
1987 Senate Bill 566

Date of enactment: **April 23, 1988**
Date of publication: **May 2, 1988**

1987 Wisconsin Act 393

AN ACT to repeal 71.09 (10) (a) and (b); to renumber 857.03; to renumber and amend 71.09 (10) (intro.), 766.61 (3) (a), 766.61 (3) (c), 766.62 (1) and 861.02; to amend 59.51 (18), 71.02 (2) (me), 71.13 (1) (d), 766.01 (5) (b), 766.01 (8), 766.01 (9) (a), 766.01 (12), 766.31 (6), 766.31 (10), 766.55 (7), 766.605, 766.61 (1) (a) and (c), 766.62 (2), 766.70 (3) (d) (intro.), 766.70 (4) (c), 766.70 (6) (b) 2, 806.10 (1) (intro.) and (a), 806.15 (4) (intro.), 861.01 (1), 861.03, 861.20 and 893.135; to repeal and recreate 766.51 (10), 766.61 (2) and 851.055; and to create 71.05 (1) (a) 32 and (b) 17, 71.05 (1) (t), 71.09 (10m), 71.11 (2r), 766.01 (9) (c) and (d), 766.03, 766.575, 766.588, 766.589, 766.61 (2m), 766.61 (3) (a) 2, 766.61 (3) (c) 2, 766.61 (7) and (8), 766.62 (1) (b), 766.70 (6) (b) 3, 857.015, 857.03 (2), 861.015, 861.02 (2) and 863.08 of the statutes, relating to statutory property classification agreements, management and control of certain business property by the holding spouse, domicile requirements and the application of the marital property law, revisions of insurance provisions of the marital property law, protections for insurers and trustees, the application of certain remedies to certain business property, revisions of tax law as affected by marital property and other changes relating to the implementation of the marital property law.

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

PREFATORY NOTE: This bill was developed by the legislative council's special committee on marital property implementation, established by the legislative council in March 1987. The special committee was established to:

"...review proposals for implementation of the marital property law to determine if further clarification and refinement of the law is necessary".

In developing the bill, the special committee's technical review subcommittee held 16 meetings. The report of the technical review subcommittee was reviewed and approved, with amendment, by the special committee before the proposal was submitted to the legislative council.

The special committee considered proposals to modify the marital property law from a variety of sources. The sources include: (1) 1987 senate bill 100 (the budget bill); (2) the state bar of Wisconsin marital property committee; and (3) legislators, individual lawyers and other interested persons.

Following is a general summary of the provisions of the bill. For additional information, see the NOTES to individual provisions of the bill. This bill:

Nontax provisions

A. STATUTORY PROPERTY CLASSIFICATION AGREEMENTS

1. Individual Property Classification Agreement

Creates a statutory terminable individual property classification agreement whereby spouses may classify their marital property as the individual property of the owning spouse. The substantive aspects and the form of the agreement are set forth in the statutes.

If there is no disclosure of assets and liabilities before executing the agreement or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date both spouses have signed the agreement. Spouses may enter into only one agreement for which disclosure of assets and liabilities is not provided.

If the spouses complete the disclosure form (provided as an attachment to the agreement form), the agreement is effective until dissolution of the marriage or death. If the spouses complete the disclosure form and it is shown in a legal action to enforce the agreement that the information on the disclosure form did not provide fair and reasonable disclosure under the circumstances, the duration of the agreement is 3 years after both spouses have signed the agreement.

The statutory agreement is subject to termination by either spouse at any time. A termination form is provided as part of the statutory agreement form.

Notwithstanding execution of a statutory agreement, the surviving spouse has elective rights under ss. 861.02 and 861.03 (deferred marital property and augmented marital property estate), including elective rights in property that would have been marital property but for the agreement.

The statutory agreement does not affect the duty of support that spouses otherwise have to each other and to their children and does not affect property division and maintenance payments in connection with a divorce.

2. Marital Property Classification Agreement

Creates a statutory terminable marital property classification agreement whereby spouses may classify all their property as marital property. The substantive aspects and the form of the agreement are set forth in the statutes.

If there is no disclosure of assets and liabilities before executing the agreement or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date both spouses have signed the agreement. Spouses may enter into only one agreement for which disclosure of assets and liabilities is not provided.

If the spouses complete the disclosure form (provided as an attachment to the agreement form), the agreement is effective

until dissolution of the marriage or death. If the spouses complete the disclosure form and it is shown in a legal action to enforce the agreement that the information on the disclosure form did not provide fair and reasonable disclosure under the circumstances, the duration of the agreement is 3 years after both spouses have signed the agreement.

The statutory agreement is subject to termination by either spouse at any time. A termination form is provided as part of the statutory agreement form.

The statutory agreement does not affect the duty of support that spouses otherwise have to each other and to their children and does not affect property division and maintenance payments in connection with a divorce.

B. MANAGEMENT AND CONTROL OF CERTAIN BUSINESS PROPERTY BY HOLDING SPOUSE

Provides a new management and control option for a spouse who holds the following types of business property (which is not also held by the other spouse): (1) an interest in a partnership held as a general partner or an interest in a joint venture held as a participant; (2) an interest in a professional corporation, professional association or similar entity held as a stockholder or member; and (3) an interest in a corporation, the stock of which is not publicly traded.

A spouse who holds business property, as described above, may direct in a will or other signed writing that the nonholding spouse's marital property interest in such property and the nonholding spouse's deferred marital property election against such property be satisfied from other property of equal value.

Following the death of a spouse, the marital property interest and the elective deferred marital property interest of the nonholding spouse in the business property must be satisfied within one year of the decedent spouse's death from other property which is of equal clear market value at the time of satisfaction. If the interests of the nonholding spouse are not satisfied within one year of the decedent spouse's death, the nonholding spouse's marital property interest and deferred marital property interest in the business property continues as if the holding spouse had not executed the directive to satisfy the interests from other property.

C. DOMICILE REQUIREMENTS

1. Provides that both spouses must be domiciled in this state before the marital property law generally applies to the spouses. Also provides that the marital property law generally does not apply when one or both spouses are not domiciled in this state. As part of the revision, deletes the concept of "marital domicile".

2. Provides that the cessation of the application of the marital property law because a spouse is no longer domiciled in this state does not by itself affect any property, right, interest or remedy acquired under the marital property law by either spouse or by a 3rd party or affect the satisfaction of any obligation incurred by a spouse under the marital property law. The new domicile provisions are not intended to adversely affect any spouse or 3rd party with respect to any property right, interest or remedy acquired, or property available to satisfy any obligation incurred, on or after January 1, 1986 and before the effective date of the new domicile provisions.

3. Establishes time-apportionment rules for determining the marital property interest in certain insurance policies and deferred employment benefits when a marital property interest in a policy or benefit has been acquired but one or both spouses subsequently are no longer domiciled in this state.

D. INSURANCE-RELATED CHANGES

1. Insurer Payout Protections

Clarifies payout protections for insurers.

Under current law, if an issuer of an insurance policy makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of those payments or actions unless, at the time of the payments or actions, the insurer had actual knowledge of an inconsistent decree or

marital property agreement or of an adverse claim by a spouse, former spouse or surviving spouse or person claiming under a deceased spouse's disposition at death.

Under the bill, a policy issuer generally may rely on and act in accordance with the issuer's policy and records. If an issuer makes payments or takes actions in accordance with its policy and records, the issuer is not liable because of those payments or actions. Further, classification of a policy as marital property has no effect on the policy issuer's duty to perform under the issuer's contract.

An exception to the general rule arises when a policy issuer receives a written notice of claim which asserts that the claimant is entitled to proceeds, payments or an interest in a policy. Once a timely notice of claim is received by an insurer, the bill specifies the actions the insurer may take.

2. *Written Consents*

Allows a written consent, in which a spouse consents to the designation of another person as beneficiary or consents to the use of property to pay premiums on a policy, to be used in connection with an insurance policy insuring the life of any individual. Currently, use of written consents is limited to an insurance policy insuring the life of a spouse.

3. *Remedy When Noninsured Spouse Dies First*

Clarifies the remedy to recover a decedent spouse's marital property interest in a life insurance policy which designates the surviving spouse as the owner and insured and which provides for a 3rd-party beneficiary. If the surviving spouse does not offer to purchase the decedent spouse's marital property interest, an action to recover the decedent spouse's marital property interest may be brought, but that marital property interest is limited to a dollar amount equal to one-half of the marital property component of, in general terms, the cash value of the policy on the date of death of the deceased spouse.

4. *Miscellaneous*

a. Clarifies the definition of "owner" as the term applies to group insurance.

b. Clarifies that the classification of a life insurance policy held by a deferred employment benefit plan is governed by the classification rules which apply to the classification of deferred employment benefit plans.

c. Clarifies the effective period of both nongroup life insurance policies and group life insurance policies for purposes of determining the marital property component of such policies.

E. TRUSTEE PROTECTIONS

Provides that a trustee generally may rely on and act in accordance with the terms of the trust and that the classification of property in the possession or control of the trustee does not affect the trustee's right and duty to administer, manage and distribute property in accordance with the terms of the trust.

An exception to the general rule arises when a trustee receives a written notice of claim which asserts that the claimant is entitled to property in the trustee's possession or control. Once a timely notice of claim is received by a trustee, the bill specifies the actions the trustee may take.

F. APPLICATION OF CERTAIN REMEDIES TO CERTAIN BUSINESS PROPERTY

1. *"Add-A-Name" Remedy*

Expands the class of corporate property to which the "add-a-name" remedy does not apply. Currently, the add-a-name remedy does not apply to a corporation, the stock of which is not publicly traded, if the other spouse is an employe of the corporation. The qualification that the other spouse be an employe of the corporation is deleted.

2. *Remedy for Gross Mismanagement*

Provides that the remedy for substantial injury of marital property by a spouse's gross mismanagement, waste or absence does not apply to substantial injury to property of a corporation, the stock of which is not publicly traded.

G. APPLICATION OF THE DEFINITION OF "HELD" TO UNCERTIFICATED SECURITIES AND PARTNERSHIP INTERESTS

Provides, for purposes of the definition of "held" under the marital property law, that:

1. An uncertificated security is "held" by the person identified as the registered owner of the security upon books maintained for that purpose by or on behalf of the issuer of the security. An "uncertificated security" is a security which is not represented by an instrument issued in bearer or registered form.

2. The property rights of a partner in a general partnership are "held" by the partner.

H. REAL PROPERTY-RELATED CHANGES

1. *Reclassification of Property by Deed*

Allows spouses to reclassify their property by conveyance, signed by both spouses.

2. *Reclassification of Homesteads*

Provides that an exception to the statutory classification of a homestead as survivorship marital property arises when an intent to the contrary is expressed in a marital property agreement. In addition, expressly provides that a homestead may be reclassified by gift, conveyance signed by both spouses or marital property agreement.

3. *Judgment Liens on Real Property*

Makes technical revisions to the provisions of ch. 806, which relate to the attachment of a judgment lien to property that is held by a person who is a spouse or former spouse of a judgment debtor and that is not also held by the judgment debtor.

I. EXCHANGE OF MARITAL PROPERTY INTEREST AT DEATH OF A SPOUSE

Provides that a surviving spouse and a distributee of all or part of a decedent spouse's 50% interest in marital property may exchange their interests under certain circumstances, if the exchange is approved by the court. The provision may avoid or reduce burdensome and perhaps undesirable coownership of assets previously classified as marital property.

Tax provisions

A. CREDITING OF TAX OVERPAYMENTS

Clarifies when the department of revenue (DOR) may credit ("offset") an overpayment, homestead or farmland preservation credit or refund on an individual, separate or joint return against certain liabilities of a taxpayer.

For persons filing *individual or separate returns*, the DOR is authorized to presume that any overpayment, credit or refund is nonmarital property of the filer which may be used to offset any taxes due, a debt owed to the state under s. 71.105 or delinquent support and maintenance payments under s. 46.255 owed by the filer. The bill provides a 2-year period for the spouse or former spouse of a filer of an individual or separate return to claim a refund of any incorrectly credited amount by showing by clear and convincing evidence that the overpayment, credit or refund was nonmarital property of the nonobligated spouse.

For married persons filing a *joint return*, the DOR may credit overpayments, credits or refunds against the liability of either or both spouses under specified fact situations. However, the nonobligated spouse may limit the offsetting procedure by showing, within 20 days of the DOR's notice to the spouses of an intent to use the offset procedure, that all or part of the overpayment, credit or refund on the joint return is nonmarital property of the nonobligated spouse. If a spouse does not receive the DOR notice, the spouse is allowed 2 years to file a claim for a refund of any incorrectly credited amount.

For taxes, debts to the state and child support obligations that are marriage or family obligations under s. 766.55 (2) (b), the DOR may credit the overpayments, credits or refunds on a joint return against the liability of either spouse.

A statutory formula is provided for the portion of overpayments, credits or refunds on a joint return that may be credited against the liability of a spouse in 3 situations:

1. Taxes, debts to state and child support obligations incurred before January 1, 1986 or before marriage (whichever is later);

2. Debts owed to the state and child support obligations not subject to s. 766.55 (2) (b); and

3. Taxes due which are subject to the innocent spouse provisions.

B. INNOCENT FORMER SPOUSE PROTECTION

Provides protection from income tax liability if a person was not aware of marital property income earned by his or her former spouse and limits the offset procedures used by the DOR that apply to the liability of a spouse or former spouse subject to income tax liability under innocent spouse provisions.

Current law provides innocent spouse protection when the spouses file joint or separate returns. This bill provides protection to former spouses in similar situations whether a former spouse files an individual return as a single person or a separate or joint return after remarriage. The criteria for protecting an innocent former spouse are derived from sec. 66 (c), internal revenue code: (1) the individual did not know and had no reason to know of an item of marital property income; and (2) it is inequitable to include such an item of marital property in the individual's gross income, taking into account all facts and circumstances.

C. INNOCENT SPOUSE SET-OFF LIMITATION

Clarifies that, when a person is relieved of liability under innocent spouse provisions, the tax obligation of the spouse or former spouse of the person may be satisfied only from the property of the spouse or former spouse that is marital property or from the spouse's or former spouse's interest in marital property, in that order, or under the setoff provision discussed above for a tax year in which the spouse or former spouse and the person were married to each other.

D. TAX-FREE EXCHANGE OF MARITAL PROPERTY INTEREST AT DEATH OF A SPOUSE

Provides that the exchange of marital property interests between the surviving spouse and a distributee is not a taxable event by treating the exchange as if each interest were acquired as a gift for the determination of basis. Otherwise, the potential exists that the exchange will require a recognition of capital gain or loss because of the difference in basis of the 2 interests or because the personal representative distributed the one-half interest other than as directed in a will or proratably.

E. ALLOCATION OF NEGATIVE INCOME ITEMS

Resolves an anomaly in current tax law by stating that negative income items are not allocated to the spouse who does not own the nonmarital property which generates net rents or other net returns if those net returns are marital property and are derived from the investment, rental, licensing or other use of the nonmarital property. Negative income items include losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other similar items.

This exception to the general rule allocating negative income items in the manner that the income is or would be allocated is provided for persons filing individual or separate returns. On a joint return, the exception is not necessary because all of the negative income items and all of the net returns and rents are reportable on the return.

SECTION 1. 59.51 (18) of the statutes is amended to read:

59.51 (18) Record and index marital property agreements under ~~s. 766.58~~ ch. 766 and statements and revocations under s. 766.59.

NOTE: Reflects the creation of 2 statutory agreements. See the creation off ss. 766.588 and 766.589.

There has been some uncertainty about the relationship between this section and the references to ch. 706 in ss. 766.55 (4m) and 766.56 (2) (a). Nothing in this section or ss. 766.55 (4m) and 766.56 (2) (a) is intended to affect the application of

ch. 706. Chapter 706 controls the recording, and the effects of recording, "conveyances", including a marital property agreement which is intended as a "conveyance" and which satisfies the requirements of s. 706.02. In contrast, the recording and indexing provision of this section is intended as a convenience only, for couples executing a marital property agreement who want to document the existence and contents of the agreement by recording.

SECTION 2. 71.02 (2) (me) of the statutes is amended to read:

71.02 (2) (me) "Wisconsin taxable income" of natural persons means Wisconsin adjusted gross income less the Wisconsin standard deduction, with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated, except that the negative income items on individual or separate returns for net rents and other net returns which are marital property attributable to the investment, rental, licensing or other use of nonmarital property shall be allocated to the owner of the property.

NOTE: Clarifies an anomaly in current law by expressly allocating all of the negative income items to the spouse owning the nonmarital property which generates the net rent or other net returns defined as income under s. 766.01 (10). Otherwise, the general proportionate allocation rule under s. 71.02 (2) (me) would split the negative income allocations between the spouses in the same ratio as the income generated by the property is allocated. However, application of the general allocation formula would be inequitable with regards to net rent or net returns from nonmarital property owned by one spouse. The general rule would result in a windfall for the nonowning spouse because he or she would receive one-half of the net income (income less negative income items), plus a share of the negative income items, which would reduce the amount of income subject to taxation. The provision is limited to individual and separate returns because the inequity does not occur if all the income and all the negative income items are included on a joint return filed by both spouses.

SECTION 3. 71.05 (1) (a) 32 and (b) 17 of the statutes are created to read:

71.05 (1) (a) 32. Any amount recognized as a loss under section 1001 (c) of the internal revenue code if a surviving spouse and a distributee exchange their interests in marital property under s. 857.03 (2).

(b) 17. Any amount recognized as a gain under section 1001 (c) of the internal revenue code if a surviving spouse and a distributee exchange their interests in marital property under s. 857.03 (2).

NOTE: If a gain or loss is recognized for federal income tax purposes the creation of s. 71.05 (1) (a) 32 and (b) 17 sets forth the necessary modifications of federal adjusted gross income to reflect the tax-free exchange of marital property interests at the death of a spouse, for Wisconsin tax purposes.

SECTION 4. 71.05 (1) (t) of the statutes is created to read:

71.05 (1) (t) Property exchanged under s. 857.03 (2) shall be treated as if acquired by gift for the determination of basis.

NOTE: Clarifies that the basis of marital property exchanged between a surviving spouse and a distributee under s. 857.03 (2) is determined as if the property were acquired by gift from the surviving spouse or the distributee.

SECTION 5. 71.09 (10) (intro.) of the statutes is renumbered 71.09 (10) and amended to read:

71.09 (10) In the case of any overpayment, homestead or farmland preservation credit or refund on an individual or separate return, the department of revenue, within the applicable period of limitations, may credit the amount of overpayment, homestead or farmland preservation credit or refund including any interest allowed, against any liability; in respect to any tax collected by the department, a debt under s. 71.105 or a certification under s. 46.255 on the part of the person who made the overpayment; or received the homestead and farmland preservation credits or the refund and shall refund any balance to the person. ~~For married persons, the department of revenue may credit overpayments or refunds resulting from joint returns under this chapter.~~ The department shall presume that the overpayment, homestead and farmland preservation credits or refund is nonmarital property of the filer. Within 2 years after the crediting, the spouse or former spouse of the person filing the return may file a claim for a refund of amounts credited by the department if the spouse or former spouse shows by clear and convincing evidence that all or part of the state tax overpayment, homestead and farmland preservation credits or refund was nonmarital property of the nonobligated spouse.

NOTE: Authorizes the department of revenue to presume that any overpayment, homestead and farmland preservation credits or refund on an individual or separate return is the nonmarital property of the filer, all of which may be credited against any tax liability, debt to the state under s. 71.105 or delinquent child support obligation under s. 46.255 incurred by the filer before, during or after a marriage. A 2-year period is provided for the spouse or former spouse of the filer to claim a refund from the department upon proof that all or part of the credited amounts were the nonmarital property of the nonobligated spouse.

SECTION 6. 71.09 (10) (a) and (b) of the statutes is repealed.

SECTION 7. 71.09 (10m) of the statutes is created to read:

71.09 (10m) For married persons, unless within 20 days after the date of the notice under par. (c) the nonobligated spouse shows by clear and convincing evidence that the overpayment, homestead or farmland preservation credit or refund is the nonmarital property of the nonobligated spouse, notwithstanding s. 766.55 (2) (d), the department of revenue may credit overpayments, homestead and farmland preservation credits and refunds, including any interest allowed, resulting from joint returns under this chapter as follows:

(a) Against any liability of either spouse or both spouses in respect to an amount owed the department, a certification under s. 46.255 that is subject to s. 766.55 (2) (b) or a debt under s. 71.105 that is subject to s. 766.55 (2) (b) and that was incurred during marriage by a spouse after December 31, 1985, or after both spouses are domiciled in this state, whichever is later, except as provided in s. 71.11 (2), (2m) and (2r).

(b) Against the liability of a spouse in the proportion that the Wisconsin adjusted gross income which would have been the property of the spouse but for the marriage has to the adjusted gross income of both spouses as follows:

1. In respect to an amount owed the department that was incurred before January 1, 1986, or before marriage, whichever is later.

2. In respect to a debt under s. 71.105 or a certification under s. 46.255 if that debt or certification is not subject to s. 766.55 (2) (b).

3. In respect to an amount subject to s. 71.11 (2), (2m) and (2r).

(c) If the department of revenue determines that a spouse is otherwise entitled to a state tax refund or homestead or farmland credit, it shall notify the spouses under s. 71.11 (22) that the state intends to reduce any state tax refund or homestead or farmland preservation credit due the spouses by the amount credited against any liability under par. (a) or (b) or both.

(d) If a spouse does not receive notice under par. (c) and if the department of revenue incorrectly credits the state tax overpayment, refund or homestead or farmland preservation credit of a spouse or spouses against a liability under par. (a) or (b) or both, a claim for refund of the incorrectly credited amount may be filed under s. 71.10 (10) (e) within 2 years after the notice under par. (c).

NOTE: Authorizes the department of revenue to credit any overpayment, homestead or farmland preservation credit or refund on a joint return against a liability of either or both spouses for taxes, debts to the state under s. 71.05 or delinquent child support obligations under s. 46.255 incurred during marriage after December 31, 1985, or after both spouses are domiciled in Wisconsin, whichever is later.

However, the department may credit only a portion of the overpayments, homestead and farmland preservation credits or refunds against certain debts to the state or certain delinquent child support obligations not subject to the family and marriage debt satisfaction provisions of s. 766.55 (2) (b) and against premarital-date or predetermination-date tax liabilities of a spouse. The portion is stated in s. 71.09 (10) (b). The subsection eliminates the necessity for the department to credit the overpayments, homestead and farmland preservation credits and refunds in accordance with the marshaling provisions of s. 766.55 (2) (d).

Subsection (10m) requires the department to provide notice to the spouses of its intent to use the crediting process, allows the nonobligated spouse 20 days after the notice to prove that all or parts of the amounts to be credited are the nonmarital property of the nonobligated spouse and establishes a 2-year period in which a spouse may file a claim for refund of any incorrectly credited amount if the spouse does not receive the requisite notice.

SECTION 8. 71.11 (2r) of the statutes is created to read:

71.11 (2r) RETURNS OF FORMERLY MARRIED AND REMARRIED PERSONS. A formerly married or remarried person filing a return for a period during which the person was married may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter for unreported

marital property income from that period as if the person were a spouse under section 66 (c) of the internal revenue code. The department may not apply ch. 766 in assessing the former spouse of the person with respect to marital property income that the former spouse did not report if that former spouse failed to notify the person about the amount and nature of the income before the due date, including extensions, for filing the return for the taxable year during which the income was derived. The department shall include all of that marital property income in the gross income of the former spouse and exclude all of that marital property income from the gross income of the person.

NOTE: Extends innocent spouse protection to a formerly married or remarried person under certain conditions for a return filed for a period during which the person was married to a former spouse who did not notify the person of the amount and nature of marital property income before the due date of the return, including extensions.

SECTION 9. 71.13 (1) (d) of the statutes is amended to read:

71.13 (1) (d) All tax obligations to this state, including interest, penalties and costs thereon, incurred during marriage by a spouse after December 31, 1985, or after ~~the establishment of a marital domicile~~ both spouses are domiciled in this state, whichever is later, are incurred in the interest of the marriage or family and may be satisfied only under ss. 766.55 (2) (b) and 859.18. However, if one spouse is relieved of liability under s. 71.11 (2) ~~or (2m) or (2r)~~, the tax obligation to this state of the other spouse may be satisfied only under s. 766.55 (2) (d) or by setoff under s. 71.09 (7) (e), (10), (10m) or (11) (e).

NOTE: Clarifies that, when an innocent spouse is relieved of a tax obligation under the provisions under s. 71.11 (2), (2m) or (2r), the tax obligation of the other spouse or former spouse may be satisfied only under the marshaling provisions of s. 766.55 (2) (d) or under the setoff procedures under s. 71.09 (7) (e), (10), (10m) or (11) (e).

SECTION 10. 766.01 (5) (b) of the statutes is amended to read:

766.01 (5) (b) 12:01 a.m. on the date of ~~establishment of a marital domicile~~ that both spouses are domiciled in this state.

NOTE: See the treatment of s. 766.03 and the NOTE thereto.

SECTION 11. 766.01 (8) of the statutes is amended to read:

766.01 (8) "During marriage" means a period in which both spouses are domiciled in this state that begins at marriage the determination date and ends at dissolution or at the death of a spouse.

NOTE: See the treatment of s. 766.03 and the NOTE thereto.

SECTION 12. 766.01 (9) (a) of the statutes is amended to read:

766.01 (9) (a) Except as provided in ~~par. (b) pars. (b) to (d)~~, property is "held" by a person only if a document of title to the property is registered, recorded or filed in a public office in the name of the person or a writing that customarily operates as a document of

title to the type of property is issued for the property in the person's name.

SECTION 13. 766.01 (9) (c) and (d) of the statutes are created to read:

766.01 (9) (c) An uncertificated security, as defined under s. 408.102 (1) (h), is "held" by the person identified as the registered owner of the security upon books maintained for that purpose by or on behalf of the issuer. If the registered owner of an uncertificated security is identified as a brokerage account, the security is "held" as provided under par. (b).

(d) The property rights, as specified and described in ss. 178.21 and 178.22, of a partner in a general partnership are "held" by the partner.

NOTE: By including uncertificated securities and partnership property rights within the definition of "held", the holding spouse will have the exclusive right to manage and control the security or partnership right, vis-a-vis the other spouse, subject to the good faith duty under s. 766.15.

SECTION 14. 766.01 (12) of the statutes is amended to read:

766.01 (12) "Marital property agreement" means an agreement that complies with s. 766.58, 766.585 ~~or 766.587, 766.588 or 766.589~~. The term does not include the financial disclosure form under s. 766.588 (9) or 766.589 (10).

NOTE: Exempts the disclosure form from the definition so that spouses need not furnish the disclosure form to 3rd parties in order for the statutory agreements to be binding on 3rd parties.

SECTION 15. 766.03 of the statutes is created to read:

766.03 Applicability. (1) Except as provided in sub. (4) and ss. 766.58 (5), (11) and (12) and 766.585, this chapter first applies to spouses upon their determination date.

(2) After this chapter first applies to spouses, it continues to apply to spouses during marriage. Section 766.75 applies after a dissolution. If at the time of the death of a spouse both spouses are domiciled in this state, the provisions of this chapter which have application after the death of a spouse apply.

(3) The cessation of the application of this chapter because a spouse is no longer domiciled in this state does not by itself affect any property, right, interest or remedy acquired under this chapter by either spouse or by a 3rd party or the satisfaction of any obligation incurred by a spouse under this chapter.

(4) Section 766.97 applies to a spouse in this state whether or not that person is domiciled in this state.

(5) Any property, right, interest or remedy of a spouse or 3rd party acquired or property that is available to satisfy an obligation incurred on or after January 1, 1986, and before the effective date of this subsection [revisor inserts date], shall not be adversely affected by 1987 Wisconsin Act (this act), sections 10, 11, 15, 16, 27, 29 and 32.

NOTE: Expressly provides, in combination with the amendments to the definitions of "determination date" (see the treatment of s. 766.01 (5) (b) and "during marriage" (see the

treatment of s. 766.01 (8), that both spouses must be domiciled in this state before ch. 766 applies. Further, if after both spouses are domiciled in this state one of the spouses ceases to be domiciled in this state, ch. 766 no longer applies.

These revisions replace the concept of “marital domicile” in ch. 766. The latter term was subject to varying interpretation. Under one interpretation, domicile of both spouses in this state was required before a “marital domicile” was established. However, it was argued by some that the domicile of one spouse in the state could establish a “marital domicile”. Subsection (5) reflects the uncertain state of the law prior to the effective date of this section by protecting spouses and 3rd parties.

SECTION 16. 766.31 (6) of the statutes is amended to read:

766.31 (6) Property owned at a marriage which occurs after 12:01 a.m. on January 1, 1986, is individual property of the owning spouse if, at the marriage, ~~the spouse has a marital domicile~~ both spouses are domiciled in this state.

SECTION 17. 766.31 (10) of the statutes is amended to read:

766.31 (10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01 (4), signed by both spouses, marital property agreement, written consent under s. 766.61 (3) (e) or unilateral statement under s. 766.59. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

NOTE: Clarifies that spouses may reclassify their real property by conveyance. The clarification addresses concerns that use of a deed or other conveyance to reclassify property may not necessarily meet all the requirements of a gift or a marital property agreement. For example:

1. Husband and wife as joint tenants to husband and wife as survivorship marital property.
2. One spouse to both spouses as marital property.

Reclassification of property without the signature of both spouses can continue to be accomplished if the necessary elements of a gift are met.

SECTION 18. 766.51 (10) of the statutes is created to read:

766.51 (10) At the death of a spouse if property described under s. 766.70 (3) (a), (b) or (d) is held by either spouse, but not in the names of both spouses, such property may be subject to the management and control of the holding spouse as provided under s. 857.015.

NOTE: See the NOTE following the treatment of s. 857.015.

SECTION 19. 766.55 (7) of the statutes is amended to read:

766.55 (7) Property available under this chapter to satisfy an obligation of a spouse is available regardless of whether the property is located in this state or whether this chapter no longer applies because one or both spouses are no longer domiciled in this state.

NOTE: Restates, for convenience, what is generally provided in the creation of s. 766.03 (3).

SECTION 20. 766.575 of the statutes is created to read:

766.575 Protection of trustees dealing with spouses.

(1) In this section:

(a) “Business day” has the meaning given under s. 421.301 (6).

(b) “Governing instrument” means the contract or other instrument pursuant to which a trustee has possession or control of property. The term includes, in the case of trustees whose rights, duties and responsibilities are fixed by court order or statute or both, the court order and the applicable statutory provisions as modified by any court order, as they would apply if this chapter had not been enacted.

(c) “Notice of claim” means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or person claiming under a deceased spouse’s disposition at death, that the person claims to be entitled to property in the trustee’s possession or control, specifying the portion of property to which the claim relates.

(d) “Property” includes, in addition to the meaning given under s. 766.01 (15), any proceeds of property, any income earned on property or derived from property and any income or proceeds derived from proceeds or income previously received and reinvested.

(e) “Trustee” has the meaning given under s. 701.01 (8).

(2) Except as provided in sub. (3), in a court order or in the terms of a trust, the classification of property in the possession or control of a trustee shall not affect the trustee’s right and duty to administer, manage and distribute the property in accordance with the terms of the governing instrument and the trustee may rely on and act in accordance with those terms.

(3) (a) If at least 5 business days before distributing property in accordance with the terms of a governing instrument a trustee has received at its principal business office a notice of claim, the trustee shall notify the persons to whom the property would otherwise be distributed, whether as a matter of right or in the exercise of any discretion granted under the governing instrument, of the receipt of the notice of claim and shall suspend the distribution of the portion of property to which the claim relates for 14 business days.

(b) If within 14 business days after receiving the notice of claim the trustee receives, as purporting to support the claim, a decree, marital property agreement or proof that a legal action has been commenced, including a copy of an election filed pursuant to s. 861.03, to establish the validity of the claim, the trustee shall suspend distribution of the portion of the property to which the claim relates pending resolution of the validity of the claim.

(c) If documentation purporting to support the claim is not submitted as described in par. (b), the trustee may proceed to distribute the property as if the notice of claim had not been received.

(4) A trustee is not liable to any person for any claim for damages as a result of distribution of prop-

erty in accordance with the terms of the governing instrument prior to its receipt of a notice of claim under sub. (3) or for any damages claimed as a result of suspension of distribution under this section. A person who files a notice of claim under sub. (3) is not entitled to recover fees or expenses charged against such property by the trustee prior to or in connection with the establishment of the validity of his or her claim. A trustee shall pay interest or earnings which accrue during the suspension of any action under sub. (3).

NOTE: Provides protections for trustees similar to those provided for insurers under repealed and recreated s. 766.61 (2). Thus, trustees generally may rely on and act in accordance with the terms of the trust and the classification of property in the possession or control of the trustee does not affect the trustee's right and fiduciary duty to administer, manage and distribute property in accordance with the terms of the trust. An exception to the general rule arises when a trustee receives a timely written notice of claim which asserts that the claimant is entitled to property in the trustee's possession or control. General ground rules are provided for a trustee's response to a timely written notice of claim.

SECTION 21. 766.588 of the statutes is created to read:

766.588 Statutory terminable marital property classification agreement. (1) **GENERALLY.** (a) Spouses may execute an agreement under this section to classify the property of the spouses presently owned and property acquired, reclassified or created in the future, as marital property. Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (9). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(b) Notwithstanding an agreement under this section:

1. The marital property interest of the nonemployee spouse in a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employe spouse; and

2. The marital property interest of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured is limited as provided under s. 766.61 (7).

(c) 1. If property is held as survivorship marital property under s. 766.60 (5) (a) or 766.605 at the time an agreement under this section becomes effective, or if property is held as or acquired as survivorship marital property under s. 766.60 (5) (a) or 766.605 while an agreement is in effect, the property remains survivorship marital property as long as it is so held.

2. A joint tenancy which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is survivorship marital property.

3. A tenancy in common which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is marital property.

4. With respect to a tenancy in common or joint tenancy not described under subds. 2 and 3 in which at least one spouse is a tenant when an agreement under this section becomes effective or while an agreement is in effect, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of marital property, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(2) **EXECUTION.** An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (9).

(3) **EFFECTIVE DATE AND EFFECTIVE PERIOD.** (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (9) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses have signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (9), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) **LIMITATION ON EXECUTION OF 3-YEAR AGREEMENT.** If spouses execute an agreement under this section which becomes effective for any period and if the spouses did not complete the financial disclosure form under sub. (9) for that agreement, the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (9) is completed.

(4) **TERMINATION BY ONE SPOUSE.** (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (9).

(b) Notice of termination is given to the other spouse on the date:

1. That a signed termination is personally delivered to the other spouse; or

2. That a signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(d) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) **ENFORCEABILITY.** (a) If the spouses do not complete the financial disclosure form under sub. (9), the

agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (9), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their property as marital property.

(8) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(9) STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable marital property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable marital property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. PROPERTY WHICH IS BROUGHT TO THE MARRIAGE AND PROPERTY WHICH IS ACQUIRED BY ONE SPOUSE DURING THE MARRIAGE BY GIFT OR INHERITANCE IS

NOT MARITAL PROPERTY BUT IS SOLELY OWNED BY THE ACQUIRING SPOUSE. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO A SOLE OWNERSHIP INTEREST IN YOUR SOLELY OWNED PROPERTY; HOWEVER, YOU ARE ACQUIRING AUTOMATIC, EQUAL OWNERSHIP RIGHTS, WITH YOUR SPOUSE, TO ALL PROPERTY THAT YOU AND YOUR SPOUSE OWN OR ACQUIRE.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

C. BY ITSELF PROVIDE THAT, UPON YOUR DEATH, YOUR MARITAL PROPERTY PASSES TO YOUR SURVIVING SPOUSE. IF THAT IS WHAT YOU INTEND, YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE TO DETERMINE WHAT MUST BE DONE TO ACCOMPLISH THAT RESULT.

5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (IT IS NOT NECESSARY TO FURNISH A COPY OF THE FINANCIAL DISCLOSURE FORM.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

6. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

7. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT, EXECUTE A SUBSEQUENT STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT, IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT, YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

8. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN.

9. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

10. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

11. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED BY OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREE-

MENT ON THIS FORM THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

12. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

13. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE MARITAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.588,
Wisconsin Statutes)

This agreement is entered into by and (husband and wife) (who intend to marry) (strike one). The parties hereby classify all of the property owned by them when this agreement becomes effective, and property acquired during the term of this agreement, as marital property.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXE-

- F. Trust interests
 - G. Livestock, farm products, crops
 - H. Automobiles and other vehicles
 - I. Jewelry and personal effects
 - J. Household furnishings
 - K. Life insurance and annuities:
 - 1. Face value
 - 2. Cash surrender value
 - L. Retirement benefits (include value):
 - 1. Pension plans
 - 2. Profit sharing plans
 - 3. HR-10 KEOGH plans
 - 4. IRAs
 - 5. Deferred compensation plans
 - M. Other assets not listed elsewhere
- II. **OBLIGATIONS (TOTAL OUTSTANDING BALANCE):**
- A. Mortgages and liens
 - B. Credit cards
 - C. Other obligations to financial institutions
 - D. Alimony, maintenance and child support (per month)
 - E. Other obligations (such as other obligations to individuals, guarantees, contingent liabilities)
- III. **ANNUAL COMPENSATION FOR SERVICES:**
(for example, wages and income from self-employment; also include social security, disability and similar income here)

(IF YOU NEED ADDITIONAL SPACE,
ADD ADDITIONAL SHEETS)

NOTE: Provides a statutory terminable marital property classification agreement for use by spouses and persons intending to marry. Under the agreement, the property of the spouses presently owned and property acquired, reclassified or created in the future is classified as marital property.

A disclosure form is included as part of the statutory agreement form ("SCHEDULE "A", Financial Disclosure"). If the spouses do not complete the financial disclosure form before the agreement is executed or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date both spouses signed the agreement.

If the spouses complete the disclosure form, the agreement is "permanent"; the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse. Note, however, that under the enforceability provision, if the spouses complete the disclosure form and the spouse against whom enforcement of the agreement is sought establishes that the information on the disclosure form did not provide "fair and reasonable disclosure, under the circumstances" of the other spouse's property or financial obligations, the agreement terminates 3 years after both spouses signed the agreement. The enforceability provision is not intended to limit the use of contract defenses not precluded under this section and s. 766.58. The following comment to SECTION 10 of The Uniform Marital Property Act approved by the National Conference of Commissioners on Uniform State Laws in 1983 is applicable here:

"Although the act sets forth a specific group of requirements for enforceability, they are not exclusive. Ordinary contract defenses not specifically ruled out by the act (as lack of consideration is) remain available."

A statutory agreement may be terminated unilaterally by a spouse at any time. A termination form, not intended to be

the exclusive termination form, is included as part of the statutory agreement.

Termination of an agreement, whether by written notice, operation of law, dissolution or death, is prospective; termination does not affect the classification of property before termination.

Spouses may execute only one statutory agreement for which the financial disclosure form is not completed. The limitation is intended to avoid continued renewal of 3-year agreements for the purpose of avoiding the disclosure requirement which applies to "permanent" agreements. The limitation applies on a "per-marriage" basis; one 3-year agreement per marriage may be executed (Note, also, that the limitation only applies if the first agreement actually becomes effective for any period. An agreement may be executed and not become effective until a later time; for example, when executed before marriage or before both spouses are domiciled in this state).

Except as provided otherwise in this section, the general section concerning execution content and enforceability of marital property agreements (s. 766.58), applies to statutory terminable marital property classification agreements. In addition, the statutory agreements are defined as marital property agreements for purposes of ch. 766 generally (see the treatment of s. 766.01 (12)), and, thus, for example, are binding on 3rd parties only as provided in ch. 766.

In addition to not affecting the duty of support that spouses have to each other, as specified in sub. (6), the agreement does not affect the duty of support that a spouse has to his or her children [see s. 766.58 (2)]. Also, a statutory agreement does not affect determination of property division under s. 767.255 or of maintenance payments under s. 767.26.

SECTION 22. 766.589 of the statutes is created to read:

766.589 Statutory terminable individual property classification agreement. (1) **GENERALLY.** (a) For purposes of determining ownership of property classified by an agreement under this section, a spouse owns property if the property is held by that spouse. If property classified by an agreement under this section is not held by either or both spouses, ownership of the property is determined as if the spouses were unmarried when the property was acquired.

(b) Spouses may execute an agreement under this section to classify the marital property of the spouses presently owned and property acquired, reclassified or created in the future that would otherwise be marital property, as the individual property of the owner. At the death of the owning spouse, property classified by an agreement under this section is subject to the rights of the surviving spouse under sub. (7). Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (10). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(c) 1. If at the time an agreement under this section is executed property is held as survivorship marital property, the property is owned as a joint tenancy, or if the property is held in a form as provided under s. 766.60 (1) or (2), the property is classified as individual property and is owned as a tenancy in common. If while an agreement is in effect spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If while an agreement is in effect spouses acquire property as tenants in common exclusively between themselves, the spouses' respective ownership interests in the property are classified as the individual property of the owners. If while an agreement is in effect spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common.

2. For purposes of an agreement under this section, to the extent the incidents of a joint tenancy or tenancy in common conflict with or differ from the incidents of individual property, the incidents of the tenancy in common or joint tenancy, including the incident of survivorship, control.

(2) **EXECUTION.** An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (10).

(3) **EFFECTIVE DATE AND EFFECTIVE PERIOD.** (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (10) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (10), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) **LIMITATION ON EXECUTION OF 3-YEAR AGREEMENT.** If spouses execute an agreement under this section which becomes effective for any period and, for that agreement, do not complete the financial disclosure form under sub. (10), the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (10) is completed.

(4) **TERMINATION BY ONE SPOUSE; GOOD FAITH DUTY.** (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (10).

(b) Notice of termination is given to the other spouse on the date:

1. That signed termination is personally delivered to the other spouse; or

2. That signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) After notice of termination is given under this subsection and until the agreement terminates, each spouse shall act in good faith with respect to the other spouse in matters involving the property of the spouse who is required to act in good faith which is classified as individual property by the agreement. Management and control by a spouse of that property in a manner that limits, diminishes or fails to produce income from that property does not violate this paragraph.

(d) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(e) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) **ENFORCEABILITY.** (a) If the spouses do not complete the financial disclosure form under sub. (10), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (10), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable

disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the time of death of a spouse who is party to the agreement, the surviving spouse may elect under ss. 861.02 and 861.03. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(8) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their marital property.

(9) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(10) STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable individual property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable individual property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE-HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING

INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN PROPERTY ACQUIRED AS A RESULT OF SPOUSAL EFFORT DURING MARRIAGE AND THE TERM OF THE AGREEMENT; HOWEVER, YOU ARE ACQUIRING AUTOMATIC OWNERSHIP RIGHTS TO PROPERTY TITLED IN YOUR NAME.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

5. NOTWITHSTANDING THIS AGREEMENT, THE PROPERTY CLASSIFIED BY THIS AGREEMENT WHICH IS OWNED BY THE FIRST SPOUSE TO DIE IS SUBJECT TO CERTAIN ELECTIVE RIGHTS OF THE SURVIVING SPOUSE. YOU MAY BAR THESE ELECTIVE RIGHTS BY SEPARATE MARITAL PROPERTY AGREEMENT.

6. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (IT IS NOT NECESSARY TO FURNISH A COPY OF THE FINANCIAL DISCLOSURE FORM.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

7. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS

AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

8. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT EXECUTE A SUBSEQUENT STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

9. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN. IF SUCH NOTICE OF TERMINATION IS GIVEN BY ONE SPOUSE TO THE OTHER SPOUSE, EACH SPOUSE HAS A DUTY TO THE OTHER SPOUSE TO ACT IN GOOD FAITH IN MATTERS INVOLVING THE PROPERTY OF THE SPOUSE WHO IS REQUIRED TO ACT IN GOOD FAITH WHICH HAS BEEN CLASSIFIED AS INDIVIDUAL PROPERTY BY THIS AGREEMENT. THE GOOD FAITH DUTY CONTINUES UNTIL THE AGREEMENT TERMINATES (30 DAYS AFTER NOTICE IS GIVEN).

10. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

11. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

12. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM, THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

13. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

14. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.589,
Wisconsin Statutes)

This agreement is entered into by and (husband and wife) (who intend to marry) (strike one). The parties hereby classify the marital property owned by them when this agreement becomes effective, and property acquired during the term of this agreement which would otherwise have been marital property, as the individual property of the owning spouse. The parties agree that ownership of such property shall be determined by the name in which the property is held and, if property is not held by either or both spouses, ownership shall be determined as if the parties were unmarried persons when the property was acquired.

Upon the death of either spouse the surviving spouse may, except as otherwise provided in a subsequent marital property agreement, and regardless of whether this agreement has terminated, elect against the property of the decedent spouse as provided in section 766.589 (7) of the Wisconsin Statutes.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last-known address. The

agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE THAT SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse:
Date:
Print Name Here:
Residence Address:
(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, 19..
*....

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this day of, 19..
the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....
Notary Public, County, Wisconsin.
My Commission is permanent.

(If not, state expiration date:, 19..) (Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

Signature of Other Spouse:
Date:
Print Name Here:
Residence Address:
(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature authenticated this day of, 19..
*....

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this day of, 19..
the above named to me known to be the person who executed the foregoing instrument and acknowledge the same.

*....
Notary Public, County, Wisconsin.
My Commission is permanent.

(If not, state expiration date:, 19..) (Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

TERMINATION OF
STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.589 (4) OF THE WISCONSIN STATUTES.

2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.

3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable individual property classification agreement entered into by me and my spouse on (date last spouse signed the agreement) under section 766.589 of the Wisconsin Statutes.

Signature:
Date:
Print Name Here:
Residence Address:

SCHEDULE "A"
FINANCIAL DISCLOSURE

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

- | | <i>Husband</i> | <i>Wife</i> | <i>Both Names</i> |
|--|----------------|-------------|---|
| I. ASSETS: | | | |
| A. | | | Real estate (gross value) |
| B. | | | Stocks, bonds and mutual funds |
| C. | | | Accounts at and certificates and other instruments issued by financial institutions |
| D. | | | Mortgages, land contracts, promissory notes and cash |
| E. | | | Partnership interests |
| F. | | | Trust interests |
| G. | | | Livestock, farm products, crops |
| H. | | | Automobiles and other vehicles |
| I. | | | Jewelry and personal effects |
| J. | | | Household furnishings |
| K. | | | Life insurance and annuities: |
| | | | 1. Face value |
| | | | 2. Cash surrender value |
| L. | | | Retirement benefits (include value): |
| | | | 1. Pension plans |
| | | | 2. Profit sharing plans |
| | | | 3. HR-10 KEOGH plans |
| | | | 4. IRAs |
| | | | 5. Deferred compensation plans |
| M. | | | Other assets not listed elsewhere |
| II. OBLIGATIONS (TOTAL OUTSTANDING BALANCE): | | | |
| A. | | | Mortgages and liens |
| B. | | | Credit cards |
| C. | | | Other obligations to financial institutions |
| D. | | | Alimony, maintenance and child support (per month) |
| E. | | | Other obligations (such as other obligations to individuals guarantees, contingent liabilities) |
| III. ANNUAL COMPENSATION FOR SERVICES:
(for example, wages and income from self-employment; also include social security, disability and similar income here) | | | |

(IF YOU NEED ADDITIONAL SPACE,
ADD ADDITIONAL SHEETS.)

NOTE: Provides a statutory terminable individual property classification agreement for use by spouses and persons intending to marry. Under the agreement, the marital property of the spouses presently owned and property acquired, reclassified or created in the future that would otherwise be marital property is classified as the individual property of the owner. For purposes of the agreement, a spouse owns property if the property is held by that spouse ["held" is defined in s. 766.01 (9)]. If property classified by the agreement is not held by either or both spouses, ownership of the property is determined as if the spouses were unmarried when the property was acquired.

Notwithstanding execution of the statutory agreement, the surviving spouse has elective rights under ss. 861.02 and 861.03 (deferred marital property and the augmented marital property estate), including elective rights in property that would have been marital property but for the agreement.

A disclosure form is included as part of the statutory agreement form (SCHEDULE "A", "Financial Disclosure"). If the spouses do not complete the financial disclosure form before the agreement is executed or contemporaneously with

execution of the agreement, the agreement terminates 3 years after the date both spouses signed the agreement.

If the spouses complete the disclosure form, the agreement is "permanent"; the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse. Note, however, that under the enforceability provision, if the spouses complete the disclosure form and the spouse against whom enforcement of the agreement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations, the agreement terminates 3 years after both spouses signed the agreement. The enforceability provision is not intended to preclude the use of contract defenses not precluded under this section and s. 766.58. The following comment to SECTION 10 of The Uniform Marital Property Act is applicable here:

"Although the act sets forth a specific group of requirements for enforceability, they are not exclusive. Ordinary contract defenses not specifically ruled out by the act (as lack of consideration is) remain available."

A statutory agreement may be terminated unilaterally by a spouse at any time. A termination form, not intended to be the exclusive termination form, is provided as part of the statutory agreement. After notice of termination is given and until the agreement terminates (30 days), each spouse is required to act in good faith with respect to the other spouse in matters involving the property of the spouse who is required to act in good faith which is classified as individual property under the agreement.

Termination of an agreement, whether by written notice, operation of law, dissolution or death, is prospective; termination does not affect the classification of property acquired before termination.

Spouses may execute only one statutory agreement for which the financial disclosure form is not completed. The limitation is intended to avoid continued renewal of 3-year agreements for the purpose of avoiding the disclosure requirement which applies to "permanent" agreements. The limitation applies on a "per-marriage" basis; one 3-year agreement per marriage may be executed (Note, also, that the limitation only applies if the first agreement actually becomes effective for any period. An agreement may be executed and not become effective until a later time; for example when executed before marriage or before both spouses are domiciled in this state.)

Except as provided otherwise in this section, the general section concerning execution content and enforceability of marital property agreements, s. 766.58, applies to statutory terminable individual property classification agreements. In addition, the statutory agreements are defined as marital property agreements for purposes of ch. 766, generally (see the treatment of s. 766.01 (12)), and, thus, for example, are binding on 3rd parties only as provided in ch. 766.

In addition to not affecting the duty of support that spouses have to each other, as specified in sub. (6), the agreement does not affect the duty of support that a spouse has to his or her children [see s. 766.58 (2)]. Also, a statutory agreement does not affect determination of property division under s. 767.255 or of maintenance payments under s. 767.26.

SECTION 23. 766.605 of the statutes is amended to read:

766.605 Classification of homestead. A homestead acquired after the determination date exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement. A homestead may be reclassified under s. 766.31 (10).

NOTE: Clarifies that a homestead may be reclassified by the general methods for reclassification of property.

SECTION 24. 766.61 (1) (a) and (c) of the statutes are amended to read:

766.61 (1) (a) "Owner" means a person appearing on the records of the policy issuer as the person having the ownership interest, or means the insured if no person other than the insured appears on those records as a person having that interest. In the case of group insurance, the term means the holder of each individual certificate of coverage under the group plan and does not include the person who contracted with the policy issuer on behalf of the group, regardless of whether that person is listed as the owner on the contract.

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

(3) (e), the term includes an insurance policy insuring the life of any individual and providing for payment of death benefits at the death of the insured. This paragraph does not apply to sub. (2).

NOTE: The amendment to s. 766.61 (1) (a) clarifies the meaning of "owner" as the term applies to group insurance where, for example, the records of the policy issuer list an employer providing group insurance for employees as the owner of the policy but where the employee has the right to designate the beneficiary.

The amendment to s. 766.61 (1) (c) allows written consents under s. 766.61 (3) (e), in which a spouse may consent to the designation of another person as beneficiary or consent to the use of property to pay premiums on a policy, to be used in connection with an insurance policy insuring the life of any individual. Under former law, use of written consents was limited to an insurance policy insuring the life of a spouse.

SECTION 25. 766.61 (2) of the statutes is repealed and recreated to read:

766.61 (2) (a) In this subsection:

1. "Business day" has the meaning given under s. 421.301 (6).

2. "Notice of claim" means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or a person claiming under a deceased spouse's disposition at death, that the person claims to be entitled to proceeds, payments or an interest in the policy.

3. "Policy" means an insurance policy insuring the life of a spouse or a life insurance policy of which a spouse is the owner.

(b) Except as provided in par. (c):

1. A policy issuer may rely on and act in accordance with the issuer's policy and records. If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of those payments or actions.

2. The classification of a policy or a portion of a policy as marital property has no effect on the policy issuer's duty to perform under the issuer's contract when making payment or taking action in accordance with the policy and the issuer's records.

(c) 1. If at least 5 business days before making payment or taking action in accordance with the issuer's policy and records, a policy issuer has received at its home office a notice of claim, the issuer shall notify the party directing the payment or action of the receipt of the notice of claim and shall not take any action on the policy for 14 business days.

2. If within 14 business days after receiving the notice of claim the issuer receives at its home office, as purporting to support the notice of claim, a decree, marital property agreement, written directive signed by the beneficiary and surviving spouse, consent under sub. (3) (e) or proof that a legal action has been filed, including a copy of an election filed pursuant to s. 861.03, to secure an interest as evidenced in such a document, the issuer shall make payment or take action on the policy after the issuer receives from a court or from the claimant and the person directing action or payment written documentation indicating that the dispute has been resolved.

3. If documentation purporting to support the claim is not submitted as described under subd. 2, the policy issuer shall take action or make payment as if the notice of claim had not been received.

(d) A policy issuer is not liable to any person for any claim for damages as a result of the issuer's suspension of policy action or the taking of any action pursuant to this subsection. A policy issuer shall pay interest which accrues during the suspension of any action under this subsection.

NOTE: Provides specific protections for insurers with respect to making payments or taking actions in accordance with the insurance policy and the issuer's records. Under former law, if an issuer of an insurance policy made payments or took actions in accordance with the policy and the issuer's records, the issuer was not liable because of those payments or actions unless, at the time of the payments or actions, the insurer had actual knowledge of an inconsistent decree or marital property agreement or of an adverse claim by a spouse, former spouse or surviving spouse or person claiming under a deceased spouse's disposition at death. Insurers raised concerns about what constituted actual knowledge of an adverse claim. The revised provision provides more certainty regarding when insurers may rely on the terms of the policy and their records and when they must recognize an adverse claim.

Under the new provision, a policy issuer generally may rely on and act in accordance with the issuer's policy and records; if an issuer makes payments or takes actions in accordance with the policy and issuer's records, the issuer is not liable because of those payments or actions. An exception to the general rule arises when a policy issuer receives a timely written notice of claim which asserts that the claimant is entitled to proceeds, payments or an interest in a policy. General ground rules are provided for an insurer's response to a timely written notice of claim.

SECTION 26. 766.61 (2m) of the statutes is created to read:

766.61 (2m) (a) In determining the marital property component of the ownership interest and proceeds of a policy under sub. (3), the date on which a policy becomes effective is the date of original issuance or coverage of the policy, whichever is earlier, if the policy is thereafter kept in force merely by continuing premium payments, without any further underwriting by the issuer. If additional underwriting is required after original issuance of the policy or if the amount of proceeds increases after original issuance as a result of unscheduled additional premiums paid by the policyholder, the effective date of the policy is the date on which the newly underwritten or newly increased coverage begins.

(b) In determining the marital property component of the ownership interest and proceeds of a group policy sponsored by an employer or association under sub. (3), the date on which the policy becomes effective is the date on which individual coverage begins, notwithstanding that the employer or association thereafter changes policy issuers or that the amount of coverage changes under the policy pursuant to the plan or benefit offered by the employer or association. If additional underwriting is required after original issuance of the policy, or if the coverage is provided by a different employer or association, the effective date

of the policy is the date on which the newly underwritten or newly provided coverage begins.

NOTE: Specifies, for purposes of determining the marital property component of the ownership interest and proceeds of a life insurance policy insuring the life of a spouse, the effective date of the policy. Paragraph (a) applies to nongroup policies. Paragraph (b) applies to group policies provided by employers or associations.

The rule under par. (a) has the benefit of simplicity although, like other classification rules under s. 766.61, it may have unanticipated results. The use of a written consent is one means of avoiding such results.

Consideration was given to defining "underwriting" for purposes of this subsection, but no appropriate definition suggested itself. The term, however, has an accepted meaning within the insurance industry.

SECTION 27. 766.61 (3) (a) of the statutes is renumbered 766.61 (3) (a) 1 and amended to read:

766.61 (3) (a) 1. ~~The~~ Except as provided in subd. 2, the ownership interest and proceeds of a policy issued after the determination date which designates the insured as the owner are marital property, regardless of the classification of property used to pay premiums on the policy.

SECTION 28. 766.61 (3) (a) 2 of the statutes is created to read:

766.61 (3) (a) 2. If after the issuance of a policy described under subd. 1 the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are mixed property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect and the denominator of which is the entire period that the policy was in effect.

SECTION 29. 766.61 (3) (c) of the statutes is renumbered 766.61 (3) (c) 1 and amended to read:

766.61 (3) (c) 1. ~~The~~ Except as provided in subd. 2, the ownership interest and proceeds of a policy which designates the spouse of the insured as the owner are individual property of its owner, regardless of the classification of property used to pay premiums on the policy.

SECTION 30. 766.61 (3) (c) 2 of the statutes is created to read:

766.61 (3) (c) 2. If after the issuance of a policy described under subd. 1 the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are mixed property. The individual property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage and after the determination date that the policy was in effect and the denominator of which is the entire period that the policy was in effect.

NOTE: Provides time-apportionment rules for determining the marital property component of: (1) a life insurance policy

issued after the determination date which designates the insured as the owner; and (2) a life insurance policy which designates the spouse of the insured as the owner, when at least one of the spouses ceases to be domiciled in the state. The classification rules reflect the express requirement under new s. 766.03 of dual domicile for the continued application of ch. 766.

With the amendment to the definition of “during marriage” by the treatment of s. 766.01 (8), the classification rules for determining the marital property component of policies covered under s. 766.61 (3) (b) and (d) reflect the cessation of dual domicile and, therefore, do not require amendment.

SECTION 31. 766.61 (7) and (8) of the statutes are created to read:

766.61 (7) If a noninsured spouse predeceases an insured spouse, the marital property interest of the decedent spouse in a policy which designates the surviving spouse as the owner and insured is limited, for purposes of an action under s. 766.70 (6) (b) 3 to recover the interest, to a dollar amount equal to one-half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the date of death of the deceased spouse. If an action is available under s. 766.70 (6) (b) 3, all rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate upon the failure of the surviving spouse to purchase the decedent spouse’s marital property interest under s. 766.70 (7).

NOTE: Specifies, for simplicity and certainty, the marital property interest, for purposes of an action under s. 766.70 (6) (b) 3, of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured. Under former law, the application of the valuation rule under s. 766.70 (6) (b) 2 was uncertain. The marital property interest of the noninsured spouse which is specified in this subsection is a dollar amount equal to one-half of the value of the marital property component of, in general terms, the “cash value” of the policy plus the unused portion of the term premium. This is the only interest of the noninsured spouse in the policy if the option of the surviving spouse under s. 766.70 (7) to purchase the policy is not exercised.

(8) This section does not apply to a policy held by a deferred employment benefit plan. Classification of the ownership interest and proceeds of such a policy is determined under s. 766.62.

NOTE: Clarifies that the classification of the ownership interest and proceeds of a life insurance policy insuring the life of a spouse which is held by a deferred employment benefit plan is determined under s. 766.62, relating to deferred employment benefits. Questions had been raised concerning the possible application of s. 766.61 to life insurance policies held by a deferred employment benefit plan.

SECTION 32. 766.62 (1) of the statutes is renumbered 766.62 (1) (a) and amended to read:

766.62 (1) (a) ~~Except as provided in par. (b), a~~ deferred employment benefit attributable to employment of a spouse occurring after the determination date is marital property.

SECTION 33. 766.62 (1) (b) of the statutes is created to read:

766.62 (1) (b) A deferred employment benefit attributable to employment of a spouse occurring

after the determination date is mixed property if, after the determination date and during the period of employment, the employed spouse or his or her spouse are at any time not domiciled in this state. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of the employment.

SECTION 34. 766.62 (2) of the statutes is amended to read:

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

(2m) Unless provided otherwise in a decree or marital property agreement, a mixed property deferred employment benefit shall be valued as of a dissolution or an employe spouse’s death.

NOTE: Provides, in sub. (1), a time-apportionment rule for determining the marital property component of a deferred employment benefit attributable to employment of a spouse occurring after the determination date. The classification rule reflects the dual domicile requirement under new s. 766.03 in this bill for the continued application of ch. 766.

The last sentence of sub. (2) is relocated into a separate subsection, new sub. (2m). The new relocation reflects the fact that a deferred employment benefit may now be mixed property under sub. (1), in addition to sub. (2).

SECTION 35. 766.70 (3) (d) (intro.) of the statutes is amended to read:

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

NOTE: Expands the class of corporate property to which the “add-a-name” remedy does not apply. The concern of undue interference with a corporation whose stock is not publicly traded and which employs the spouse of the spouse seeking the remedy has equal application to any corporation, the stock of which is not publicly traded.

The expanded class of corporate property under this provision is subject to the new management and control option of the holding spouse under new s. 857.015.

SECTION 36. 766.70 (4) (c) of the statutes is amended to read:

766.70 (4) (c) This subsection does not apply to property described in sub. (3) (a), (b), (d) and (e).

NOTE: Provides that the remedy for substantial injury of marital property by a spouse’s gross mismanagement, waste or absence does not apply to substantial injury to property of a corporation, the stock of which is not publicly traded. The

exemption reflects concerns about undue interference with the activities of such a corporation.

SECTION 37. 766.70 (6) (b) 2 of the statutes is amended to read:

766.70 (6) (b) 2. If the spouse entitled to a remedy under subd. 1 predeceases the donor spouse, no action may be commenced later than one year after the decedent's death. ~~The Except as provided in subd. 3,~~ recovery in such an action is the same as if the donor spouse had predeceased the spouse entitled to recover, but is valued at the date of death of the spouse entitled to recover.

SECTION 38. 766.70 (6) (b) 3 of the statutes is created to read:

766.70 (6) (b) 3. If there is a remedy under subd. 2 to recover a decedent spouse's marital property interest in a life insurance policy which designates the surviving spouse as the owner and insured, the estate shall sell the interest under sub. (7) if the surviving spouse offers to purchase the interest within the time period under sub. (7). If there is no offer to purchase the interest, an action under subd. 2 may be commenced but recovery is limited as provided in s. 766.61 (7). The surviving spouse is liable for the amount of such recovery but this subdivision does not preclude the use of any other applicable remedy to obtain the recovery.

NOTE: Clarifies the relationship between the option of the surviving spouse under s. 766.70 (7) to purchase the decedent spouse's interest in a life insurance policy from the decedent's estate and the limitation on the interest of the decedent spouse under new s. 766.61 (7) if the surviving spouse does not exercise the option to purchase.

SECTION 39. 806.10 (1) (intro.) and (a) of the statutes are amended to read:

806.10 (1) (intro.) At the time of entry of a judgment directing in whole or in part the payment of money, or a judgment naming a spouse under s. 806.15 (4), the clerk shall enter in a judgment docket, either arranged alphabetically or accompanied by an alphabetical index, a docket of such judgment containing:

(a) The full name and place of residence of each judgment debtor and of the spouse or former spouse of the judgment debtor if the spouse is named in a judgment described under s. 806.15 (4). If the judgment or judgment docket fails to give the place of residence of the judgment debtor or the judgment debtor's spouse or former spouse, the validity of the judgment is not affected thereby, but the judgment creditor may at any time file with the clerk an affidavit stating, on knowledge or information and belief, the information. The clerk shall thereupon enter the facts according to the affidavit in the docket, noting the date and hour of the entry.

NOTE: See the treatment of s. 806.15 (4) (intro.) and the NOTE thereto.

SECTION 40. 806.15 (4) (intro.) of the statutes is amended to read:

806.15 (4) (intro.) A lien under this section does not attach to property that is held, as defined in s. 766.01 (9), by a person who is the spouse or former spouse of a judgment debtor and that is not held by the judgment debtor, unless the spouse of the judgment debtor is a named defendant in the action for which judgment is rendered, the spouse of the judgment debtor is named in the judgment itself, the obligation is determined an obligation described in s. 766.55 (2) and any of the following applies:

NOTE: Intended, together with the amendment of s. 806.10 (1) (intro.) and (a), to ensure that a judgment lien against the property of a spouse or former spouse of a judgment debtor which is acquired after the judgment is rendered will be docketed against the spouse or former spouse so that the lien is discoverable.

SECTION 41. 851.055 of the statutes is repealed and recreated to read:

851.055 Deferred marital property. "Deferred marital property" means property acquired while spouses are married and while ch. 766 does not apply, which would have been marital property under ch. 766 if it were acquired when ch. 766 applied.

NOTE: Expands the definition of "deferred marital property" to include periods after the determination date in which one or both spouses are not domiciled in this state. See the treatments of ss. 766.03 and 861.02. The phrase "while spouses are married" in this section is not to be confused with the term "during marriage", defined under s. 766.01 (8).

SECTION 42. 857.015 of the statutes is created to read:

857.015 Management and control of certain business property by holding spouse. A spouse who holds property described under s. 766.70 (3) (a), (b) or (d) which is not also held by the other spouse may direct in a will or other signed writing that the marital property interest of the nonholding spouse in such property and the election under s. 861.02 (1) against such property be satisfied as provided under ss. 861.015 and 861.02 (2). The holding spouse shall identify in a will or other signed writing the property described under s. 766.70 (3) (a), (b) or (d) to which the directive applies. The signature of the holding spouse on a directive other than a will shall be acknowledged, attested or witnessed under s. 706.07. The estate of the holding spouse may not execute a directive under this section. If at the death of a spouse the surviving spouse is the holding spouse, the surviving spouse may execute a directive under this section if executed within 90 days after the decedent spouse's death.

NOTE: Extends management and control provisions under the marital property law to provide a new option for a spouse who holds the following business property (which is not also held by the other spouse):

1. An interest in a partnership held as a general partner or an interest in a joint venture held as a participant.
2. An interest in a professional corporation, professional association or similar entity held as a stockholder or member.
3. An interest in a corporation, the stock of which is not publicly traded.

The spouse who holds business property, as described above, may direct in a will or other signed writing that the nonholding spouse's marital property interest in the business property and the nonholding spouse's deferred marital property election against such property be satisfied from other property of equal value. The procedural aspects of satisfaction of the nonholding spouse's interests are contained in new ss. 861.015 and 861.02 (2).

This section authorizes the holding spouse to direct what may also be accomplished by an adequately drafted, specialized marital property agreement or buy-sell agreement. The management and control right under this section allows a holding spouse to control the ownership interests in a business by relatively efficient and expeditious means, but also protects the value of the marital property and deferred marital property interests of the nonholding spouse or that spouse's successors in interest.

SECTION 43. 857.03 of the statutes is renumbered 857.03 (1).

SECTION 44. 857.03 (2) of the statutes is created to read:

857.03 (2) The surviving spouse and a distributee who is a successor in interest to all or part of the decedent's one-half interest in marital property may petition the court to approve an exchange of interests in the marital property. If the court approves the exchange, the personal representative shall exchange their respective interests in 2 or more items of marital property and distribute the items in a manner to conform with the exchange. The exchange shall:

- (a) Occur before the final distribution of the estate;
- (b) Be composed of items which are fairly representative of the appreciation and depreciation that has occurred since the date of death;
- (c) Be composed of items having a fair market value at the time of exchange equal to what would have been distributed had no exchange request been made, including any money used in the exchange; and
- (d) Be reported with a written description of each item, its basis and its fair market value at the time of exchange in the manner prescribed by the department of revenue.

NOTE: Authorizes a personal representative to exchange all or a part of the decedent's interest in marital property between a surviving spouse and a distributee under certain circumstances, if the parties petition the court and secure court approval of the exchange. The exchange may result in the surviving spouse owning from none to all of an asset that was marital property or a component of an asset that was marital property. The exchange provision applies only to probate property. Property permitted to be exchanged under this subsection is not limited to assets exchangeable tax-free under the federal tax laws, such as the provisions relating to like-kind exchanges.

SECTION 45. 861.01 (1) of the statutes is amended to read:

861.01 (1) SURVIVING SPOUSE'S ONE-HALF INTEREST IN MARITAL PROPERTY. Upon the death of either spouse, the surviving spouse retains his or her undivided one-half interest in each item of marital property. The surviving spouse's undivided one-half interest in each item of marital property is not subject

to administration. Ownership and management and control rights are set forth under ~~s.~~ ss. 857.01 and 857.015.

SECTION 46. 861.015 of the statutes is created to read:

861.015 Satisfaction of nonholding spouse's marital property interest in certain business property. (1) If following the death of a spouse property is subject to a directive under s. 857.015, the marital property interest of the nonholding spouse in the property shall be satisfied within one year after the decedent spouse's death from other property which is of equal clear market value at the time of satisfaction. Except as provided under sub. (3), if the interests of the nonholding spouse under this section and s. 861.02 (2) are not satisfied within one year after the decedent spouse's death, this section does not apply and the nonholding spouse's marital property interest in the property subject to the directive continues as if the directive had not been made.

(2) For purposes of this section, property subject to a directive is valued by its clear market value on the date of the decedent's death. Satisfaction of the nonholding spouse's marital property interest in the property subject to the directive shall be based on that value, plus any income from the property subject to the directive after the death of the decedent and before satisfaction. For purposes of determining the income from the property subject to a directive, such property shall be treated as a legacy or devise of property other than money under s. 701.20 (5) (b) 1.

(3) If the interests of the nonholding spouse under this section and s. 861.02 (2) are not satisfied within one year after the decedent spouse's death because the clear market value of the property subject to the directive has not been determined, the court having jurisdiction of the decedent spouse's estate shall:

(a) Order that the interests of the nonholding spouse shall be satisfied after the determination of clear market value, at a date specified by the court; or

(b) Order that the interests of the nonholding spouse shall be satisfied before the determination of clear market value based on an estimate of the clear market value, subject to any necessary adjustment upon final determination of clear market value.

(4) The following property is not available to satisfy the nonholding spouse's marital property interest in the property subject to the directive:

(a) Property included in an order, or extension or revision of an order, for an allowance under s. 861.31 made before satisfaction of the nonholding spouse's interest.

(b) Property selected under s. 861.33 before satisfaction of the nonholding spouse's interest.

(c) Property included in an order for an allowance under s. 861.35 made before satisfaction of the nonholding spouse's interest.

(5) Satisfaction of a nonholding spouse's marital property interest under this section shall not adversely affect any of the following:

(a) The nonholding spouse's marital property interest in property not subject to the directive.

(b) The nonholding spouse's election under s. 861.02 of deferred marital property other than deferred marital property subject to the directive.

NOTE: Provides for the satisfaction of the nonholding spouse's marital property interest in business property which is subject to a directive of the holding spouse under s. 857.015. This section applies whether the holding spouse is the first spouse to die or the nonholding spouse is the first spouse to die, assuming that a timely directive has been executed under s. 857.015.

Full satisfaction of the nonholding spouse's interests is required for the directive to be effective; if the marital property interests and the deferred marital property interests, if any, of the nonholding spouse cannot be fully satisfied within the time limitations provided in this section, the nonholding spouse's interests in the business property continue as if the directive had not been made.

The section assumes that if there is a conflicting marital property agreement or buy-sell agreement, the contract is controlling over the directive.

SECTION 47. 861.02 of the statutes is renumbered 861.02 (1) and amended to read:

861.02 (1) In addition to the right to elect under s. 861.03 and unless barred under s. 861.13, at the death of a spouse whose ~~marital~~ domicile is in this state the surviving spouse may elect, under s. 861.11, not more than a one-half interest in any or all items of the deferred marital property then owned by the decedent spouse which is subject to administration, reduced by any of that property used to satisfy obligations for which the property is available under s. 859.18.

NOTE: Reflects the deletion of the concept of "marital domicile" under ch. 766. See the treatment of s. 766.03.

Under this language, as well as prior language, a surviving spouse may elect under this section and s. 861.03, regardless of the domicile of the surviving spouse. In addition, under existing language a surviving spouse not domiciled in this state has rights to take under the intestacy provisions of ch. 852.

SECTION 48. 861.02 (2) of the statutes is created to read:

861.02 (2) (a) If the deferred marital property subject to administration includes property which is subject to a directive under s. 857.015, an election under sub. (1) against such property shall be satisfied within one year after the decedent spouse's death from other property which is of equal clear market value at the time of satisfaction. Except as provided in par. (c), if the interests of the surviving spouse under this subsection and s. 861.015 are not satisfied within one year after the decedent spouse's death, this subsection does not apply and the surviving spouse's election against the property subject to the directive shall be satisfied as if the directive had not been made.

(b) For purposes of this subsection, property subject to a directive is valued by its clear market value on the date of the decedent's death. Satisfaction of the nonholding spouse's election against the property

subject to a directive shall be based on that value, plus any income from the property subject to the directive after the death of the decedent and before satisfaction. For purposes of determining the income from the property subject to a directive, such property shall be treated as a legacy or devise of property other than money under s. 701.20 (5) (b) 1.

(c) If the interests of the nonholding spouse under this subsection and s. 861.015 are not satisfied within one year after the decedent spouse's death because the clear market value of the property subject to the directive has not been determined, the court having jurisdiction of the decedent spouse's estate shall:

1. Order that the interests of the nonholding spouse shall be satisfied after the determination of clear market value, at a date specified by the court; or

2. Order that the interests of the nonholding spouse shall be satisfied before the determination of clear market value based on an estimate of the clear market value, subject to any necessary adjustment upon final determination of clear market value.

(d) The following property is not available to satisfy the election against the property subject to the directive:

1. Property included in an order, or extension or revision of an order, for an allowance under s. 861.31 made before satisfaction of the nonholding spouse's interest.

2. Property selected under s. 861.33 before satisfaction of the nonholding spouse's interest.

3. Property included in an order for an allowance under s. 861.35 made before satisfaction of the nonholding spouse's interest.

(e) Satisfaction of a surviving spouse's interests under this subsection shall not adversely affect any of the following:

1. The surviving spouse's marital property interest in property not subject to the directive.

2. The surviving spouse's election under sub. (1) of property other than property subject to the directive.

NOTE: Provides for the satisfaction of a surviving spouse's elective deferred marital property interest in business property which is subject to a directive of the holding spouse under s. 857.015. This section applies only if the holding spouse predeceases the nonholding spouse.

See the NOTES to ss. 857.03 (2) and 861.015.

SECTION 49. 861.03 of the statutes is amended to read:

861.03 Election of augmented marital property estate. In addition to the right to elect under s. 861.02 (1), at the death of a spouse whose ~~marital~~ domicile is in this state the surviving spouse may, under s. 861.11, elect not more than one-half of the augmented marital property estate. The augmented marital property estate consists of the value of property described under s. 861.05. The amount elected is subject to reduction as provided under s. 861.07. The amount elected shall be satisfied and apportioned as provided under s. 861.09.

NOTE: Reflects the deletion of the concept of "marital domicile" under ch. 766. See the treatment of s. 766.03.

SECTION 50. 861.20 of the statutes is amended to read:

861.20 Surviving spouse's right in nondomiciliary decedent's real property in this state. (1) If a married person who does not have a marital domicile in this state dies and leaves a valid will disposing of real property in this state which is not the community property or marital property of the decedent and the surviving spouse, the surviving spouse has the same right to elect to take a portion of or interest in that property against the will of the decedent as if the property were located in the decedent's domicile at the decedent's death. The procedure of the decedent's domicile for electing against the will applies to such an election.

(2) If a married person who does not have a marital domicile in this state dies and has an interest in real property in this state that is not disposed of by will, the surviving spouse has the same right to the property

under intestate succession as if the property were located in the decedent's domicile at decedent's death.

NOTE: Reflects the deletion of the concept of "marital domicile" under ch. 766. See the treatment of s. 766.03.

SECTION 51. 863.08 of the statutes is created to read:

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

SECTION 52. 893.135 of the statutes is amended to read:

893.135 Tolling of statute of limitations for marital property agreements. Any statute of limitations applicable to an action to enforce a marital property agreement ~~executed under s. 766.58~~ ch. 766 is tolled as provided under s. 766.58 (13).

SECTION 53. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
178.21 (3)(e)	861.02	861.02 (1)
701.20 (5)(b) 1	861.02	861.02 (1)
766.587 (6)	861.02	861.02 (1)
815.56	861.02	861.02 (1)
852.01 (1)(a) 2	861.02	861.02 (1)
853.15 (1)	861.02	861.02 (1)
857.01	861.02	861.02 (1)
861.03	861.02	861.02 (1)
861.07 (1) (b)	861.02	861.02 (1)
861.11 (1) and (2)	861.02	861.02 (1)
861.13 (1)(b)(intro.) and (2)	861.02	861.02 (1)
861.41 (3)	861.02	861.02 (1)

SECTION 54. **Initial applicability.** (1) The treatment of sections 71.02 (2) (me) and 71.05 (1) (a) 32 and (b) 17 and (t) of the statutes first applies to taxable year 1987.

(2) The treatment of section 71.11 (2r) of the statutes first applies to taxable year 1988.