CHAPTER 853

WILLS

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Cross−reference: See definitions in ch. 851.

SUBCHAPTER I

GENERAL RULES

853.01 Capacity to make or revoke a will.

Any person of sound mind 18 years of age or older may make and revoke a will.

When the proponent, a confidant of the decedent and the sole beneficiary, actively participated in the procurement, drafting, and execution of the will under highly suspicious circumstances, a presumption of undue influence was raised. In re Estate of Malnar, 73 Wis. 2d 192, 243 N.W.2d 435 (1976).

The "disposition to influence" element of the 4−factor test of undue influence means a willingness to do something wrong or unfair to obtain a share of an estate. The mere fact that a will benefits an alleged influencer does not prove the "coveted−result" element of the test. Elements of testamentary capacity are discussed. In Matter of Estate of Becker, 76 Wis. 2d 336, 251 N.W.2d 431 (1977).

The 4−element test to prove undue influence requires showing: 1) susceptibility to undue influence; 2) opportunity to influence; 3) disposition to influence; and 4) coveted result. Alternatively undue influence may be proved under a two prong test by showing: 1) the existence of a confidential relationship between the testator and favored beneficiary; and 2) suspicious circumstances surrounding making the will. In re Estate of Kamesar, 81 Wis. 2d 151, 259 N.W.2d 733 (1977). See also In re Estate of Taylor, 81 Wis. 2d 687, 260 N.W.2d 803 (1977).

An insane delusion cannot be a ground for disallowance of a will unless it is shown that the delusion materially affected the disposition embodied in the will. In re Estate of Evans, 83 Wis. 2d 259, 265 N.W.2d 529 (1978).

A legal guardianship, in and of itself, does not prove lack of testamentary capacity. In Matter of Estate of Sorensen, 87 Wis. 2d 339, 274 N.W.2d 694 (1979).

Parent−child relationships as a "confidential relationship" under the 2−prong test for undue influence are different than relationships with nonrelatives. In Matter of Estate of Sensenbrenner, 89 Wis. 2d 677, 278 N.W.2d 887 (1979).

A third party, unnamed in a will, has no standing and may not maintain a negligence action against the drafting attorney although extrinsic evidence of the testator's intent is available. Beauchamp v. Kemmeter, 2001 WI App 5, 240 Wis. 2d 733, 625 N.W.2d 297, 00−0470.

The objector must prove lack of testamentary capacity by clear, convincing, and satisfactory evidence. In re Estate of Persha, 2002 WI App 113, 255 Wis. 2d 767, 649 N.W.2d 661, 01−1132.

There is no right to a jury trial in a will contest. In re Estate of Sharpley, 2002 WI App 201, 257 Wis. 2d. 152, 653 N.W.2d 124, 01−2167.

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

853.03 Execution of wills.

Every will in order to be validly executed must be in writing and executed with all of the following formalities:

(1) It must be signed by the testator, by the testator with the assistance of another person with the testator's consent or in the testator's name by another person at the testator's direction and in the testator's conscious presence.

(2) (am) It must be signed by at least 2 witnesses who signed within a reasonable time after any of the following:

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

2. The testator's implicit or explicit acknowledgement of the testator's signature on the will, in the conscious presence of the witness.

3. The testator's implicit or explicit acknowledgement of the will, in the conscious presence of the witness.

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

History: 1993 a. 486; 1997 a. 188; 2005 a. 216.

The requirement of s. 238.06, 1969 stats., that if not signed by the testator, the will must be signed by some person in the testator's presence and by his express direction, is not met by simply taking the testator's hand as an inanimate object and making a mark or signature if the testator fails or is unable to in any manner expressly authorize another to sign for him. Estate of Komarr, 46 Wis. 2d 230, 175 N.W.2d 473 (1970).

NOTE: The preceding case was decided prior to the adoption of 1997 Wis. Act 188, which made extensive revisions to this section.

853.04 Self−proved will.

(1) ONE−STEP PROCEDURE. A will may be simultaneously executed, attested and made self−proved by the affidavit of the testator and witnesses. The affidavit must be made before an officer authorized to administer oaths under the laws of the state in which execution occurs and must be evidenced by the officer's certificate, under official seal, in substantially the following form:

State of ....

County of ....

I, ..., the testator, sign my name to this instrument this .... day of ...., and being first duly sworn, declare to the undersigned authority all of the following:

1. I execute this instrument as my will.

2. I sign this will willingly, or willingly direct another to sign for me.

3. I execute this will as my free and voluntary act for the purposes expressed therein.

4. I am 18 years of age or older, of sound mind and under no constraint or undue influence.

Testator: ....

We, ..., ..., the witnesses, being first duly sworn, sign our names to this instrument and declare to the undersigned authority all of the following:

1. The testator executes this instrument as his or her will.

2. The testator signs it willingly, or willingly directs another to sign for him or her.

3. Each of us, in the conscious presence of the testator, signs this will as a witness.

4. To the best of our knowledge, the testator is 18 years of age or older, of sound mind and under no constraint or undue influence.

Witness: ....

Witness: ....

Subscribed and sworn to before me by ...., the testator, and by ...., and ...., witnesses, this .... day of ...., ...

(Seal) ....

(Signed): ....

(Official capacity of officer): ....

(2) TWO−STEP PROCEDURE. An attested will may be made self−proved at any time after its execution by the affidavit of the testator and witnesses. The affidavit must be made before an officer authorized to administer oaths under the laws of the state in which the affidavit occurs and must be evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

State of ....

County of ....

We, ..., ..., and ...., the testator and the witnesses whose names are signed to the foregoing instrument, being first duly sworn, do declare to the undersigned authority all of the following:

1. The testator executed the instrument as his or her will.

2. The testator signed willingly, or willingly directed another to sign for him or her.

3. The testator executed the will as a free and voluntary act.

4. Each of the witnesses, in the conscious presence of the testator, signed the will as witness.

5. To the best of the knowledge of each witness, the testator was, at the time of execution, 18 years of age or older, of sound mind and under no constraint or undue influence.

Testator: ....

Witness: ....

Witness: ....

Subscribed and sworn to before me by ...., the testator, and by ...., and ...., witnesses, this .... day of ...., ...

(Seal) ....

(Signed): ....

(Official capacity of officer): ....

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

History: 1997 a. 188; 1999 a. 32; 2005 a. 216.

853.05 Execution of wills outside the state or by nonresidents within this state. (1) A will is validly executed if it is in writing and any of the following applies:

(a) The will is executed according to s. 853.03.

(b) The will is executed in accordance with the law, at the time of execution or at the time of death, of any of the following:

1. The place where the will was executed.

2. The place where the testator resided, was domiciled or was a national at the time of execution.

3. The place where the testator resided, was domiciled or was a national at the time of death.

(2) Any will under sub. (1) (b) has the same effect as if executed in this state in compliance with s. 853.03.

History: 1997 a. 188.

853.07 Witnesses. (1) Any person who, at the time of execution of the will, would be competent to testify as a witness in court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(2) (a) Subject to pars. (b) and (c), a will is not invalidated because it is signed by an interested witness.

(b) Except as provided in par. (c), any beneficial provisions of the will for a witness or the spouse of a witness are invalid to the extent that the aggregate value of those provisions exceeds what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's death.

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

1. The will is also signed by 2 disinterested witnesses.

2. There is sufficient evidence that the testator intended the full transfer to take effect.

(3) An attesting witness is interested only if the will gives to the witness or spouse some personal and beneficial interest. The following are not interests which are personal and beneficial:

(a) A provision for employment as personal representative or trustee or in some other capacity after death of the testator and a provision for compensation at a rate or in an amount not greater than that usual for the services to be performed;

(b) A provision which would have conferred no benefit if the testator had died immediately following execution of the will.

History: 1987 a. 403; 1997 a. 188; 2001 a. 102.

853.09 Deposit of will in circuit court during testator's lifetime. (1) DEPOSIT OF WILL. Unless provided otherwise by county ordinance, any testator may deposit his or her will with the register in probate of the court of the county where he or she resides. The will shall be sealed in an envelope with the name and address of the testator, and the date of deposit noted thereon. If the will is deposited by a person other than the testator, that fact also shall be noted on the envelope. The size of the envelope may be regulated by the register in probate to provide uniformity and ease of filing. A county board may, by ordinance, provide that wills may not be deposited with the register in probate for the county. Wills deposited with the register in probate prior to the effective date of that ordinance shall be retained by the register in probate as provided under sub. (2).

(2) DUTY OF REGISTER IN PROBATE. The register in probate shall issue a receipt for the deposit of the will and shall maintain a registry of all wills deposited. The original will, unless withdrawn under sub. (3) or opened in accordance with s. 856.03 after death of the testator, shall be kept on file for the period provided in SCR chapter 72; thereafter the register may either retain the original will or open the envelope, copy or reproduce the will for confidential record storage purposes by microfilm, optical disc, electronic format, or other method of comparable retrievability and destroy the original. If satisfactorily identified, the reproduction is admissible in court for probate or any other purpose the same as the original document. Wills deposited with the county judge under s. 238.15, 1967 stats., shall be transferred to the register in probate and become subject to this section.

(3) WITHDRAWAL. A testator may withdraw the testator's will during the testator's lifetime, but the register in probate shall deliver the will only to the testator personally or to a person duly authorized to withdraw it for the testator, by a writing signed by the testator and 2 witnesses other than the person authorized.

History: 1977 c. 449; 1981 c. 146; Sup. Ct. Order, 136 Wis. 2d xx (1987); 1993 a. 172, 486; 1995 a. 27; 2015 a. 196.

The practice of attorneys retaining wills for safekeeping is disapproved. State v. Gulbankian, 54 Wis. 2d 605, 196 N.W.2d 733 (1972).

If a will was not withdrawn fraudulently, non–compliance with the witnessing requirement of sub. (3) did not invalidate the revocation of the will. Re Estate of Haugk, 91 Wis. 2d 196, 280 N.W.2d 684 (1979).

853.11 Revocation. (1) REVOCATION BY WRITING. (a) A will is revoked in whole or in part by a subsequent will that is executed in compliance with s. 853.03 or 853.05 and that revokes the prior will or a part thereof expressly or by inconsistency.

(bm) 1. A subsequent will wholly revokes the prior will if the testator intended the subsequent will to replace rather than supplement the prior will, regardless of whether the subsequent will expressly revokes the prior will.

2. The testator is presumed to have intended a subsequent will to replace, rather than supplement, the prior will if the subsequent will completely disposes of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the prior will is revoked.

3. The testator is presumed to have intended a subsequent will to supplement, rather than replace, the prior will if the subsequent will does not completely dispose of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the prior will only to the extent of any inconsistency.

(1m) REVOCATION BY PHYSICAL ACT. A will is revoked in whole or in part by burning, tearing, canceling, obliterating or destroying the will, or part, with the intent to revoke, by the testator or by some person in the testator's conscious presence and by the testator's direction.

(2m) PREMARITAL OR PREDOMESTIC PARTNERSHIP WILL. Entitlements of a surviving spouse or surviving domestic partner under a decedent's will that was executed before marriage to the surviving spouse or before recording of the domestic partnership under ch. 770 are governed by s. 853.12.

(3) TRANSFER TO FORMER SPOUSE OR FORMER DOMESTIC PARTNER. A transfer under a will to a former spouse or former domestic partner is governed by s. 854.15.

(3m) INTENTIONAL KILLING OF DECEDENT BY BENEFICIARY. If a beneficiary under a will killed the decedent, the rights of that beneficiary are governed by s. 854.14.

(4) OTHER METHODS OF REVOCATION. A will is revoked only as provided in this section.

(5) DEPENDENT RELATIVE REVOCATION. Except as modified by sub. (6) this section is not intended to change in any manner the doctrine of dependent relative revocation.

(6) REVIVAL OF REVOKED WILL. (a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under sub. (1m), the revoked part of the previous will is revived. This paragraph does not apply if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part of the previous will to take effect as executed.

(b) If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act under sub. (1m), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

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

(d) In the absence of an original valid will, the execution and validity of the revived will or part may be established as provided in s. 856.17.

History: 1981 c. 228; 1983 a. 186; 1987 a. 222; 1993 a. 486; 1997 a. 188; 2005 a. 216 s. 75; 2005 a. 216; 2009 a. 28.

When a 16–year–old will could not be found, revocation by destruction was presumed despite an expression of satisfaction with the will 6 years before death. Estate of Fonk, 51 Wis. 2d 339, 187 N.W.2d 147.

853.12 Premarital will or predomestic partnership will. (1) ENTITLEMENT OF SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER. Subject to sub. (3), if the testator married the surviving spouse or recorded a domestic partnership under ch. 770 with the surviving domestic partner after the testator executed his or her will, the surviving spouse or surviving domestic partner is entitled to a share of the probate estate.

(2) VALUE OF SHARE. The value of the share under sub. (1) is the value of the share that the surviving spouse or surviving domestic partner would have received had the testator died with an intestate estate equal to the value of the testator's net estate, but the value of the net estate shall first be reduced by the value of all of the following:

(a) All devises to or for the benefit of the testator's children who were born before the marriage to the surviving spouse or the domestic partnership with the surviving domestic partner and who are not also the children of the surviving spouse or surviving domestic partner.

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

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

(3) EXCEPTIONS. Subsection (1) does not apply if any of the following applies:

(a) It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse or domestic partnership with the surviving domestic partner.

(b) It appears from the will or other evidence that the will is intended to be effective notwithstanding any subsequent marriage or domestic partnership, or there is sufficient evidence that the testator considered revising the will after marriage or domestic partnership but decided not to.

(d) The testator and the spouse have entered into an agreement that complies with ch. 766 and that provides for the spouse or specifies that the spouse is to have no rights in the testator's estate.

(4) PRIORITY AND ABATEMENT. In satisfying the share provided by this section:

(a) Amounts received by the surviving spouse under s. 861.02 and devises made by will to the surviving spouse or surviving domestic partner are applied first.

(b) Devises other than those described in sub. (2) (a) to (c) abate as provided under s. 854.18.

History: 2005 a. 216 s. 75; 2009 a. 28.

853.13 Contracts. (1) A contract to make a will or devise, not to revoke a will or devise or to die intestate may be established only by any of the following:

(a) Provisions of a will stating the material provisions of the contract.

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.

(c) A valid written contract, including a marital property agreement under s. 766.58 (3) (e).

(d) Clear and convincing extrinsic evidence.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: 1995 a. 225; 1997 a. 188.

The existence of an irrevocable contract does not prevent the making of a later will or its admission to probate. The remedy is an action in equity to enforce the contract. Estate of Schultz, 53 Wis. 2d 643, 193 N.W.2d 655 (1972).

Whether clear and convincing evidence of a contract exists is a fact to be found by the trial court and given deference by an appellate court. Estate of Czerniejewski, 185 Wis. 2d 892, 619 N.W.2d 702 (Ct. App. 1994).

NOTE: The preceding cases were decided prior to the adoption of 1997 Wis. Act 188, which made extensive revisions to this section.

Joint and mutual wills. Kroncke, 43 WBB, No. 5.

Contracts to make joint or mutual wills. O'Donnell, 55 MLR 103.

853.15 Equitable election if will attempts to dispose of property belonging to beneficiary. (1) NECESSITY FOR ELECTION. (a) Unless the will provides otherwise, this subsection applies if a will gives a devise to one beneficiary and also clearly purports to give to another beneficiary property that does not pass under the will but belongs to the first beneficiary by right of ownership, survivorship, beneficiary designation or otherwise.

(b) If the conditions in par. (a) are fulfilled, the first beneficiary must elect either to take under the will and transfer his or her property in accordance with the will or to retain his or her property and not take under the will. If the first beneficiary elects not to take under the will, unless the will provides otherwise his or her devise under the will shall be assigned to the other beneficiary.

(c) This section does not require an election if the property belongs to the first beneficiary because of transfer or beneficiary designation made by the decedent after the execution of the will.

(2) PROCEDURE FOR ELECTION. If an election is required under sub. (1), the following provisions apply:

(a) The court may by order set a time within which the beneficiary is required to file with the court a written election either to take under the will and forego, waive or transfer the beneficiary's property interest in favor of the other person to whom it is given by the will, or to retain such property interest and not take under the will. The time set shall be not earlier than one month after the necessity for such an election and the nature of the interest given to the beneficiary under the will have been determined.

(b) If a written election by the beneficiary to take under the will and transfer the beneficiary's property interest in accordance with the will has not been filed with the court within the time set by order, or if no order setting a time has been entered, then prior to the final judgment, the beneficiary is deemed to have elected not to take under the will.

(c) Except as provided above, participation in the administration by the beneficiary does not constitute an election to take under the will.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393 s. 53; 1993 a. 486; 1997 a. 188.

853.17 Effect of will provision changing beneficiary of life insurance or annuity. (1) Any provision in a will which purports to name a different beneficiary of a life insurance or annuity contract than the beneficiary properly designated in accordance with the contract with the issuing company, or its bylaws, is ineffective to change the contract beneficiary unless the contract or the company's bylaws authorizes such a change by will.

(2) This section does not prevent the court from requiring the contract beneficiary to elect under s. 853.15 in order to take property under the will.

History: 2013 a. 92.

853.18 Designation of beneficiary, payee or owner. (1) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766, none of the following is subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift, or intestacy, even though the designation or assignment is revocable or the rights of the beneficiary, payee, owner, or assignee are otherwise subject to defeasance:

(a) A written designation in accordance with the terms of any insurance, annuity, or endowment contract.

(b) Any agreement issued or entered into by an insurance company supplemental to or in settlement of any insurance, annuity, or endowment contract.

(c) Any written designation made under a contract, plan, system, or trust providing for pension, retirement, deferred compensation, stock bonus, profit–sharing, or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee, or owner of any right, title, or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing.

(d) Directions provided in an online tool, as defined in s. 711.03 (18).

(2) This section applies to such designations or assignments made either before or after June 25, 1969, by persons who die on or after that date. This section creates no implication of invalidity as to any designation or assignment, of the nature described in sub. (1), made by any person who dies before that date or as to any declaration, agreement or contract for the payment of money or other transfer of property at death not specified under sub. (1).

History: 1983 a. 186; 2005 a. 216; 2015 a. 300.

The phrase "statute governing the transfer of property by will" in sub. (1) refers to statutes establishing formalities for the execution of a valid will. In Matter of Estate of Habelman, 145 Wis. 2d 228, 426 N.W.2d 363 (Ct. App. 1988).

853.19 Advancement. The effect of a lifetime gift by the testator on the rights of a beneficiary under the will is governed by s. 854.09.

History: 1993 a. 486; 1997 a. 188.

853.25 Unintentional failure to provide for issue of testator. (1) CHILDREN BORN OR ADOPTED AFTER MAKING OF THE WILL. (a) *Applicability.* Except as provided in sub. (5), if a will fails to provide for a child of the testator born or adopted after execution of the will, the child is entitled to a share of the estate unless any of the following applies:

1. It appears from the will or from other evidence that the omission was intentional.

2. The testator provided for the omitted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) *Share if testator had no living child at execution.* Except as provided in sub. (5), if a will fails to provide for a child of the testator born or adopted after the execution of the will and the testator had no child living when he or she executed the will, the omitted child receives a share in the estate equal in value to that which the child would have received under ch. 852. This paragraph does not apply if the will devised all or substantially all of the estate to or for the benefit of the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(c) *Share if testator had living child at execution.* Except as provided in sub. (5), if a will fails to provide for a child of the testator born or adopted after the execution of the will and the testator had one or more children living when he or she executed the will and the will devised property to one or more of the then–living children, the omitted child is entitled to share in the testator's estate as follows:

1. The portion that the omitted child is entitled to share is limited to devises made to the testator's then–living children under the will.

2. The omitted child is entitled to receive the share of the testator's estate, as limited in subd. 1., that the child would have received had the testator included all omitted after–born and after–adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

3. To the extent feasible, the interest granted an omitted child under this section shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then–living children under the will.

4. In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then–living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(d) *Rights of issue.* Except as provided in sub. (5), if a child entitled to a share under this section dies before the testator, and the child leaves issue who survive the testator, the issue who represent the deceased child are entitled to the deceased child's share.

(2) LIVING ISSUE OMITTED BY MISTAKE. (a) Except as provided in sub. (5), if clear and convincing evidence proves that the testator failed to provide in the testator's will for a child living at the time of making of the will, or for the issue of any then deceased child, by mistake or accident, including the mistaken belief that the child or issue of a deceased child was dead at the time the will was executed, the child or issue is entitled to receive a share in the estate of the testator as if the child or issue was born or adopted after the execution of the will, as follows:

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

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

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

(3) TIME FOR PRESENTING DEMAND FOR RELIEF. A demand for relief under this section must be presented to the court in writing not later than (a) entry of the final judgment, or (b) 6 months after allowance of the will, whichever first occurs.

(4) FROM WHAT ESTATE SHARE IS TO BE TAKEN. Except as provided in sub. (5), the court shall in its final judgment assign a share provided under sub. (1) (b) as follows:

(a) First, from intestate property.

(b) Any balance from each devise to a beneficiary under the will in proportion to the value of the estate each beneficiary would have received under the will as written. If the intention of the testator, shown by clear and convincing evidence, in relation to some specific gift or other provision in the will would be defeated by assignment of the share as provided in this paragraph, the court may adopt a different apportionment and may exempt a specific devise or other provision.

(5) DISCRETIONARY POWER OF COURT TO ASSIGN DIFFERENT SHARE. If in any case under sub. (1) or (2) the court determines that the share is in a different amount or form from what the testator would have wanted to provide for the omitted child or issue of a deceased child, the court may in its final judgment make such provision for the omitted child or issue out of the estate as it deems would best accord with the intent of the testator.

History: 1993 a. 486; 1997 a. 188; 2005 a. 216.

853.27 Lapse. The rights under a will of a beneficiary who predeceases the testator are governed by s. 854.06.

History: 1993 a. 486; 1997 a. 188.

A will clause providing that if any beneficiary dies within 5 months of the testator, the deceased beneficiary's share is to be treated as if the beneficiary predeceased the testator, served to pass a deceased beneficiary's share to her children under the anti–lapse statute. Firehammer v. Marchant, 224 Wis. 2d 673, 591 N.W.2d 898 (Ct. App. 1999), 98–0586.

853.29 After–acquired property. A will is presumed to pass all property that the testator owns at the testator's death and that the testator has power to transfer by will, including property acquired by the testator after the execution of the will or acquired by the testator's estate.

History: 1993 a. 486; 1997 a. 188.

853.31 Presumption that will passes all of testator's interest in property. Any gift of property by will is presumed to pass all the estate or interest which the testator could lawfully will in the property unless it clearly appears by the will, interpreted in light of the surrounding circumstances, that the testator intended to pass a less estate or interest.

853.32 Effect of reference to another document. **(1)** INCORPORATION. (am) A will may incorporate by reference another writing or document if all of the following apply:

1. The will, either expressly or as construed from extrinsic evidence, manifests an intent to incorporate the other writing or document.

2. The other writing or document was in existence when the will was executed.

3. The other writing or document is sufficiently described in the will to permit identification with reasonable certainty.

4. The will was executed in compliance with s. 853.03 or 853.05.

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

(2) DISPOSITION OF TANGIBLE PERSONAL PROPERTY AND DIGITAL PROPERTY. (a) 1. A reference in a will to another document that lists tangible personal property not otherwise specifically disposed of in the will disposes of that property if the other document describes the property and the distributees with reasonable certainty and is signed and dated by the decedent. The court may enforce a document that is not dated but that fulfills all of the other requirements under this paragraph.

2. A reference in a will to another document that lists digital property, as defined in s. 711.03 (10), not otherwise specifically disposed of in the will disposes of that digital property if the other document describes the digital property and the distributees with reasonable certainty and is signed and dated by the decedent. The court may enforce a document that is not dated but that fulfills all of the other requirements under this paragraph.

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

(b) Another document under par. (a) is valid even if any of the following applies:

1. The document does not exist when the will is executed.

2. The document is changed after the will is executed.

3. The document has no significance except for its effect on the disposition of property by the will.

(c) If the document described in par. (a) is not located by the personal representative, or delivered to the personal representative or circuit court with jurisdiction over the matter, within 30 days after the appointment of the personal representative, the personal representative may dispose of tangible personal property according to the provisions of the will as if no such document exists. If a valid document is located after some or all of the tangible personal property has been disposed of, the document controls the distribution of the property described in it, but the personal representative incurs no liability for the prior distribution or sale of the property, as long as the time specified in this paragraph has elapsed.

(d) The duties and liability of a person who has custody of a document described in par. (a), or information about such a document, are governed by s. 856.05.

(e) Beneficiaries under a document that is described in par. (a) are not interested parties for purposes of s. 879.03.

(3) TRANSFERS TO TRUSTS. The validity and implementation of a will provision that purports to transfer or appoint property to a trust are governed by s. 701.0419.

History: 1995 a. 234; 1997 a. 188 ss. 144, 145, 153; 2005 a. 216; 2013 a. 92; 2015 a. 300.

Wisconsin's New Personal Property Memorandum Law. Slate. Wis. Law. Oct. 1996.

853.325 Effect of reference to acts or events. A will may dispose of property by reference to acts or events that have significance apart from their effect on the disposition of property under the will and that do not occur solely for the purpose of determining the disposition of property under the will. Reference to the execution or revocation of another individual's will fulfills the requirements under this section. This section applies whether the acts or events occur before or after execution of the will or before or after the testator's death.

History: 1997 a. 188.

853.33 Gift of securities. Section 854.11 governs gifts of securities under a will.

History: 1997 a. 188.

853.34 Transfers to testamentary trusts. (1) TESTAMENTARY TRANSFER TO TRUST OF ANOTHER. A transfer or appointment by will shall not be held invalid because it is made to a trust created, or to be created, under the will of another person if the will of such other person was executed, or was last modified with respect to the terms of such trust, prior to the death of the person making the transfer or appointment and such other person's will is admitted to probate prior to, or within 2 years after, the death of the person making the transfer or appointment. Property included in such a transfer or appointment shall not be considered property subject to administration as part of the other person's estate but shall pass directly to that other person's testamentary trustee, be added to the designated trust and administered as a part thereof.

(2) INVALID TESTAMENTARY TRANSFER. If such a transfer or appointment by will is not accepted by the testamentary trustee of such other person or if no will of such other person which meets the conditions specified in sub. (1) is admitted to probate within the period therein limited, and if the will containing such transfer or appointment by will makes no alternative disposition of the assets, the will shall be construed as creating a trust upon the terms contained in the documents constituting the will of such other person as of the date of death of the person making the transfer or appointment by will.

(3) ASSETS TRANSFERRED TO TRUSTS CREATED BY WILL. If a trustee of a trust created by a testator's will is designated as the beneficiary of a transfer under another governing instrument, as defined in s. 854.01 (2), at the death of the testator or at the death of a 3rd party, the transfer of any assets under that other governing instrument to the trustee does not cause the transferred assets to be included in the property administered as part of the testator's estate. The transferred assets are not subject to taxes, debts, or charges enforceable against the testator's estate to any greater extent than if the proceeds were payable to a beneficiary other than the testator's estate.

History: 1971 c. 66; Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1975 c. 218; 1987 a. 27; 1989 a. 278; 1991 a. 316; 2013 a. 92 ss. 153, 154, 331; Stats. 2013 s. 853.34.

853.35 Nonademption of specific gifts in certain instances. The rights of a beneficiary with respect to a specific gift that is destroyed, damaged, sold or condemned before the testator's death are governed by s. 854.08.

History: 1993 a. 486; 1997 a. 188.

853.40 Disclaimer. A person to whom property would otherwise pass under a will may disclaim all or part of the property as provided in s. 854.13.

History: 1977 c. 309; 1983 a. 186; 1983 a. 189 s. 329 (26); 1985 a. 29, 37; 1987 a. 220; 1991 a. 39; 1997 a. 188.

Unless barred by statute, a debtor can disclaim a bequest, thus defeating a creditor's action under s. 813.026. Estate of Goldhammer v. Goldhammer, 138 Wis. 2d 77, 405 N.W.2d 693 (Ct. App. 1987).

Except for a tax−related "qualified disclaimer," the 9−month time limit for disclaimer of a future interest commences on the death of the life tenant. Estate of Balson, 183 Wis. 2d 31, 515 N.W.2d 474 (Ct. App. 1994).

NOTE: The preceding cases were decided prior to the adoption of 1997 Wis. Act 188, which made extensive revisions to s. 853.27 and created s. 854.06.

853.41 Applicability of general transfers at death provisions. Chapter 854 applies to transfers under wills, including transfers under a Wisconsin basic will or basic will with trust.

History: 1997 a. 188.

SUBCHAPTER II

WISCONSIN BASIC WILLS

853.50 Definitions. In ss. 853.50 to 853.62:

(1) "By right of representation" means according to the method specified in s. 854.04 (1).

(2) "Children" includes all children whether born or adopted before or after a Wisconsin basic will or basic will with trust is executed.

(3) "Issue" means children, grandchildren, great−grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. 854.20 and nonmarital children and their lineal descendants to the extent provided by s. 852.05.

(4) "Testator" means any person choosing to make a Wisconsin basic will or basic will with trust.

(5) "Trustee" means a person so designated in a Wisconsin basic will with trust and any other person acting at any time as the trustee under a Wisconsin basic will with trust.

(6) "Wisconsin basic will" means a Wisconsin basic will executed in accordance with ss. 853.50 to 853.62.

(7) "Wisconsin basic will with trust" means a Wisconsin basic will with trust executed in accordance with ss. 853.50 to 853.62.

History: 1983 a. 376; 1997 a. 188.

853.51 Execution of will. (1) The only method of executing a Wisconsin basic will or basic will with trust is for all of the following to occur:

(a) The testator shall do all of the following:

1. Complete the blanks, boxes and lines substantially in accordance with the instructions.

2. Sign the will.

(bc) The witnesses shall comply with s. 853.03 (2).

(2m) Any failure to comply with the instructions in a Wisconsin basic will or basic will with trust, other than the requirements for the testator's and witnesses' signatures, does not affect the validity of the will.

History: 1983 a. 376; 1997 a. 188.

853.52 Contents of wills. (1) There are 2 Wisconsin basic wills: the Wisconsin basic will and the Wisconsin basic will with trust.

(2) The Wisconsin basic will includes all of the following:

(a) The contents of the form for the Wisconsin basic will under s. 853.55.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.

2. The clause under s. 853.57.

3. The property disposition clause under s. 853.58 adopted by the testator.

4. The mandatory clauses under s. 853.60.

(3) The Wisconsin basic will with trust includes all of the following:

(a) The contents of the form for the Wisconsin basic will with trust under s. 853.56.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.
2. The clause under s. 853.57.
3. The property disposition clause under s. 853.59.
4. The mandatory clauses under ss. 853.60 and 853.61.

(4) Any person who prints forms for the Wisconsin basic will or basic will with trust shall place a signature line on each page of the printed document. A testator shall sign on each such line. Failure to comply with this subsection does not affect the validity of the will.

History: 1983 a. 376; 1993 a. 304.

853.53 Selection of property disposition clause. If more than one property disposition clause is selected or if none is selected, the residuary property of a testator who signs a Wisconsin basic will or basic will with trust shall be distributed to the testator's heirs as if the testator did not make a will.

History: 1983 a. 376.

853.54 Revocation or revision. (1) A Wisconsin basic will or a basic will with trust may be revoked and may be amended in the same manner as other wills.

(2) Any additions to or deletions from the face of the form of the Wisconsin basic will or basic will with trust, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

(3) Notwithstanding sub. (2), any failure to print in the proper places, provide the full name of a person or charity to receive a gift, include residences or use the phrase "not used" where applicable does not affect the validity of a Wisconsin basic will or basic will with trust.

History: 1983 a. 376.

853.55 Wisconsin basic will. The following is the form for the Wisconsin basic will:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

2. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

3. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL. YOU MAY REVOKE THIS WISCONSIN BASIC WILL, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

5. THE FULL TEXT OF THIS WISCONSIN BASIC WILL, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

6. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

7. YOU SHOULD KEEP THIS WILL IN YOUR SAFE−DEPOSIT BOX OR OTHER SAFE PLACE.

8. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE BIRTH CHILDREN.

10. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE WISCONSIN BASIC WILL WITH TRUST OR ANOTHER TYPE OF WILL.

11. IF THIS WISCONSIN BASIC WILL DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will shall set forth the above notice in 10−point boldface type.]

WISCONSIN BASIC WILL OF

. . . . . .

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....
FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....
FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....
FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....
FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will go under Property Disposition Clause (b) and I realize that means the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING, IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION . . . . . .

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. . . . . .

Article 3. Nominations of Personal Representative and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before I do or if for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.3. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will on ..... (date), at ..... (city), ... (state).

Signature of Testator. . . . . .

STATEMENT OF WITNESSES (You must use two witnesses, who should be adults.)

I declare that the testator signed the will in front of me, acknowledged to me that this document was his or her will *or* acknowledged to me that the signature above is his or her signature. The testator appears to me to be of sound mind and not under undue influence.

Signature . . . . . Residence Address: . . . . . .

Print Name Here: . . . . . Date Signed: . . . . . .

I declare that the testator signed the will in front of me, acknowledged to me that this document was his or her will *or* acknowledged to me that the signature above is his or her signature. The testator appears to me to be of sound mind and not under undue influence.

Signature . . . . . Residence Address: . . . . . .

Print Name Here: . . . . . Date Signed: . . . . . .

History: 1983 a. 376; 1997 a. 188.

853.56 Wisconsin basic will with trust. The following is the form for the Wisconsin basic will with trust:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR FAMILY. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

4. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

5. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL WITH TRUST. YOU MAY REVOKE THIS WISCONSIN BASIC WILL WITH TRUST, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

6. THE FULL TEXT OF THIS WISCONSIN BASIC WILL WITH TRUST, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE−DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE BIRTH CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF THIS WISCONSIN BASIC WILL WITH TRUST DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will with trust shall set forth the above notice in 10−point boldface type.]

WISCONSIN BASIC WILL WITH TRUST OF

. . . . . .

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. .....

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINES. If I sign on more than one line or if I fail to sign on any line, the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

IF YOU HAVE A SUBSTANTIAL ESTATE, CHOOSING CLAUSE (a) OR (b) MIGHT NOT BE THE MOST ADVANTAGEOUS TAX OPTION AVAILABLE TO YOU. If you have questions concerning the tax implications of these clauses, you should consult a competent tax adviser.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. . . . . .

(b) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER . . . YEARS OF AGE. . . . . .

(IF YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, IN CLAUSE (B) AND SIGN ON THE LINE BESIDE THAT CLAUSE.)

Article 3. Nominations of Personal Representative, Trustee and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. TRUSTEE. (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE

SECOND TRUSTEE

THIRD TRUSTEE

3.3. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before me or for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.4. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative, trustee or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will With Trust on .....(date), at.....(city),..... (state).

Signature of Testator. . . . . .

STATEMENT OF WITNESSES (You must use two witnesses, who should be adults.)

I declare that the testator signed the will in front of me, acknowledged to me that this document was his or her will *or* acknowledged to me that the signature above is his or her signature. The testator appears to me to be of sound mind and not under undue influence.

Signature . . . . . Residence Address: . . . . . .

Print Name Here: . . . . . Date Signed: . . . . . .

I declare that the testator signed the will in front of me, acknowledged to me that this document was his or her will *or* acknowledged to me that the signature above is his or her signature. The testator appears to me to be of sound mind and not under undue influence.

Signature . . . . . Residence Address: . . . . . .

Print Name Here: . . . . . Date Signed: . . . . . .

History: 1983 a. 376; 1993 a. 304; 1997 a. 188.

853.57 Personal, recreational and household items. The following is the full text of paragraph 2.1 of the Wisconsin basic will and the basic will with trust:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, recreational equipment, household furnishings and effects, and other tangible articles of a household, recreational or personal use, together with all policies of insurance insuring any such items. If my spouse does not survive me, the personal representative shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the personal representative's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

History: 1983 a. 376.

853.58 Residuary estate; basic will. The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

History: 1983 a. 376.

853.59 Residuary estate; basic will with trust. The following is the full text of the property disposition clause referred to in paragraph 2.3 of the Wisconsin basic will with trust, except that if a different age is specified by the testator in the Wisconsin basic will with trust, that specified age is substituted for 21 years in this section:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much, or all, of the principal or net income of the trust or both, as the trustee deems necessary for their health, support, maintenance and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational and other studies after high school, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at

law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

History: 1983 a. 376; 1993 a. 304; 1995 a. 225; 1997 a. 188.

Trust B of the Wisconsin basic will may be a hazardous estate plan. Erlanger and Crowley, WBB January, 1986.

853.60 Mandatory clauses. The Wisconsin basic will and basic will with trust include the following mandatory clauses:

(1) INTESTATE DISPOSITION. If the testator has not made an effective disposition of the residuary estate, the personal representative shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the state of Wisconsin in effect on the date of the testator's death.

(2) POWERS OF PERSONAL REPRESENTATIVE. (a) In addition to any powers conferred upon personal representatives by law, the personal representative may do any of the following:

1. Sell estate assets at public or private sale, for cash or on credit terms.

2. Lease estate assets without restriction as to duration.

3. Invest any surplus moneys of the estate in real or personal property, as the personal representative deems advisable.

(b) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to any of the following:

1. The guardian of the minor's person or estate.

2. Any adult person with whom the minor resides and who has the care, custody or control of the minor.

3. A custodian, serving on behalf of the minor under the uniform gifts to minors act or uniform transfers to minors act of any state.

(c) On any distribution of assets from the estate, the personal representative may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the personal representative may distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

(3) POWERS OF GUARDIAN. A guardian of the person or of the estate nominated in the Wisconsin basic will or basic will with trust, and subsequently appointed, shall have all of the powers conferred by law.

History: 1983 a. 376; 1987 a. 191.

853.61 Mandatory clauses; basic will with trust. The Wisconsin basic will with trust includes the following mandatory clauses:

(1) INEFFECTIVE DISPOSITION. If, at the termination of any trust created in the Wisconsin basic will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the state of Wisconsin then in effect.

(2) POWERS OF TRUSTEE. (a) In addition to any powers conferred upon trustees by law, the trustee shall have all the powers listed in ss. 701.0815 and 701.0816.

(b) In addition to the powers granted in par. (a), the trustee may:

1. Hire and pay from the trust the fees of investment advisers, accountants, tax advisers, agents, attorneys and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

2. On any distribution of assets from the trust, the trustee may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

3. The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the uniform gifts to minors act or uniform transfers to minors act of any state. The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with this section.

(3) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a Wisconsin basic will with trust:

(a) The interests of trust beneficiaries shall not be transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy or other legal process to the fullest extent permissible by law.

(b) The trustee shall be entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(c) All persons who have any interest in a trust under a Wisconsin basic will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the Wisconsin basic will with trust.

History: 1983 a. 376; 1987 a. 191; 2013 a. 92.

853.62 Date of execution of will. Except as specifically provided in ss. 853.50 to 853.61, a Wisconsin basic will or basic will with trust includes only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the will is executed.

History: 1983 a. 376.