor as security.

(5) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or to parenthood is not marital property, regardless of the classification of property used to pay premiums on that policy.

(6) This section does not affect the ownership interest or proceeds of a policy if neither spouse is designated as an owner in the policy or the policy issuer's records and no marital property is used to pay a premium on the policy.

766.62 Classification of deferred employment benefits. (1) A deferred employment benefit attributable to employment of a spouse occurring after the determination date is marital property.

(2) A deferred employment benefit attributable to employment of a spouse occurring during marriage 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 the multiplication of 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 the employment. Unless provided otherwise in a decree, marital property agreement or written consent, a mixed property deferred employment benefit shall be valued as of a dissolution or an employe spouse's death.

(3) Ownership or disposition provisions of a deferred employment benefit plan which conflict with subs. (1) and (2) are ineffective between spouses or former spouses or between a surviving spouse and a person claiming under a deceased spouse's disposition at death.

(4) If a deferred employment benefit plan administrator makes payments or takes actions in accordance with the plan and the administrator's records, the administrator is not liable because of those payments or actions.

(5) The marital property interest of the nonemploye spouse in a deferred employment benefit plan terminates at the death of the nonemploye spouse if he or she predeceases the employe spouse.

766.63 Mixed property. (1) Except as provided otherwise in ss. 766.61 and 766.62, mixing marital property with property having any other classification reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced.

(2) Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse's individual property creates marital property attributable to that application if both of the following apply:

(a) Reasonable compensation is not received for the application.

(b) Substantial appreciation of the individual property results from the application.

766.70 Interspousal remedies. (1) A spouse has a claim against the other spouse for breach of the duty of good faith imposed by s. 766.15 resulting in damage to the claimant spouse's present undivided 50% interest in marital property. Except as otherwise pro-

vided in s. 766.53 (2) no spouse may commence an action under this subsection later than 3 years after acquiring actual knowledge of the facts giving rise to the claim.

(2) A court may order an accounting of the spouses' property and obligations and may determine rights of ownership in, beneficial enjoyment of or access to marital property and the classification of all property of the spouses.

(3) A court may order the name of a spouse added to marital property or to a document evidencing ownership of marital property held in the name of the other spouse alone except with respect to any of the following:

(a) An interest in a partnership held by the other spouse as a general partner.

(b) An interest in a professional corporation, professional association or similar entity held by the other spouse as a stockholder or member.

(c) An asset of an unincorporated business if the other spouse is the only one of the spouses involved in operating or managing the business.

(d) A corporation, the stock of which is not publicly traded, if the other spouse is an employe of the corporation. Under this paragraph, stock of a corporation is publicly traded if both of the following apply:

1. The stock is traded on a national stock exchange or quoted on the national association of securities dealers automated quotations system.

2. The employes, officers and directors of the corporation own, in the aggregate, less than 10% in value of the outstanding shares of the stock in the corporation.

(e) Any other property if the addition would adversely affect the rights of a 3rd person.

(4) A spouse may request the court to order a temporary or permanent limitation or termination of some or all of the other spouse's management and control rights in marital property or a change in classification of marital property if the marital property has been or is likely to be substantially injured by the other spouse's gross mismanagement, waste or absence. A spouse requesting relief under this subsection may request that all obligations contracted for or incurred after the court order are the obligations of the spouse who contracted for or incurred them and that the other spouse is not liable for them. A spouse may request the court to divide the obligations of the spouses existing as of the date of request after consideration of the nature of the obligations as provided in this chapter and the factors specified in ss. 767.255 and 767.26, except that this division may not affect any right or interest of a 3rd party created before entry of the order. A spouse may also request the court to declare that any property acquired by either spouse is the individual property of the acquiring spouse. The court may order any action under this subsection subject to any equitable terms and conditions. The court may name one spouse the sole manager of the marital property or may appoint a conservator or guardian under ch. 880 for one spouse to protect the interest of that spouse. This subsection does not apply to any property described in sub. (3) (a) to (e).

(5) When marital property is levied upon for satisfaction of an obligation other than an obligation under s. 766.55 (2) (b), the nonobligated spouse may request the court to order that he or she receive as individual property marital property equal in value to that portion taken to meet the obligations of the obligated spouse, subject to the rights of any 3rd party who relied upon the availability of the marital property to satisfy any obligation under s. 766.55 (2) (b) and subject to equitable considerations. No person may bring an action under this subsection later than one year after the date of levy.

(7) (a) If a deposit is made on or after the effective date of this chapter (1983), a surviving spouse who is not a party to a multiple-party account may recover from any surviving party to a multiple-party account of which the deceased spouse was a party, from any surviving original payee of a P.O.D. account of which the deceased spouse was an original payee or from any P.O.D. beneficiary of a P.O.D. account of which the de-

ceased spouse was the only original payee, an amount equal to 50% of that portion of the sum on deposit which the surviving party or original payee could withdraw immediately after the death of the deceased spouse or an amount equal to 50% of that portion of the sums on deposit which was paid to that P.O.D. beneficiary if the surviving spouse establishes that the sums were marital property of the decedent spouse and no consideration was received by the decedent spouse. If a surviving spouse only proves that a portion of the sums in the account were the marital property of the decedent spouse for which no consideration was received, recovery is limited to 50% of those sums which were marital property.

(b) In addition to the remedy under par. (a), remedies relating to multiple-party accounts may be sought under ch. 705.

(8) (a) A surviving spouse may recover from the beneficiary under a life insurance policy or a deferred employment benefit plan covered by s. 766.61 or 766.62 his or her marital property interest in the policy or plan.

(b) No action for recovery under this subsection may be commenced later than 90 days after receipt of notice by the surviving spouse under s. 857.35 or later than 90 days after discovery by the surviving spouse of the existence of the life insurance policy or deferred employment benefit, whichever occurs earlier.

(c) Within 90 days after the earlier of either the receipt of the inventory listing any life insurance policy or deferred employment benefit plan covered by s. 766.61 or 766.62, or the discovery of the existence of such a policy or plan, the surviving spouse may purchase the decedent's interest in the policy or plan from the decedent's estate at the interest's fair market value at the date of death, if all or part of the policy or plan is included in the decedent spouse's estate.

(9) With respect to property owned in joint tenancy or tenancy in common by one spouse and a 3rd party, a right of reimbursement exists as follows:

(a) If a spouse acquired an interest in property as a joint tenant or tenant in common with his or her individual property, the spouse of the tenant has a right of reimbursement against any other joint tenant or tenant in common for 50% of the appreciation of the property attributable to the application to the property of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity of either spouse during the marriage, if reasonable compensation for the application was not received by either spouse and if substantial appreciation of the property resulted from the application.

(b) If a spouse acquired an interest in property as a joint tenant or tenant in common all or in part with marital property, the spouse of the tenant has a right of reimbursement against any other joint tenant or tenant in common for 50% of the appreciation of the property attributable to the contribution of marital property and for 50% of the appreciation of the property attributable to the application to the property of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity of either spouse during the marriage, if reasonable compensation for the contribution or application was not received by either spouse and if substantial appreciation resulted from the contribution or application.

(c) If the spouse entitled to reimbursement under this subsection predeceases the tenant spouse, no action to enforce a claim may be commenced later than 6 months after the decedent's death.

766.73 Invalid marriages. If a marriage is invalidated by a decree, a court may apply so much of this chapter to the property of the parties to the invalid marriage as is necessary to avoid an inequitable result.

766.75 Treatment of certain property at dissolution. Except as provided in s. 766.73:

(1) In a dissolution, all property then owned by either or both spouses which was acquired during marriage and before the determination date and which would have been marital property under this chapter if acquired after the determination date shall be treated as if it were marital property.

(3) After a dissolution each former spouse owns an undivided 50% interest in the former marital property as a tenant in common, except as provided otherwise in a decree or written consent.

(4) In an action for legal separation, the court may set forth in a decree the extent to which property acquired by the spouses after the legal separation is marital property and the responsibility of each spouse for obligations incurred after the legal separation.

766.77 Treatment of certain property at death of spouse. (1) Except as provided in sub. (2), at the death of a spouse domiciled in this state all property then owned by the spouse which was acquired during marriage and before the determination date and which would have been marital property under this chapter if acquired after the determination date shall be treated as if it were marital property.

(2) A surviving spouse may disclaim all or part of his or her interest in property under this section as provided in s. 853.40.

766.90 Agreements preserved. (1) **EXISTING JOINT TENANCIES, TENANCIES IN COMMON AND JOINT ACCOUNTS.** Property which is acquired by a spouse or by both spouses in joint tenancy or tenancy in common or property acquired as a joint account subject to ch. 705, prior to the effective date of this chapter (1983), is classified as provided in s. 766.31. Income from this property accruing on or after the effective date of this chapter (1983), is subject to this chapter. Appreciation of this property occurring on or after the effective date of this chapter (1983), is subject to the right of reimbursement under s. 766.70 (9).

(2) **BUY-SELL AGREEMENTS.** Any agreement entered into by a spouse imposing restrictions on the transferability of property held by the parties to the agreement and providing for the disposition of that property upon a specified event, including but not limited to the death, disability or retirement of an owner, which is executed prior to the effective date of this chapter (1983), and is not amended on or after the effective date of this chapter (1983), so as to create a material change not contemplated by the agreement is controlled by the law in effect at the time it is executed. If such a material change is made in the agreement, the agreement is controlled by the law in effect at the time the change is made.

(3) **TRANSACTIONS OF GUARANTY, INDEMNITY OR SURETYSHIP.** Any guaranty or contract of indemnity or surety executed by a person prior to the effective date of this chapter (1983), is controlled by the law in effect at the time it is executed unless it is amended on or after the effective date of this chapter (1983), so as to create a material change not contemplated by the guaranty or contract. If such a material change is made in the guaranty or contract, the guaranty or contract is controlled by the law in effect at the time the change is made.

766.95 Rules of construction. Unless displaced by this chapter, the principles of law and equity supplement its provisions.

766.96 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

766.97 Equal rights; common law disabilities.

(2) Nothing in this chapter revives the common law disabilities on a woman's right to own, manage, inherit, transfer or receive gifts of property in her own name, to enter into contracts in her own name or to institute civil actions in her own name. Except as otherwise provided in this chapter and in other sections of the statutes controlling marital property or the individual property of spouses, either spouse has the right to own and

exclusively manage his or her individual property, enter into contracts with 3rd parties or with his or her spouse, institute and defend civil actions in his or her name and maintain an action against his or her spouse for damages resulting from that spouse's intentional act or negligence.

(3) The common law rights of a spouse to compel the domestic and sexual services of the other spouse are abolished. Nothing in this subsection affects a spouse's common law right to consortium or society and companionship.

SECTION 48. 766.15 (exc. 766.15 (title)) of the statutes is renumbered 766.97 (1) and amended to read:

766.97 (1) Women and men shall have the same rights and privileges under the law in the exercise of suffrage, freedom of contract, choice of residence ~~for voting purposes~~, jury service, holding office, holding and conveying property, care and custody of children and in all other respects. The various courts, and executive and administrative officers shall construe the statutes so that words importing one gender extend and may be applied to ~~any~~ either gender consistent with the manifest intent of the legislature. The courts, and executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this ~~section~~ subsection.

SECTION 49. 766.15 (title) of the statutes is repealed.

SECTION 50. 767.255 (5e) of the statutes is created to read:

767.255 (5e) Whether equity requires reimbursement of one spouse by the other because of certain transactions during the marriage.

SECTION 51. 767.36 of the statutes is repealed.

SECTION 52. 815.19 (2) of the statutes is amended to read:

815.19 (2) If the property seized is an automobile which is appraised and can be sold for more than \$1,000 or if the property seized is a tractor used in farming operations which is appraised and can be sold for more than \$1,500, the officer may sell such automobile or tractor and out of the proceeds of such sale ~~he~~ the officer shall pay to the debtor or ~~his wife~~ the debtor's spouse the exempted value of such automobile or tractor. The balance of the proceeds of such sale shall be applied on the execution or attachment.

SECTION 53. 815.20 (1) of the statutes is amended to read:

815.20 (1) An exempt homestead as defined in s. 990.01 (14) selected by a resident owner and occupied by him or her shall be exempt from execution, from the lien of every judgment and from liability for the debts of ~~such~~ the owner to the amount of \$25,000, except mortgages, laborers', mechanics' and purchase money liens and taxes and except as otherwise provided. ~~Such~~ The exemption shall not be impaired by temporary removal with the intention to reoccupy the premises as a homestead nor by the sale ~~thereof~~ of the homestead, but shall extend to the proceeds derived from ~~such~~ the sale to an amount not exceeding \$25,000, while held, with the intention to procure another homestead ~~there-~~ with with the proceeds, for 2 years. ~~Such~~ The exemption extends to land owned by husband and wife jointly or in common or as marital property, and when they reside in the same household may be claimed by either or may be divided in any proportion between them, but ~~in no event shall~~ the exemption may not exceed \$25,000 for ~~such~~ the household. ~~In the event~~ If the husband and wife fail to agree on the division of exemption, the exemption shall be divided between them by the court in which the first judgment was taken. ~~Such~~ The exemption extends to the interest therein of tenants in common, having a homestead thereon with the consent of the cotenants, and to any estate less than a fee.

SECTION 54. 815.56 of the statutes is amended to read:

815.56 Sheriff's deed, who grantee if purchaser dead. In case the person who would be entitled to a deed of real estate sold on execution shall die previous to the delivery of such deed the sheriff shall execute a deed to the person's executors or administrators. The real estate so conveyed shall be held in trust for the use of the heirs or devisees of such deceased person, ~~subject to the dower of the surviving spouse,~~ but may be sold for the payment of debts in the same manner as lands whereof the person died seized.

SECTION 55. 840.01 of the statutes is amended to read:

840.01 Definition of interest in real property. As used in chs. 840 to 846 "interest in real property" includes estates in, powers (as provided in ch. 702) over, and all present and future rights to, title to, or interests in real property, including, without limitation by enumeration, security interests and liens on land, easements, profits, rights of appointees under powers, rights under covenants running with the land, powers of termination, ~~dower, curtesy and homestead rights;~~ the interest may be such as was formerly designated legal or equitable; the interest may be surface, subsurface, suprasurface, riparian or littoral; but "interest" does not include interests held only as a member of the public nor does it include licenses.

SECTION 56. 851.55 (3m) of the statutes is created to read:

851.55 (3m) If a husband and wife die leaving marital property and there is not sufficient evidence that they died otherwise than simultaneously, except as provided in sub. (4) 50% of the marital property shall be distributed as if the husband had survived and 50% as if the wife had survived, and each 50% shall be distributed as if it were the individual property of the person deemed to survive.

SECTION 57. 851.55 (4) of the statutes is amended to read:

851.55 (4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is ~~no~~ not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. If the policy is the marital property of the insured and of the insured's spouse and there is no alternative beneficiary except the estate or the personal representative of the estate, the proceeds shall be distributed as marital property under sub. (3m).

SECTION 58. 851.61 of the statutes is repealed.

SECTION 59. 852.01 (1) (a) 1 of the statutes is amended to read:

852.01 (1) (a) 1. If there are no surviving issue of the decedent, or if the surviving issue are all issue of the surviving spouse and the decedent, the entire estate;

SECTION 60. 852.01 (1) (a) 2 of the statutes is repealed.

SECTION 61. 852.01 (1) (a) 3 of the statutes is renumbered 852.01 (1) (a) 2 and amended to read:

852.01 (1) (a) 2. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the individual property estate ~~if there is only one surviving child and no issue of a deceased child, or if only the issue of one deceased child survives, and in other cases one third of the estate.~~

SECTION 62. 853.11 (2) (b) of the statutes is amended to read:

853.11 (2) (b) Testator and the spouse have entered into a contract before or after marriage, which complies with ch. 766 and which makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator.

SECTION 63. 853.15 (1) of the statutes is amended to read:

853.15 (1) NECESSITY FOR ELECTION. If a will gives a bequest or devise to one beneficiary and also clearly purports to give to another beneficiary a property interest which does not pass under the will but belongs to the first beneficiary by right of ownership,

survivorship, beneficiary designation or otherwise, the first beneficiary must elect either to take under the will and transfer his property interest in accordance with the will, or to retain his property interest and not take under the will. If he elects not to take under the will, the bequest or devise given him under the will is to be assigned by the court to the other beneficiary in lieu of the property interest which does not pass under the will. But this section does not require an election in any case where the property interest belongs to the first beneficiary by reason of transfer or beneficiary designation made by the decedent after the execution of the will. ~~This section does not apply to the elective right of the surviving spouse under s. 861.05.~~

SECTION 64. 853.18 (1) of the statutes is amended to read:

853.18 (1) The Except as otherwise provided in 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, ~~or the 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, ~~shall not be~~ 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 ~~such that~~ designation or assignment is revocable or the rights of ~~such that~~ beneficiary, payee, owner or assignee are otherwise subject to defeasance.

SECTION 65. 853.40 (2) (a) of the statutes is amended to read:

853.40 (2) (a) *In general.* A person who is an heir, person succeeding to a disclaimed intestate interest, beneficiary under a will, person succeeding to a disclaimed interest created by will, donee of a power created by will, appointee under a power exercised by will ~~or~~, taker in default under a power created by will or person succeeding to an interest under s. 766.77, may disclaim any property or interest in property, including contingent or future interests or the right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

SECTION 66. 857.01 of the statutes is amended to read:

857.01 Title in personal representative. Upon his or her letters being issued by the court, the personal representative has title to all property of the decedent. The personal representative may petition the court for an order determining the classification of property under ch. 766, and for other equitable relief necessary for management and control of the marital property during the administration of the estate. The court may make any decree under ch. 766, including a decree that the property be titled in accordance with its classification, to assist the personal representative in managing and controlling the marital property and the decedent's property other than marital property during administration of the estate.

SECTION 67. 857.04 of the statutes is created to read:

857.04 Distribution of marital and other expenses. (1) Except as provided in sub. (2), the personal representative shall pay expenses of administration out of the decedent's interests in marital property and in property other than marital property on a prorated basis according to the value of those interests.

(2) To the extent possible, the personal representative shall pay special expenses attributable to the management and control of marital property from the marital property generating the expenses, and special expenses attributable to the management and control of the decedent's property other than marital property from the other property generating the expenses.

SECTION 68. 857.35 of the statutes is created to read:

857.35 Notification of spouse. If a personal representative who is not a surviving spouse becomes aware that any beneficiary other than the surviving spouse is designated to receive more than 50% of the proceeds of any life insurance policy or deferred employment benefit plan, the personal representative shall give the surviving spouse written information sufficient to identify the policy or plan and any beneficiary thereof. A surviving spouse may recover life insurance proceeds and deferred employment benefits under s. 766.70 (8).

SECTION 69. 858.01 of the statutes is amended to read:

858.01 Inventory must be filed by personal representative. Except as provided by s. 865.11, the personal representative, within a reasonable time but no later than 6 months after appointment unless the court has by order extended or shortened the time, shall file an inventory of all property owned by the decedent. The inventory when filed shall show ~~the value of all property~~, as of the date of the decedent's death, the value of all property, its classification under ch. 766 and the type and amount of any existing obligation relating to any item of property. If a special administrator or personal representative has filed an inventory, no personal representative who is later appointed need file a further inventory unless additional property is found or the court orders otherwise.

SECTION 70. 859.18 of the statutes is created to read:

859.18 Classification of claim as marital or other. Except as provided in s. 859.25 (3) (a), if an estate consists partly of marital property and partly of other property, for the purposes of this chapter the personal representative shall classify any claim described in s. 766.55 (2) (a) or (b) as a marital obligation and any claim described in s. 766.55 (2) (c) or (d) as an obligation other than a marital obligation. Classification may make certain property unavailable to satisfy an obligation. A marital obligation is payable out of all marital property. An obligation other than a marital obligation is payable out of the decedent's property other than marital property and out of the decedent's interest in marital property, in that order. If the personal representative does not classify an allowed claim or, within 60 days after a claim is filed, notify the claimant of the classification, the claim is payable out of all marital property and all of the decedent's property other than marital property.

SECTION 71. 859.25 (title) of the statutes is amended to read:

859.25 (title) Setting priority of and apportioning payment of claims and allowances.

SECTION 72. 859.25 (3) of the statutes is created to read:

859.25 (3) MARITAL AND OTHER CLAIMS. (a) No personal representative may classify, under s. 859.18, the items listed in sub. (1) (a) to (d) and (g).

(b) If an estate consists partly of marital property and partly of other property, the personal representative shall pay:

1. The claims and allowances under sub. (1) (a) to (d) and (g) out of the decedent's interests in marital property and in property other than marital property on a prorated basis according to the value of those interests.

2. The claims under sub. (1) (e), (f) and (h) out of the property available under s. 859.18 based upon whether the obligation is marital or other than marital.

(c) If there are insufficient funds available under s. 859.18 to pay all obligations listed under sub. (1), a claimant may proceed under s. 859.33 to satisfy a claim from property which would have been available under s. 766.55 but for the decedent's death.

SECTION 73. 859.33 of the statutes is amended to read:

859.33 Contest of claims; procedure. (1) **HOW CONTEST INITIATED.** The following persons may contest a claim or the consequences of a classification under s. 859.18, or assert an offset or counterclaim in court: the personal representative, a guardian ad litem or a person interested who has the approval of the court. They may do so only by

mailing a copy of the objection, offset or counterclaim to the claimant or personally serving the same upon the claimant and filing the same with the court. The objection, offset or counterclaim may be served at any time prior to entry of judgment on the claim, but if a copy of the claim has been served under s. 859.01 (2) upon the personal representative or the attorney for the estate, the objection, offset or counterclaim shall be served upon or mailed to the claimant and filed with the court within 60 days after the last date for filing claims. The personal representative shall not be obligated to assert any offset or counterclaim in court and may, if he or she deems it to be in the best interests of the estate, assert the offset or counterclaim in any separate action otherwise authorized by law outside the court proceedings. Any offset or counterclaim so asserted shall be deemed denied by the original claimant.

(2) PROCEDURE. If any claim, classification consequences, offset or counterclaim is contested, the court may require the issues to be made definite, fix a date for pretrial conference and direct the manner in which pleadings, if any, shall be exchanged. The court shall set a time for trial upon its own motion or upon motion of any party.

SECTION 74. Subchapter I (title) of chapter 861 of the statutes is amended to read:

CHAPTER 861
SUBCHAPTER I
INTEREST IN MARITAL PROPERTY
(to precede s. 861.01)

SECTION 75. 861.01 of the statutes is created to read:

861.01 Ownership of marital property at death. (1) SURVIVING SPOUSE'S 50% INTEREST IN MARITAL PROPERTY. Upon the death of either spouse, the surviving spouse retains his or her undivided 50% interest in each item of marital property.

(2) INTEREST OF A 3RD PARTY IN MARITAL PROPERTY. A 3rd party who is a successor in interest to all or part of the decedent's 50% interest in marital property is a tenant in common with the surviving spouse.

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

SECTION 76. 861.03 of the statutes is repealed.

SECTION 77. 861.05 of the statutes is repealed.

SECTION 78. 861.07 of the statutes is repealed.

SECTION 79. 861.11 of the statutes is repealed.

SECTION 80. 861.13 of the statutes is repealed.

SECTION 81. 861.15 of the statutes is repealed.

SECTION 82. 861.17 (title), (1) and (3) of the statutes are amended to read:

861.17 (title) Rights in property transferred in fraud of surviving spouse. (1) Nothing in this chapter precludes a court in an equitable proceeding from subjecting to the rights of the surviving spouse under ch. 852, this chapter and s. 766.77 any property arrangement made by the decedent in fraud of those rights. A property arrangement in fraud of the rights of the surviving spouse means any any of the following:

(a) Any transfer or acquisition of property, regardless of the form or type of property rights involved, made by the decedent during marriage or in anticipation of marriage for the primary purpose of ~~removing the property from the probate estate in order to defeat~~ defeating the rights of the surviving spouse under ch. 852, this chapter and s. 766.77.

(3) If the spouse is successful in an action to reach fraudulent property arrangements, recovery is limited to ~~one third of the total of the net probate estate as defined in s. 861.05 (1) and the fraudulently arranged property, reduced by any property received out of the probate estate (whether by intestate succession, election, or the terms of the will) and any property passing to the spouse under the fraudulent arrangement to the extent that such property would have reduced an elective share under s. 861.05 (1) if the property had passed by will. Failure of the spouse to elect against a will within the time allowed for election by this chapter does not bar the spouse from maintaining an action~~ the share the spouse would receive under ch. 852, this chapter and s. 766.77. Other rules of this chapter apply so far as possible. ~~The suit may be barred if election is barred under s. 861.07. Recovery will forfeit~~ forfeits any power of appointment which the surviving spouse possesses over the remaining portion of the fraudulently arranged property, except a special power; and a power to pay over or apply principal or income may be exercised as to the property only as a similar power under a will could be exercised under ~~s. 861.05 (2).~~

SECTION 83. 861.17 (1) (b) and (3m) of the statutes are created to read:

861.17 (1) (b) Any breach of the good faith duty imposed by s. 766.15 made for the primary purpose of defeating the rights of the surviving spouse in or to marital property.

(3m) If the spouse is successful in an action to reach fraudulent property arrangements involving marital property, recovery is limited to the surviving spouse's interest in the marital property. Other rules of this chapter apply so far as possible. Recovery forfeits any power of appointment which the surviving spouse possesses over the remaining portion of the fraudulently arranged marital property, except a special power.

SECTION 84. 861.35 of the statutes is amended to read:

861.35 (title) Special allowance for support of spouse and support and education of minor children. (1) ~~If the decedent is survived by a spouse or by minor children, the court may order an allowance for the support and education of each minor child until he or she reaches a specified age, not to exceed 18, and for the support of the spouse. This allowance may be made whether the estate is testate or intestate; but no. If the decedent is not survived by a spouse, the court also may allot directly to the minor children household furniture, furnishings and appliances. No allowance may be made under this section if~~ the any of the following apply:

(a) The decedent has amply provided for each child and for the spouse by the terms of his or her will and if the estate is sufficient to carry out the terms after payment of all debts and expenses, or if support and education have been provided for by any other means, ~~or.~~

(b) In the case of minor children, if the surviving spouse is legally responsible for support and education and has ample means to provide them in addition to his or her own support. In any case where the decedent is not survived by a spouse, the court also may allot directly to the minor children household furniture, furnishings and appliances

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

(2) The court may set aside property to provide an allowance and may appoint a trustee to administer the property, subject to the continuing jurisdiction of the court. If a child dies or reaches 18, or if at any time the property held by the trustee is no longer required for the support of the spouse or the support and education of the minor child, ~~or when the child dies or reaches 18,~~ any remaining property is to be distributed by the trustee as directed by the court in accordance with the terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy unpaid claims of the decedent's estate.

(3) In making ~~allowances~~ an allowance under this section, the court ~~must take into account~~ shall consider the effect on claims under s. 859.25 and shall balance the needs of the spouse or minor child against the nature of the creditors' claims in setting the amount allowed hereunder. The court shall also consider the size of the estate, other resources available for support, the existing standard of living and any other factors it considers relevant.

SECTION 85. 861.41 (3) of the statutes is amended to read:

861.41 (3) The assignment of property shall be applied against any right of the surviving spouse to take under the will, or under the intestate succession law, ~~or under the elective share provided by s. 861.05.~~

SECTION 86. 863.11 (1) of the statutes is amended to read:

863.11 (1) GENERAL RULES. Except as provided in sub. (2); and ~~in ss. s. 853.25 and 861.13~~, shares of the distributees abate, without any preference or priority as between real and personal property, in the following order: (a) property not disposed of by the will; (b) residuary bequests; (c) general bequests; (d) specific bequests. A general bequest charged on any specific property or fund is, for purposes of abatement, deemed property specifically bequeathed to the extent of the value of the thing on which it is charged. Upon the failure or insufficiency of the thing on which it is charged, it is deemed a general bequest to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of that property each of the beneficiaries would have received had full distribution of that property been made in accordance with the terms of the will.

SECTION 87. 865.201 of the statutes is created to read:

865.201 Confirmation of survivorship interest in marital property. (1) As an alternative to s. 867.046 the personal representative may file with the probate registrar a verified statement describing property in which the decedent had a marital property interest to which a right of survivorship was added by an agreement under s. 766.58 (3) (f) or 766.60, including the recording data, if any, of the document creating the interest in marital property and the right of survivorship. Valuations need not be set forth in the statement.

(2) Upon filing under sub. (1), the statement constitutes prima facie evidence of the facts recited and evidences the confirmation of the surviving spouse's interest in the property listed, with the same effect as if a certificate had been issued by the court under s. 867.046. If the statement describes an interest in real property or a debt secured by an interest in real property, the personal representative may file a certified copy or duplicate original of the statement in the office of the register of deeds in each county in this state in which real property is located.

SECTION 88. 867.046 of the statutes is created to read:

867.046 Summary confirmation of survivorship interest in marital property. (1) UPON DEATH; GENERALLY. If a domiciliary of this state dies who immediately prior to death had a marital property interest, or if a person not domiciled in this state dies having a marital interest in property in this state, upon petition of a person having a right of survivorship in the property because of an agreement under s. 766.58 (3) (f) or 766.60 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 of the decedent's interest in the marital 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 certifi-

cate in the office of the register of deeds in each county in this state in which the real property is located.

(2) **UPON DEATH; REAL PROPERTY, SAVINGS AND CHECKING ACCOUNTS, STOCKS AND BONDS.** As an alternative to sub. (1), upon the death of any person having a marital property interest in any real property or in any savings or checking account or any stock certificate or bond, a surviving person having a right of survivorship in the property because of a marital property agreement under s. 766.58 (3) (f) or 766.60 may obtain evidence of the termination of that interest of the decedent by providing to the register of deeds of the county in which the property is located certified copies of the agreement and the death certificate for the decedent and by providing, in triplicate, 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 surviving person.

(b) The date of decedent's death.

(c) The serial number of any stock certificate or bond and its value on the date of decedent's death.

(d) The name and post-office address of any bank, savings and loan association and credit union in which the decedent and the person had a savings account, the account number and the balance on the date of decedent's death.

(e) The name and post-office address of any bank in which the decedent and the person had a checking account, the account number and the balance on the date of decedent's death.

(f) The total value of pars. (c), (d) and (e).

(g) The assessed value of the real property for the immediately preceding year as determined from the tax bill, receipt or other records.

(h) Either of the following:

1. Recording data from the deed creating the marital property interest.

2. The deed creating the marital property interest, from which the register of deeds shall copy the recording data onto the application.

(3) **COMPLETION OF APPLICATION.** The register of deeds shall complete the application by entering the full value of the real property as determined from sub. (2) (g) or other records. The register of deeds or a notary public shall complete a statement at the foot of the application, declaring that the person appeared before him or her and verified, under oath, the correctness of the information required by sub. (2).

(4) **DELIVERY AND RECORDING OF APPLICATION.** The register of deeds shall mail or deliver a copy of the application to the department of revenue and to the circuit court for the county of residence of the decedent, and shall record the original application, certifying on it the mailing or delivery.

(5) **RECORDING; TERMINATION OF MARITAL PROPERTY INTEREST.** Upon the recording, the application constitutes prima facie evidence of the facts recited and constitutes the termination of the marital 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) **APPLICATION FORM.** The department of revenue shall prepare and furnish the register of deeds and the public with adequate supplies of the application form described in sub. (2).

SECTION 89. 880.173 of the statutes is created to read:

880.173 Guardian or conservator for married person. A guardian or conservator appointed under this chapter for a married person may consent to or join in any transaction with that person's spouse for which consent or joinder of both spouses is required under ch. 766.

SECTION 90. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) REVENUE.

(a) *Marital property.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.431 (intro.)	none	867.046 (6)

SECTION 91. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
71.09 (13)(a), (b) and (d)	sub. (7), (11), (12) or (12m)	sub. (7), (7m), (11), (12) or (12m)
71.09 (13)(cm), as affected by 1983 Wis. Act 27	sub. (7), (11), (12), (12c), (12m), (12r), (12rf) or (12t)	sub. (7), (7m), (11), (12), (12c), (12m), (12r), (12rf) or (12t)

SECTION 92. Initial applicability. (1) **INCOME TAXES.** The treatment of sections 71.02 (2) (f) and (gp) 6, 71.03 (7), 71.05 (1) (a) 25, (b) 8, (g) and (k), 71.08 (1), 71.09 (4) (a), (6p) (d) 2 and (7m), 71.10 (19), 71.11 (2), 71.20 (2m), 71.21 (20), 71.53 (1) (c) and 71.65 (1) (fm) of the statutes by this act first applies to taxable year 1985 if this act is published in 1983 or to taxable year 1986 if this act is published in 1984.

(2) **INHERITANCE TAXES.** The treatment of section 72.16 (4) of the statutes by this act applies to transfers on account of deaths occurring on or after the effective date of this subsection.

(3) **GIFT TAXES.** The treatment of section 72.82 (1) (b) of the statutes by this act applies to transfers occurring on or after the effective date of this subsection.

(4) **PROPERTY DIVISION.** The treatment of section 767.255 (5e) of the statutes by this act applies to actions for annulment, divorce, legal separation or property division commenced on or after the effective date of this subsection.

(5) **INTESTATE SUCCESSION.** The treatment of section 852.01 (1) (a) 1, 2 and 3 of the statutes by this act applies to deaths occurring on or after the effective date of this subsection.

(6) **ELECTIVE SHARE AND MARITAL PROPERTY INTEREST.** The treatment of sections 72.01 (13), 178.21 (3) (e), 706.09 (1) (e), 767.36, 815.56, 840.01, 853.15 (1), 861.01, 861.03, 861.05, 861.07, 861.11 861.13, 861.15, 861.17 (title), (1) (intro.) and (b), (3) and (3m), 861.41 (3) and 863.11 (1) and subchapter I (title) of chapter 861 of the statutes by this act applies to deaths occurring on or after the effective date of this subsection.

SECTION 93. Effective date. This act takes effect on the 2nd January 1 commencing after the date of publication.