

## CHAPTER 766

## PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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NOTE: Chapter 766 as shown here was created by 1983 Wis. Act 186 eff. 1-1-86. Chapter 766, "Property Rights of Married Women" is effective until 1-1-86 and is shown in smaller type following this chapter.

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

**History:** 1983 a. 186

A brief overview: The new Wisconsin marital property act. Weisberger and Wilcox. WBB July 1984.

The marital property law WBB July 1984.

**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 January 1, 1986.

(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

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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.

History: 1983 a 186

**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).

History: 1983 a 186

**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.

History: 1983 a 186

**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 nonemployed spouse in a deferred employment benefit plan terminates at the death of the nonemployed spouse if he or she predeceases the employed 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.

History: 1983 a. 186.

**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.

History: 1983 a. 186.

**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.

History: 1983 a. 186.

**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

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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.

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**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 applicant 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.

History: 1983 a 186

**CHAPTER 766 AS EFFECTIVE JANUARY 1, 1986**

**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.

History: 1983 a 186

**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 when- ever 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.

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(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 January 1, 1986, 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.

History: 1983 a 186.

**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 survivorship 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.

History: 1983 a 186.

**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.

History: 1983 a 186.

**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 multi-

plying 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.

History: 1983 a 186.

**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.

History: 1983 a 186.

**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 intellec-

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tual 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.

History: 1983 a 186.

**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 provided 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 January 1, 1986, 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 deceased 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. benefi-



ary 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.

History: 1983 a. 186

**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.

History: 1983 a. 186.

**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.

History: 1983 a. 186.

**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.

History: 1983 a. 186.

**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 January 1, 1986, is classified as provided in s. 766.31. Income from this property accruing on or after January 1, 1986, is subject to this chapter. Appreciation of this property occurring on or after January 1, 1986, 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 January 1, 1986, and is not amended on or after January 1, 1986, 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 January 1, 1986, is controlled by the law in effect at the time it is executed unless it is amended on or after January 1, 1986, 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.

History: 1983 a. 186.

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

History: 1983 a. 186.

**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.

History: 1983 a. 186.

**766.97 Equal rights; common law disabilities.** (1) Women and men have the same rights and privileges under the law in the exercise of suffrage, freedom of contract, choice of residence, 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 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 subsection.

(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.

History: 1983 a. 186 ss. 47, 48.

**NOTE: 1983 Wisconsin Act 186 repeals and recreates this chapter effective 1-1-86. On that date the following sections 766.01 to 766.11 shown in small type are repealed and 766.15 is renumbered 766.97 (1).**

## CHAPTER 766

### PROPERTY RIGHTS OF MARRIED WOMEN

766.01	Realty of	766.075	Liability of wife for injuries to husband.
766.02	Estate of, not subject to husband.	766.08	Husband not liable for antenuptial debts.
766.03	May receive, hold and convey property.	766.09	Insurance of husband, son, etc.
766.05	Individual earnings.	766.10	May be assignee or receiver.
766.06	May transact business in her own name and for her own benefit.	766.11	Married women may assign insurance policy.
766.07	May sue in her own name.	766.15	Equal rights.

**766.01 Realty of.** The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were unmarried.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.02 Estate of, not subject to husband.** The real and personal property of any female who may hereafter marry and which she shall own at the time of marriage and the rents, issues and profits thereof shall not be subject to the disposal of her husband nor be liable for his debts and shall continue her sole and separate property.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.03 May receive, hold and convey property.** Any married female may receive by inheritance or by gift, grant, devise or bequest from any person, hold to her sole and separate use, convey and devise real and personal property and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts. Any conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.05 Individual earnings.** The individual earnings of every married woman, except those accruing from labor performed for her husband, or in his employ or payable by him, shall be her separate property and shall not be subject to her husband's control or liable for his debts.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

See note to art. I, sec. 1, citing Marshfield Clinic v Discher, 105 W (2d) 506, 314 NW (2d) 326 (1982).

**766.06 May transact business in her own name and for her own benefit.** When the husband of any married woman has deserted her or for any cause neglects or refuses to provide for her support or for the support and education of her children, she shall have the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply the same for her own support and the support and education of such children. Such business and earnings shall not be subject to her husband's control or interference or liable for his debts.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.07 May sue in her own name.** Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to recover the earnings secured to her by ss. 766.05 and 766.06, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried. And any married woman may bring and maintain an action in her own name for any injury to her person or character the same as if she were sole. She may also bring and maintain an action in her own name, and for her own benefit, for the alienation and the loss of the affection and society of her husband. Any judgment recovered in any such action shall be the separate property and estate of such married woman. Nothing herein contained shall affect the right of the husband to maintain a separate action for any such injuries as are now provided by law.

**History:** 1979 c. 32 ss. 49, 92 (3); 1983 a. 186.

While a husband can sue for medical expenses and loss of consortium for injuries to his wife, the action is derivative, and the jury must find that she was injured. *Utecht v. Steinagel*, 54 W (2d) 507, 196 NW (2d) 674.

**766.075 Liability of wife for injuries to husband.** A husband shall have and may maintain an action against his wife for the recovery of damages for injuries sustained to his person caused by her wrongful act, neglect or default.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.08 Husband not liable for antenuptial debts.** Marriage does not render the husband liable for the payment of the wife's antenuptial debts; but she shall be liable to all remedies for the recovery of such debts to be enforced against her and her separate property as if she were unmarried.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.09 Insurance of husband, son, etc. (1)** Any married woman may, in her own name or in the name of a third person as her trustee, with the trustee's assent, cause to be insured for her sole use the life of her husband, son or other person for any definite period or for the natural life of such person; and any person, whether her husband or not, effecting any insurance on the person's own life or on the life of another may cause the same to be made payable or assign the policy to a married woman or to any person in trust for her or her benefit; and every such policy, when expressed to be for the benefit of or assigned or made payable to any married woman or any such trustee, shall be the sole and separate property of such married woman and shall inure to her separate use and benefit and that of her children, and in case of her surviving the period or term of such policy the amount of the insurance and all proceeds and avails therefrom shall be payable to her or her trustee for her own use and benefit, free

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from the control, disposition or claims of her husband and of the person effecting or assigning such insurance and from the claims of their respective representatives and creditors and from the claims of her creditors, whether or not the right to change the beneficiary was reserved or permitted by the terms of the policy. The amount of such insurance, proceeds and avails free from the control, disposition or claims of her creditors shall be limited to five thousand dollars. Nothing contained in this section shall be deemed to affect or impair the right of the insured or person effecting such insurance to change the beneficiary of a policy in accordance with the terms thereof, where such right has been reserved.

(2) Provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed. The amount of any such insurance may be made payable, in case of the death of such married woman before the period at which it becomes due, to her children or to their guardian for their use, if under age, or to any other person as shall be provided in the policy. In such case the receipt of such married woman or of such children, or of their guardian if minors, shall discharge the insurance corporation from all further liability therefor. The provisions of this section shall apply to all insurance on lives effected before November 1, 1878.

**History:** 1979 c. 32 s. 49; 1979 c. 176; 1983 a. 186.

**766.10 May be assignee or receiver.** Any married woman may be appointed and act as assignee or receiver, ex-

cept of the estate of her husband or of property in which he is interested, and shall be subject to the same liabilities upon her bond and otherwise and exercise the same powers as other assignees or receivers.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.11 Married women may assign insurance policy.** Any married woman may, with the written consent of the person effecting the insurance, assign, incur or dispose of any right, title or interest she may have in, to or under any policy of life insurance, whether on the life of herself or of her husband, or of any other person, and whether such policy be expressed to be for the benefit of or assigned or made payable to such married woman, or any trustee for her, in the same manner and with like effect as if she were unmarried. The provisions of this section shall apply to all insurance on lives, whether effected before or after March 18, 1903, but shall not apply to assignments thereof made before said date.

**History:** 1979 c. 32 s. 49; 1983 a. 186.

**766.15 Equal rights.** 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, executive and administrative officers shall construe the statutes so that words importing one gender extend and may be applied to any gender consistent with the manifest intent of the legislature. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this section.

**History:** 1975 c. 94; 1979 c. 32 s. 49; 1983 a. 186.