

# State of Wisconsin



2021 Senate Bill 893

Date of enactment: **March 18, 2022**

Date of publication\*: **March 19, 2022**

## 2021 WISCONSIN ACT 201

AN ACT *to amend* 863.27, 865.201 (1), 867.046 (1) (c), 867.046 (1m) and 867.046 (2) (intro.); and *to create* 705.18 and 867.046 (2) (L) of the statutes; **relating to:** nonprobate transfers of farming implements at death.

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

**SECTION 1.** 705.18 of the statutes is created to read:

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

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

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

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

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

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

- a. Auxiliary power generators.
  - b. Bale loaders.
  - c. Barn elevators.
  - d. Conveyors.
  - e. Feed elevators and augers.
  - f. Grain dryers and grinders.
  - g. Milk coolers.
  - h. Milking machines, including piping, pipeline washers, and compressors.
  - i. Silo unloaders.
  - j. Powered feeders, but not including platforms or troughs constructed from ordinary building materials.
- (c) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

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

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

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

1. The name of the owner or owners of the interest in a farm implement that will be transferred.

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

2. The name of the designated TOD beneficiary.  
 3. That the transfer is effective only upon the death of the owner or owners.

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

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

(c) A document designating a TOD beneficiary under this section is not effective unless it is in writing and executed with all of the following formalities:

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

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

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

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

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

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

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

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

designating a TOD beneficiary is otherwise satisfactorily proved.

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

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

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

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

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

(9) Unless previously adjudicated in a formal testacy proceeding or otherwise barred, the claim of any claimant to recover a farm implement transferred to a TOD beneficiary under this section is barred unless, by no later than 120 days after the death of the sole owner or the last to die of multiple owners, a complaint is filed in an action in which the relief demanded may confirm or change interests in the farm implement transferred under this section.

**SECTION 2.** 863.27 of the statutes is amended to read:  
**863.27 Contents of final judgment.** In the final judgment the court shall approve the final account, designate the persons to whom assignment and distribution are being made, and assign to each of them the property or proportions or parts of the estate or the amounts to which each is entitled. The findings of fact which support the judgment shall include a determination of the heirs of the decedent; facts showing that all jurisdictional requirements have been met; the date of death of the decedent and the decedent’s testacy or intestacy; facts relating to the payment of state death tax, state income tax, and

claims and charges against the estate. If immediately before death the decedent had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination has not been issued under s. 867.04 or an interest in marital property for which a certificate has not been issued under s. 865.201 or 867.046, the findings of fact which support the judgment shall set forth the termination of the life estate, the right of survivorship of any joint tenant, or the decedent's interest in marital property and, upon the petition of the decedent's spouse, the confirmation of the one-half interest held by the surviving spouse in marital property immediately before the death of the decedent spouse. In addition, the findings of fact shall, upon petition of a designated person, trust, or other entity under s. 766.58 (3) (f) or of a TOD beneficiary under s. 705.15 or 705.18, set forth the confirmation of an interest in property passing by nontestamentary disposition under s. 705.15, 705.18, or 766.58 (3) (f). Every tract of real property in which an interest is assigned or terminated shall be specifically described. If a fund is withheld from distribution for the payment of contingent claims, for meeting possible tax liability, or for any other reasonable purpose, the judgment shall provide for the distribution of the fund if all or a part of it is not needed.

**SECTION 3.** 865.201 (1) of the statutes is amended to read:

865.201 (1) As an alternative to s. 867.046 the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest in marital property or in which any designated person, trust, or other entity has an interest passing by nontestamentary disposition under s. 705.15, 705.18, or 766.58 (3) (f), including the recording data, if any, of the document creating the interest and any right of survivorship. Valuations need not be set forth in the statement.

**SECTION 4.** 867.046 (1) (c) of the statutes is amended to read:

867.046 (1) (c) "TOD beneficiary" means a person designated on a deed as a transfer on death beneficiary under s. 705.15 or a person designated on a document as a transfer on death beneficiary under s. 705.18.

**SECTION 5.** 867.046 (1m) of the statutes is amended to read:

867.046 (1m) UPON DEATH; GENERALLY. If a domiciliary of this state dies who immediately prior to death had an interest in property in this state, including an interest in survivorship marital property or an interest in property passing under s. 705.10 (1) or 705.18 (2), or if a person not domiciled in this state dies having an interest in property in this state, including an interest in survivorship

marital property or an interest in property passing under s. 705.10 (1) or 705.18 (2), upon petition of the decedent's spouse, a beneficiary of a marital property agreement, a TOD beneficiary, or a beneficiary of a transfer under s. 705.10 (1) or 705.18 (2) to the court of the county of domicile of the decedent or, if the decedent was not domiciled in this state, of any county where the property is situated, the court shall issue a certificate under the seal of the court. The certificate shall set forth the fact of the death of the decedent, the termination or transfer of the decedent's interest in the property, the interest of the petitioner in the property and any other facts essential to a determination of the rights of persons interested. The certificate is prima facie evidence of the facts recited, and if the certificate relates to an interest in real property or to a debt secured by an interest in real property, the petitioner shall record a certified copy or duplicate original of the certificate in the office of the register of deeds in each county in this state in which the real property is located.

**SECTION 6.** 867.046 (2) (intro.) of the statutes is amended to read:

867.046 (2) UPON DEATH; INTEREST IN PROPERTY. (intro.) As an alternative to sub. (1m), upon the death of any person having an interest in any real property, a vendor's interest in a land contract, an interest in a savings or checking account, an interest in a security, a mortgagee's interest in a mortgage, or an interest in property passing under s. 705.10 (1) or 705.18 (2), including an interest in survivorship marital property, the decedent's spouse, a beneficiary of a marital property agreement, a TOD beneficiary, or a beneficiary of a transfer under s. 705.10 (1) or 705.18 (2) may obtain evidence of the termination of that interest of the decedent and confirmation of the applicant's interest in the property by providing to the register of deeds of the county in which the property is located, on an application supplied by the register of deeds for that purpose, the name, residence, and post-office address of the decedent, the name, residence, and post-office address of the applicant, and the date of the decedent's death. A person providing an application to the register of deeds under this subsection or, if the person is not an individual, a representative of the person shall sign the application and verify, under oath, the correctness of the information provided in the application. The applicant shall also provide to the register of deeds the following information:

**SECTION 7.** 867.046 (2) (L) of the statutes is created to read:

867.046 (2) (L) In the case of a transfer under s. 705.18 (2), except as described in par. (j), a copy of the document described in s. 705.18 (2).