

## CHAPTER 705

### MULTIPLE-PARTY AND AGENCY ACCOUNTS; NONPROBATE TRANSFERS AT DEATH; TRANSFER ON DEATH SECURITY REGISTRATION

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#### SUBCHAPTER I

##### MULTIPLE-PARTY AND AGENCY ACCOUNTS

**705.01 Definitions.** As used in this subchapter, unless the context otherwise requires:

(1) “Account” means a contract of deposit of funds between a depositor and a financial institution, and includes a checking or savings account, certificate of deposit, share account and other like arrangement. All such contracts in which there are 2 or more parties or one or more agents shall be evidenced by a writing signed by each party making a deposit to the account, prior to or within a reasonable time after such deposit, containing language in substantially the form set forth in s. 705.02. For purposes of this subchapter, the term “account” does not include contracts established for the deposit of funds of a partnership, joint venture, or other association for business purposes, accounts controlled by one or more persons as the duly authorized agents or trustees for a corporation, limited liability company, unincorporated association, or charitable or civic organization, or regular fiduciary or trust accounts where the relationship is established other than by deposit agreement.

(2) “Agent” means a person who, by the terms of an account, has a present right, subject to request, to payment therefrom as agent for all of the parties to the account.

(3) “Financial institution” means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan associations and credit unions.

(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 January 1, 1986, by 2 parties who claim to be husband and wife, which is payable on request to either or both of the parties.

(4m) “Marital account” means an account established without the right of survivorship on or after January 1, 1986, 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.

(5) “Net contribution” of a party to a joint account as of any given time is the sum of all deposits made by or for the party, less all withdrawals made by or for the party which have not been paid to or applied for the use of any other party, plus a proportional share of any interest or dividends included in the current balance as adjusted to reflect time of deposit. It includes any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(6) “Party” means a person who, by the terms of an account, has a present right, subject to request, to payment therefrom other than as agent. A beneficiary of a P.O.D. account is a party only after the account becomes payable to the beneficiary by reason of the beneficiary’s surviving the original payee. A minor may be a party to an account, subject to the withdrawal restrictions of s. 705.04 (2). Unless the context indicates otherwise, “party” includes a guardian, conservator, personal representative or assignee, including an attaching creditor, of a party.

(7) “Payment” of sums on deposit includes withdrawal, payment on check or other order of a party, any pledge of sums on deposit by a party and any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge.

(8) “P.O.D. account” means an account payable on request to one person during lifetime and on the person’s 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 with-

drawal or payment on advance notice, for purposes of this subchapter 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.

(11) “Sums on deposit” means the balance payable on a multiple-party account including interest, dividends, and any deposit life insurance proceeds added to the account by reason of the death of a party.

**History:** 1973 c. 291; 1979 c. 110 s. 60 (11); 1983 a. 186; 1989 a. 331; 1993 a. 112, 486.

The definition of “party” in sub. (6) relates only to parties to an account and has nothing to do with the legal standing of named beneficiaries to sue the depositor’s agent for negligence in failing to maintain a payable-on-death account. *Brooks v. Bank of Wisconsin Dells*, 161 Wis. 2d 39, 467 N.W.2d 187 (Ct. App. 1991).

A personal representative is not a “party” to an account held as a “joint account” by the decedent and another who survives; a bank that disburses the funds of the joint account to the personal representative is not entitled to immunity under s. 705.06 (2). *Ixonia State Bank v. Schuelke*, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

A P.O.D. beneficiary must be named in the account records of the financial institution such that the financial institution can adhere to its contract to pay the depositor’s funds to the beneficiary as it was directed upon the depositor’s death. A separate writing not filed by a depositor with a financial institution is ineffective to alter a P.O.D. beneficiary designation under this chapter. *Mueller v. Edwards*, 2017 WI App 79, 378 Wis. 2d 689, 904 N.W.2d 392, 16-2437.

Multiple-Party and Agency Accounts Chapter 705, 1973 Wisconsin Statutes Effective July 1, 1975. Evans. WBB June 1975.

## 705.02 Creation of multiple-party or agency relationship.

(1) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the multiple-party accounts described in this subchapter when conspicuously printed or typewritten immediately above or adjacent to the place for the signatures of the parties to the account:

(a) Joint account: “THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS JOINTLY OWNED BY THE PARTIES NAMED HEREON. UPON THE DEATH OF ANY OF THEM, OWNERSHIP PASSES TO THE SURVIVOR(S).”

(b) P.O.D. account with single party: “THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE PARTY NAMED HEREON. UPON THE DEATH OF SUCH PARTY, OWNERSHIP PASSES TO THE P.O.D. BENEFICIARY(IES) NAMED HEREON.”

(c) P.O.D. account with multiple parties: “THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS JOINTLY OWNED BY THE PARTIES NAMED HEREON. UPON THE DEATH OF ANY OF THEM, OWNERSHIP PASSES TO THE SURVIVOR(S). UPON THE DEATHS OF ALL OF SUCH PARTIES, OWNERSHIP PASSES TO THE P.O.D. BENEFICIARY(IES) NAMED HEREON.”

(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.”

(2) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the agency relationship described in this subchapter when conspicuously printed or typewritten immediately above or adjacent to the place for the designation of the agent or agents, which designation shall be separately subscribed or initialed by all of the parties to the account: “TRANSACTIONS REGARDING THIS ACCOUNT/CER-

TIFICATE OF DEPOSIT MAY BE MADE BY THE AGENT(S) NAMED HEREON. NO PRESENT OR FUTURE OWNERSHIP OR RIGHT OF SURVIVORSHIP IS CONFERRED BY THIS DESIGNATION.” In addition, if such designation makes specific reference to s. 705.05 (3) or otherwise provides that the authority of an agent shall be exercisable notwithstanding the legal disability of any party to the account, or if the designated agent is the spouse of a party, then the authority of such agent shall be governed by s. 705.05 (3).

(3) Any deposit made to an account created on or after July 1, 1975, and within the scope of this subchapter, 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 January 1, 1986, 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 subchapter, with respect to such deposit and all other deposits by the same person, notwithstanding whatever relationships may be established by other depositors.

**History:** 1973 c. 291; 1983 a. 186; 1989 a. 331; 2017 a. 365 s. 111.

An unauthenticated ledger and signature cards bearing the entry “P.O.D.” to the plaintiff were not competent evidence of the decedent’s intent to make a savings and loan account payable on death to the plaintiff. *Bruckner v. Prairie Federal Savings & Loan Ass’n*, 81 Wis. 2d 215, 260 N.W.2d 256 (1977).

When parties to an account execute a signature card containing the language in sub. (1) (a), the law presumes that the language on the signature card governs and expresses the intention to create an account with joint ownership and survivorship rights under ss. 705.03 (1) and 705.04 (1). However, both of those presumptions are rebuttable. *Henke v. Estate of Klawitter*, 2023 WI App 60, 409 Wis. 2d 696, 998 N.W.2d 579, 22-2036.

**705.03 Ownership during lifetime.** Unless there is clear and convincing evidence of a different intent:

(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 parties 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.

(2) A P.O.D. account belongs to the original payee during the original payee’s lifetime and not to the P.O.D. beneficiary or beneficiaries. If 2 or more parties are named as original payees, during their lifetimes rights as between them are governed by sub. (1); and a surviving original payee may revoke or amend the P.O.D. beneficiary designation at will.

(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.

**History:** 1973 c. 291; 1983 a. 186; 1993 a. 486.

Withdrawal of funds from a joint account by either party while both are alive may

not later be subjected to inquiry by the other party's estate. *Wachniak v. Estate of Frank*, 140 Wis. 2d 429, 410 N.W.2d 621 (Ct. App. 1987).

The transfer of separately owned property of one spouse into a joint account in both spouses' names changes the character of the ownership interest of the entire property to marital property. *Lloyd v. Lloyd*, 170 Wis. 2d 240, 487 N.W.2d 647 (Ct. App. 1992).

A guardian steps into the shoes of the ward and cannot prevent another party from withdrawing funds from a joint account. That a guardianship is established does not preclude a joint owner of an account from removing the funds. *Family Services, Inc. v. Gary W.*, 2003 WI App 132, 265 Wis. 2d 681, 666 N.W.2d 84, 02-3139.

A joint checking account established under this section prior to the execution of a power of attorney creates a presumption of donative intent. When an agent acting under a power of attorney transfers funds deposited by the principal from a joint account for the agent's own use, a presumption of fraud is created. When these two conflicting and inconsistent presumptions coexist, the circuit court is free to make a determination based upon the facts and the credibility of the witnesses. Extrinsic evidence may be admissible to determine the intent of the parties. *Russ v. Russ*, 2007 WI 83, 302 Wis. 2d 264, 734 N.W.2d 874, 05-2492.

**705.04 Right of survivorship.** (1) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are 2 or more surviving parties, their ownership interests during lifetime shall remain subject to s. 705.03 (1); and the right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account, on the death of the original payee or the survivor of 2 or more original payees, all of the following apply:

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

(b) If there are 2 or more P.O.D. beneficiaries and they all survive, they are entitled to payment of the sums on deposit in accordance with any written instructions that the owner filed with the financial institution or, if the owner left no written instructions, to payment in equal shares.

(c) If 2 or more persons succeed to ownership of the account, there is no further right of survivorship unless the terms of the account expressly provide for survivorship or for the account's continuance as a joint account.

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

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

(f) Payment may be made to a minor P.O.D. beneficiary only in accordance with a procedure approved under ch. 54.

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

(2g) Notwithstanding subs. (1) and (2), the department of health services may collect, from funds of a decedent that are held by the decedent immediately before death in a joint account or a P.O.D. account, an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, 49.685, or 49.785 that is recoverable under s. 49.682 (2) (a) or (am), or an amount equal to long-term community support services under s. 46.27, 2017 stats., that is recoverable under s. 46.27 (7g) (c) 1., 2017 stats., and that was paid on behalf of the decedent or the decedent's spouse.

(2m) Unless a marital property agreement under s. 766.58 provides otherwise, after deducting all payments and certifications made under s. 404.405 50 percent 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 percent 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.

(3) Subject to s. 853.15, a right of survivorship arising from the express terms of the account or under this section, or a P.O.D. beneficiary designation, cannot be changed by will. Any transfers resulting from the application of this section are not to be considered testamentary dispositions.

(4) As to any deposit made on or after January 1, 1986, a surviving spouse who is not a party to the account may recover under s. 766.70 (6).

**History:** 1973 c. 291; 1983 a. 186; 1985 a. 37 s. 187; 1995 a. 27 ss. 7065 to 7065c, 9126 (19); 1999 a. 9; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 177; 2013 a. 20; 2015 a. 55; 2019 a. 9.

A personal representative is not a "party" to an account held as a "joint account" by the decedent and another who survives; a bank that disburses the funds of the joint account to the personal representative is not entitled to immunity under s. 705.06 (2). *Ixon State Bank v. Schuelke*, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

An annuity that transferred ownership from the owner to a "co-annuitant" on the owner's death was a joint account under sub. (1). A joint account with right of survivorship will defeat a marital agreement that does not make the transfer. *Reichel v. Jung*, 2000 WI App 151, 237 Wis. 2d 853, 616 N.W.2d 118, 99-1211.

To rebut the presumption of survivorship raised by sub. (1), the inquiry turns on the intention for the joint account at the time it was created. However, it does not follow that evidence postdating the creation of the account that expresses the party's post-creation intention is only probative of the party's post-creation intention and is therefore irrelevant to the inquiry. The law of evidence embraces the common sense assumption that mental states, including intentions, can persist over time. Because a party's intention for a joint account may persist after its creation and may manifest in the party's post-creation statements and conduct, post-creation evidence of such manifestations may be relevant. *Henke v. Estate of Klawitter*, 2023 WI App 60, 409 Wis. 2d 696, 998 N.W.2d 579, 22-2036.

P.O.D.s May Thwart Testators' Intent: It's What Mom Wanted. *Devitt*. Wis. Law. Mar. 2013.

**705.05 Designation and powers of agent.** (1) A party to an account, notwithstanding such party's minority, or if the account has multiple parties, all of them acting in concert, may appoint one or more agents for purposes of making withdrawals from the account. The authority of an agent to make withdrawals from an account may be terminated by any party to the account upon written notice to the financial institution, and this shall not preclude a party's liability for wrongful termination of such agency.

(2) The uses and purposes for which withdrawals may be made by an agent to an account shall be governed by agency principles of general application. The application of any sum withdrawn from an account shall only be subject to inquiry by a party to the account, and such party shall have the burden of proving breach of the agency relationship. A minor party may not disaffirm the appointment of an agent, but the period within which the minor party may inquire into the propriety of any withdrawal shall be governed by s. 893.16 or 893.18. Unless there is clear and convincing evidence of a different intent, if the agent is a spouse of a party, the sums so withdrawn may be used, but not by way of limitation, for the support and maintenance of either spouse or any common minor children.

(3) The parties to an account may provide, by the terms of the account or by independent written power of attorney which, if later, shall have precedence over the terms of the account, that the authority conferred upon an agent shall be exercisable notwithstanding any party's legal disability. In such case the authority of the agent is also exercisable notwithstanding later uncertainty as to whether a party is dead or alive. Absent a written direction to the contrary, the foregoing power of withdrawal shall exist without the necessity of written provision if the agent is the spouse of a party, but in such a case funds so withdrawn, the application of



which may be inquired into only as provided in sub. (2), may only be used for the support and maintenance of either spouse and any common minor children. This subsection shall apply to all accounts created prior to and after July 1, 1975.

**History:** 1973 c. 291; 1979 c. 323 s. 33; 1993 a. 486.

**705.06 Protection of financial institutions.** (1) In accordance with the terms of an account, and subject to this subchapter, ch. 112 and the duties prescribed for personal representatives in ch. 72 and unless otherwise ordered by a court of competent jurisdiction:

(a) A financial institution may on request pay any sums on deposit in the account to any party or agent; and the financial institution shall not be required to look into the source of funds received for deposit or the proposed application of any funds withdrawn or requested to be withdrawn.

(b) Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is under legal disability or is deceased at the time the payment is requested.

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

(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 percent of the sums on deposit to the surviving party, and 50 percent of that amount 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.

(2) Payment made under this subchapter discharges the financial institution from all claims for amounts so withdrawn. If the institution has reason to believe that a dispute exists as to the rights of the parties to an account or their successors it may, but shall not be required to, refuse to pay funds in the account to any persons pending instructions from a court, or it may pay the proceeds to a court. An institution may but need not recognize the authority of an agent, other than one with continuing authority under s. 705.05 (3), until it knows of the fact of death or adjudication of incompetence of all parties appointing such agent and has reasonable opportunity to act.

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

**History:** 1973 c. 291; 1983 a. 186; 1987 a. 27; 1989 a. 331; 2005 a. 216.

A personal representative is not a "party" to an account held as a "joint account"

by the decedent and another who survives; a bank that disburses the funds of the joint account to the personal representative is not entitled to immunity under this section. *Ixonia State Bank v. Schuelke*, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

*Joint Bank Accounts in Wisconsin*. O'Flaherty. 53 MLR 118 (1970).

**705.07 Rights of creditors.** (1) Only the creditors of any living party to an account may subject the entire sums on deposit to their claims, as if such sums resulted solely from contributions made by the debtor party. If a joint or P.O.D. account requires the signatures of all of the parties for purposes of withdrawal, such account shall not be subject to the claims of creditors of a debtor party to the extent of the net contributions of the other parties to the account. Such other parties shall have the burden of proving their net contributions by clear and convincing evidence.

(2) For purposes of ch. 242, a debtor party shall be deemed to have made a transfer only at the time some other party withdraws all or part of the sums on deposit, or at the time of the debtor party's death as to sums not previously withdrawn. In the case of a withdrawal while the debtor party is living, the sole grounds for determining any such transfer to be voidable shall be whether the debtor party is or will be thereby rendered insolvent under s. 242.05 (1) or whether the debtor party is engaged or is about to engage in a business or transaction for which the assets remaining in the debtor party's hands after the transfer are unreasonably small under s. 242.04 (1) (b) 1. In the case of a transfer by reason of the death of the debtor party, the sole ground for determining any such transfer to be voidable shall be whether the debtor party's estate subject to administration is insolvent under s. 242.02. For purposes of this subsection, the amount transferred shall be deemed to consist of those assets which the creditors of the debtor party could have made subject to their claims immediately prior to the transfer, less any sums which such creditors could have made so subject to their claims immediately after the transfer.

**History:** 1973 c. 291; 1987 a. 192; 2023 a. 246.

**705.08 Construction.** This subchapter shall be construed in such a manner as to ensure reasonable certainty of legal result for those who establish a multiple-party or agency account.

**History:** 1973 c. 291; 1989 a. 331.

**705.09 Applicability of general transfers at death provisions.** Chapter 854 applies to transfers at death under this subchapter.

**History:** 1997 a. 188.

*Wisconsin's New Probate Code*. Erlanger. Wis. Law. Oct. 1998.

## SUBCHAPTER II

### NONPROBATE TRANSFERS AT DEATH; NONPROBATE TRANSFER OF REAL PROPERTY

**705.10 Nonprobate transfers on death.** (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, online tool, as defined in s. 711.03 (18), deed of gift, marital property agreement, or other written instrument of a similar nature is non-testamentary. This subsection governs a written provision that:

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

(b) Money due or to become due under the instrument ceases

to be payable in the event of death of the promisee or the promisor before payment or demand; or

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

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

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

(4) A transfer under this section does not require confirmation in any procedure under s. 867.01, 867.02, or 867.03 or ch. 856 or 865. A transfer under this section may be confirmed under s. 867.046 (1m) or (2).

**History:** 1989 a. 331; 1997 a. 188; 2005 a. 206 s. 5; 2005 a. 216 s. 35; Stats. 2005 s. 705.10; 2007 a. 97 s. 198; 2015 a. 300.

An annuity is an "other written instrument" under sub. (1). A contractual arrangement that creates a nonprobate transfer of property subject to this section will defeat a marital agreement that does not make the transfer. *Reichel v. Jung*, 2000 WI App 151, 237 Wis. 2d 853, 616 N.W.2d 118, 99-1211.

No provision of this section or s. 766.58 (3) permits parties to ignore ch. 854 or to agree to prohibit court involvement in implementing a marital property agreement. That "Washington Will" provisions permit transfer of property without probate does not mean the legislature allowed parties to agree to no court involvement in implementing transfer of ownership and creating a reliable and public record of transfer. *Maciolek v. City of Milwaukee Employees' Retirement System Annuity & Pension Board*, 2006 WI 10, 288 Wis. 2d 62, 709 N.W.2d 360, 04-1254.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

## 705.15 Nonprobate transfer of real property on death.

(1b) In this section:

(a) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(b) "Sole owner" means the owner of an interest in real property described in sub. (1m) (a) to (c).

(c) "TOD beneficiary" means a person designated as a beneficiary in a document that complies with sub. (2) (a).

(1m) Any of the following interests in real property may be transferred without probate to a designated TOD beneficiary as provided in this section on the death of the sole owner or the last to die of the multiple owners:

(a) An interest in real property that is owned by one individual and is not concurrently owned by any other person.

(b) A fractional interest in real property that is owned by an individual as a tenant in common.

(c) An interest in real property that is owned by a spouse as marital property. This paragraph does not include an interest in real property owned as survivorship marital property.

(d) An interest in real property owned by spouses as survivorship marital property.

(e) An interest in real property owned by 2 or more individuals as joint tenants.

(2) (a) A TOD beneficiary may be designated on a document that includes all of the following:

1. The name of the owner or owners of the interest in real property that will be transferred.

2. The name of the designated TOD beneficiary.

3. That the transfer is effective only upon the death of the owner or owners.

4. If the interest that will be transferred is an interest in real property owned by a spouse as marital property, the signatures of both spouses who have an interest in the marital property.

(b) The designation of a TOD beneficiary may be made by

use of the words "transfer on death" or "pay on death," or the abbreviation "TOD" or "POD," after the name of the owner or owners of the property and before the name of the TOD beneficiary or beneficiaries. The owner or owners may designate one or more persons as a primary TOD beneficiary and may designate one or more persons as a contingent TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the last to die of multiple owners. The designation may be included on the original document that passes the property interest to the owner or owners or may be made at a later time by the sole owner or all then surviving owners by executing and recording another document that designates a TOD beneficiary.

(c) A TOD beneficiary designation is not effective unless the document on which the designation is made, and any fees required to record the document, are submitted for recording to the register of deeds office of the county in which the real property is located before the death of the sole owner or the last to die of multiple owners.

(3) The designation of a TOD beneficiary on a document does not affect ownership of the property until the death of the sole owner or the last to die of multiple owners regardless of whether the document provides otherwise. The designation may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the TOD beneficiary, by executing and recording another document that designates a different TOD beneficiary or no beneficiary. The recording of a document that designates a TOD beneficiary or no beneficiary revokes any designation made in a previously recorded document relating to the same property interest.

(4) On the death of the sole owner or the last to die of multiple owners, ownership of the interest in the real property passes, subject to any lien or encumbrance against the real property, to the designated TOD beneficiary or beneficiaries who survive all owners and to any predeceased beneficiary's issue who would take under s. 854.06 (3). If no TOD beneficiary or predeceased TOD beneficiary's issue who would take under s. 854.06 (3) survives the death of all owners, the interest in the real property passes to the estate of the deceased sole owner or the estate of the last to die of the multiple owners.

(5) A TOD beneficiary's interest in the property on the death of the sole owner or the last to die of multiple owners may be confirmed as provided in s. 863.27, 865.201, or 867.046.

(6) Chapter 854 applies to transfers on death under this section.

(7) The capacity required to designate a TOD beneficiary or to revoke a designation of a TOD beneficiary is the same as the capacity to make or revoke a will under s. 853.01.

(8) Unless previously adjudicated in a formal testacy proceeding or otherwise barred, the claim of any claimant to recover real property transferred to a TOD beneficiary under this section is barred unless, by no later than 120 days after the death of the sole owner or the last to die of multiple owners, a complaint is filed in an action in which the relief demanded may confirm or change interests in the real property transferred under this section and a lis pendens is filed or recorded in each county where any part of the real property is located.

**History:** 2005 a. 206; 2017 a. 332.

## 705.18 Nonprobate transfer of farming implements at death. (1) In this section:

(a) "Conscious presence" means within the range of any of an individual's senses.

(am) "Disinterested witness" means an individual who is not designated as a TOD beneficiary on a document that he or she is acting as a witness to under this section.

(b) 1. “Farm implement” means a tractor or machine, including any associated accessories, attachments, fuel, and repair parts, used exclusively and directly in farming.

2. “Farm implement” does not include personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement to real property, and does not include buildings or improvements to real property, regardless of any contribution that the personal property makes to the production process of any machine and regardless of the extent to which that personal property functions as a machine.

3. For purposes of subd. 2., the following items retain their character as a “farm implement,” regardless of the extent to which they are fastened to, connected to, or built into real property:

- a. Auxiliary power generators.
- b. Bale loaders.
- c. Barn elevators.
- d. Conveyors.
- e. Feed elevators and augers.
- f. Grain dryers and grinders.
- g. Milk coolers.
- h. Milking machines, including piping, pipeline washers, and compressors.
- i. Silo unloaders.
- j. Powered feeders, but not including platforms or troughs constructed from ordinary building materials.

(c) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(d) “TOD beneficiary” means a person designated as a beneficiary in a document that complies with sub. (3) (a).

(2) Any interest in a farm implement may be transferred without probate to a designated TOD beneficiary as provided in this section on the death of the sole owner or the last to die of multiple owners.

(3) (a) A TOD beneficiary may be designated on a document that includes all of the following:

1. The name of the owner or owners of the interest in a farm implement that will be transferred.
2. The name of the designated TOD beneficiary.
3. A statement indicating that the transfer is effective only upon the death of the owner or owners.
4. If the interest that will be transferred is an interest in property owned by a spouse as marital property, the signatures of both spouses who have an interest in the marital property.

(b) The designation of a TOD beneficiary may be made by use of the words “transfer on death” or “pay on death,” or the abbreviation “TOD” or “POD,” after the name of the owner or owners of the property and before the name of the TOD beneficiary or beneficiaries. The owner or owners may designate one or more persons as a primary TOD beneficiary and may designate one or more persons as a contingent TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the last to die of multiple owners. The designation may be included on the original document that passes the property interest to the owner or owners or may be made at a later time by the sole owner or all then surviving owners by executing another document that designates a TOD beneficiary.

(c) A document designating a TOD beneficiary under this

section is not effective unless it is in writing and executed with all of the following formalities:

1. It must be signed by all owners. If an owner is unable to sign, another person may sign for the owner with the owner’s consent and in the owner’s conscious presence.

2. It must be signed by at least 2 witnesses, at least one of whom is a disinterested witness, who signed within a reasonable time after any of the following:

a. The signing of the document designating a TOD beneficiary as provided in subd. 1., in the conscious presence of the witness.

b. The owner’s implicit or explicit acknowledgment of the owner’s signature on the document designating a TOD beneficiary, in the conscious presence of the witness.

c. The owner’s implicit or explicit acknowledgment of the document designating a TOD beneficiary, in the conscious presence of the witness.

3. The 2 witnesses required under subd. 2. may observe the signing or acknowledgment under subd. 2. a. to c. at different times.

4. If there are multiple owners, each signature of an owner must be witnessed by at least 2 witnesses. For purposes of this paragraph, a witness may be a witness for multiple owners.

5. Any person who, at the time of execution of the document designating a TOD beneficiary, would be competent to testify as a witness in court to the facts relating to execution may act as a witness to the document designating a TOD beneficiary. Subsequent incompetency of a witness is not a ground for denying or voiding the TOD beneficiary designation if the execution of the document designating a TOD beneficiary is otherwise satisfactorily proved.

(4) The designation of a TOD beneficiary on a document does not affect ownership of the property until the death of the sole owner or the last to die of multiple owners regardless of whether the document provides otherwise. The designation may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the TOD beneficiary, by executing another document that designates a different TOD beneficiary or no beneficiary. The execution of a document that designates a TOD beneficiary or no beneficiary revokes any designation made in a previously executed document relating to the same property interest.

(5) On the death of the sole owner or the last to die of multiple owners, ownership of the interest in the farm implement passes, subject to any lien or encumbrance against the farm implement, to the designated TOD beneficiary or beneficiaries who survive all owners and to any predeceased beneficiary’s issue who would take under s. 854.06 (3). If no TOD beneficiary or predeceased TOD beneficiary’s issue who would take under s. 854.06 (3) survives the death of all owners, the interest in the farm implement passes to the estate of the deceased sole owner or the estate of the last to die of the multiple owners.

(6) A TOD beneficiary’s interest in the property on the death of the sole owner or the last to die of multiple owners may be confirmed as provided in s. 863.27, 865.201, or 867.046.

(7) Chapter 854 applies to transfers on death under this section.

(8) The capacity required to designate a TOD beneficiary or to revoke a designation of a TOD beneficiary is the same as the capacity to make or revoke a will under s. 853.01.

(9) Unless previously adjudicated in a formal testacy proceeding or otherwise barred, the claim of any claimant to recover a farm implement transferred to a TOD beneficiary under this section is barred unless, by no later than 120 days after the death



of the sole owner or the last to die of multiple owners, a complaint is filed in an action in which the relief demanded may confirm or change interests in the farm implement transferred under this section.

History: 2021 a. 201; s. 35.17 correction in (3) (a) 3.

### SUBCHAPTER III

#### TRANSFER ON DEATH SECURITY REGISTRATION

**705.21 Definitions; transfer on death security registration.** In ss. 705.21 to 705.30:

(2) “Beneficiary form” means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(5) “Devisee” means any person designated in a will to receive a disposition of real or personal property.

(6) “Heir” has the meaning given in s. 851.09.

(7) “Personal representative” has the meaning given in s. 851.23.

(8) “Property” has the meaning given in s. 851.27.

(9) “Register”, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(10) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(11) “Security” means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security and a security account.

(12) “Security account” means any of the following:

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

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

(b) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner’s death.

(13) “State” includes any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

History: 1989 a. 331; 2005 a. 10.

**705.22 Registration in beneficiary form; sole or joint tenancy ownership.** Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the en-

tireties, or as owners of community property held in survivorship form, and not as tenants in common.

History: 1989 a. 331.

**705.23 Registration in beneficiary form; applicable law.** A security may be registered in beneficiary form if the form is authorized by ss. 705.21 to 705.30 or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity’s principal office, the office of its transfer agent or its office making the registration, or by ss. 705.21 to 705.30 or a similar statute of the law of the state listed as the owner’s address at the time of registration. A registration governed by the law of a jurisdiction in which ss. 705.21 to 705.30 or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: 1989 a. 331.

**705.24 Origination of registration in beneficiary form.** A security, whether evidenced by certificate or account, is registered in beneficiary form if the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: 1989 a. 331.

**705.25 Form of registration in beneficiary form.** Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD” or by the words “pay on death” or the abbreviation “POD”, after the name of the registered owner and before the name of a beneficiary.

History: 1989 a. 331.

**705.26 Effect of registration in beneficiary form.** The designation of a TOD beneficiary on a registration in beneficiary form does not affect ownership until the owner’s death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary.

History: 1989 a. 331.

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

History: 1989 a. 331; 2005 a. 216.

**705.28 Protection of registering entity.** (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by ss. 705.21 to 705.30.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented upon death of the deceased owner as provided in ss. 705.21 to 705.30.

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

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

(b) The protections provided in this subchapter do not extend to a reregistration or payment made after a registering entity has received written notice from a claimant to an interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this subchapter. If the registering entity has reason to believe that a dispute exists as to the rights of the parties to a security registered in beneficiary form or their successors, the registering entity may refuse to reregister the security pending instructions from a court.

(4) The protection provided by ss. 705.21 to 705.30 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: 1989 a. 331; 2005 a. 216.

**705.29 Nontestamentary transfer on death.** (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and ss. 705.21 to 705.30 and is not testamentary.

(2) Sections 705.21 to 705.30 do not limit the rights of credi-

tors of security owners against beneficiaries and other transferees under other laws of this state.

History: 1989 a. 331.

### 705.30 Terms, conditions and forms for registration.

(1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registration in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving a problem concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters "LDPS", standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(a) Sole owner — sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(b) Multiple owners — sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(c) Multiple owners — primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown, JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

History: 1989 a. 331.

**705.31 Applicability of general transfers at death provisions.** Chapter 854 applies to transfers at death under this subchapter.

History: 1997 a. 188.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.