

DRAFT
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REVISED UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT (202_)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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January 17, 2020

**REVISED UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS
AT DEATH ACT (202_)**

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1 **REVISED UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS**
2 **AT DEATH ACT (202_)**

3
4 **SECTION 1. SHORT TITLE.** This act may be cited as the Revised Uniform

5 Community Property Rights at Death Act.

6 **Reporter’s Notes**

7
8 Pursuant to Section 401 of the Uniform Law Commission’s Drafting Rules, the short title
9 of an act is “its title as approved by the Executive Committee of the Uniform Law Commission.
10 Uniform Law Commission, Drafting Rules: Rules 401 (2012). The short title is to be
11 distinguished from the longer, more detailed title that is often included in bills as they are
12 introduced in state legislatures.” This “short title” includes the term “Revised” to indicate a
13 substantial revision from the original Uniform Disposition of Community Property Rights at
14 Death Act (1971), rather than merely amendments to the existing act. See Uniform Law
15 Commission, Drafting Rules: Rules 409 (2012). This approach is consistent with other uniform
16 act revisions. See, e.g., Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA);
17 Revised Uniform Unclaimed Property Act; Revised Uniform Partnership Act (RUPA). Although
18 a completely new title could be adopted, it seems preferable in this instance to utilize a term
19 indicating a revision. Ultimately, however, this is a matter for the Executive Committee. See
20 Uniform Law Commission, Drafting Rules: Rules 409 (2012).

21
22 **SECTION 2. DEFINITIONS.** In this act:

23 (1) “Domicile” means the place of an individual’s home or habitual residence, as defined
24 by this State.

25 (2) “Individual” means a human being.

26 (3) “Jurisdiction” means the United States, a state, a foreign country, or a political
27 subdivision of a foreign country.

28 (4) “Partition” means a voluntary severance or division of jointly or commonly held
29 property interests undertaken mutually by both an individual and that individual’s spouse.

30 (5) “Person” means an individual, estate, business or nonprofit entity, public corporation,
31 government or governmental subdivision, agency, or instrumentality, or other legal entity.

32 (6) “Spouse” means an individual who has entered into a valid marriage or a valid
33 domestic or registered partnership under the laws of a jurisdiction and recognized as valid in this

1 State. The term also includes an individual treated as a putative spouse.

2 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
3 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
4 the United States. The term includes a federally recognized Indian tribe.

5 **Reporter’s Notes**

6
7 The definition of domicile is the place where a person “usually ... has his home.”
8 Restatement (Second) of Conflicts § 11 cmt. (a). A person may reside in more than one place,
9 but may have only one domicile. Restatement (Second) of Conflicts § 11(2) (“Every person has
10 a domicil at all times and, at least for the same purpose, no person has more than one domicil at a
11 time.”). If an individual has multiple residences, that individual’s domicile will be ascertained
12 under the appropriate standards applicable in this state.

13
14 The definition of “Person” is a standard definition. See Uniform Law Commission,
15 Drafting Rules: Rules 305 (2012). Because the standard definition of “Person” includes legal
16 entities, the term “Individual” is used to limit the application of this act to human beings who
17 have acquired community property.

18
19 The definition of “State” is also a standard definition. See Uniform Law Commission,
20 Drafting Rules: Rules 306 (2012). To ensure the applicability of this act to individuals who
21 acquired community property in a foreign country, the broader term “Jurisdiction” has also been
22 included.

23
24 The term “Partition” is defined to mean a severance of collectively or jointly owned
25 property into individually owned shares. A partition does not necessarily occur under this act
26 merely because one spouse takes title to property in a particular form. For a partition to occur,
27 both spouses must agree to the severance of their community property interests. Whether there
28 was an agreement between the spouses to sever their community interests is a factual matter to
29 be ascertained by the courts.

30
31 The term “Spouse” is used expansively to include not only married persons, of either sex,
32 but also partners in other arrangements, such as domestic or registered partnerships, under which
33 community property may be acquired. The term also encompasses putative spouses, who may
34 enjoy community property.

35
36 **SECTION 3. APPLICABILITY; AFFECTED PROPERTY.** This act applies to the
37 following property of an individual who was previously domiciled in a jurisdiction in which
38 property could be acquired as community property, provided no partition has occurred:

39 (1) if an individual is domiciled in this state at the time of death, all or a proportionate

1 part of each item of personal property, wherever situated, that was characterized as, or acquired
2 with property that was characterized as, community property by the law of a jurisdiction in
3 which the individual was previously domiciled;

4 (2) whether or not an individual is domiciled in this state at the time of death, all or a
5 proportionate part of each item of real property situated in this state that was characterized as, or
6 acquired with property that was characterized as, community property by the law of a
7 jurisdiction in which the individual was previously domiciled;

8 (3) income, rents, revenues, or profits derived from property included in subsection (a) or
9 (b); and

10 (4) property traceable to property included in subsection (a) or (b).

11 **Reporter's Notes**

12
13 The approach of this revision is to make the act initially applicable to every “individual”
14 who was previously domiciled in a community property jurisdiction and who acquired personal
15 property, wherever currently located, either which was characterized as community property by
16 the law of that community property jurisdiction when it was acquired or which was acquired
17 with property that was characterized as community property. Under subsection (b), the same
18 approach applies to real property situated in this state, even if the decedent is not currently
19 domiciled in this state.

20
21 Under subsection (c), income, rents, revenues, or profits derived from property included
22 in subsection (a) or (b) are also subject to this act. Consequently, subsection (c) extends
23 applicability of this act to income derived from property that was acquired in this state if that
24 property was acquired with community property.

25
26 Under subsection (d), this act also applies to any property that is a traceable to property in
27 subsections (a) or (b). Simply stated, property is “traceable” to community property if the
28 property changes form without changing character. WILLIAM A. REPPY, CYNTHIA A. SAMUEL,
29 AND SALLY BROWN RICHARDSON, COMMUNITY PROPERTY IN THE UNITED STATES 161 (2015)
30 (quoting W.BROCKELBANK, THE COMMUNITY PROPERTY LAW OF IDAHO 134 (1964)). Thus,
31 property received in exchange for community property has the same character as the property
32 given and thus retains a community property character. Tracing, of course, becomes more
33 complex when community and separate property are comingled. Subsections (a) and (b) make
34 clear that this act applies to a “proportionate part of each item” of property that is traceable to
35 community property. Thus, it applies to property that becomes comingled and is traceable to
36 community property.

1 Because the term “State” is uniformly defined term of the Uniform Law Commission and
2 does not include foreign countries, this provision uses the broader term “Jurisdiction” to indicate
3 that it also applies to individuals who were domiciled in foreign jurisdictions where community
4 property may be acquired.

5
6 **SECTION 4. REBUTTABLE PRESUMPTION.**

7 (a) All property acquired by an individual while domiciled in a jurisdiction under whose
8 laws property could then be acquired by that individual as community property is presumed to be
9 community property. This presumption may be rebutted by a preponderance of the evidence.

10 (b) The fact that property was acquired in a jurisdiction under whose laws property could
11 not then be acquired as community property and is currently held in a form that provides for
12 rights of survivorship or in a form that provides for its transfer or payment on the death of an
13 individual does not create a presumption that the property is not community property.

14 **Reporter’s Notes**

15
16 This section adopts a blanket presumption in favor of treating all property acquired by an
17 individual while domiciled in a community property jurisdiction as community property,
18 provided, of course, that the laws of the community property state allowed community property
19 to “then be acquired by that individual.” In other words, the presumption applies only to those
20 individuals who could acquire community property under the laws of the relevant jurisdiction.
21 Consequently, the presumption does not apply to unmarried individuals or to those who have
22 opted out of the community regime even if they acquire property while domiciled in a
23 community property state, as those individuals could not then acquire community property in
24 that state. Although stated in various ways, the blanket presumption of this section is common in
25 community property jurisdictions. See, e.g., N.M. Stat. Ann. § 40-3-12(A) (“Property acquired
26 during marriage by either husband or wife, or both, is presumed to be community property.”);
27 Wisc. Stat. § 766.31(2) (“All property of spouse is presumed to be marital property.”); Tex. Fam.
28 Code § 3.003(a) (“Property possessed by either spouse during or on dissolution of marriage is
29 presumed to be community property”); La. Civ. Code art. 2340 (“Things in the possession of a
30 spouse during the existence of a regime of community of acquets and gains are presumed to be
31 community, but either spouse may prove they are separate property.”); Cal. Fam. Code § 760;
32 Unif. Marital Prop. Act. § 4(a) (“All property of spouses is marital property except that which is
33 classified otherwise by this Act.”).

34
35 Despite the above presumption, a party may prove that the relevant property was
36 separate, even though acquired during the existence of a community regime, such as by
37 demonstrating that the property was acquired by inheritance. Although different community
38 property states provide different standards for rebutting the relevant presumption of community

1 property, this act adopts a preponderance standard for rebutting the presumption, as have a
2 number of community property states. See, e.g., *Marriage of Ettefagh*, 59 Cal. Rptr. 3rd 419
3 (Cal. App. 2007); *Talbot v. Talbot*, 864 So. 2d 590 (La. 2003); *Brandt v. Brandt*, 427 N.W. 2d
4 126 (Wisc. App. 1988); *Sanchez v. Sanchez*, 748 P.2d 21 (N.M. App. 1987); But see Tex. Fam.
5 Code § 3.03(b) (“The degree of proof necessary to establish that property is separate property is
6 clear and convincing evidence.”); *Reed v. Reed*, 44 P.3d 1100 (Idaho 2002) (requiring
7 “reasonable certainty and particularity” to rebut the presumption).

8
9 Unlike the prior version of this act, this revised act does not impose a presumption
10 against the applicability of this act for property acquired in a non-community property state and
11 held in a form that creates rights of survivorship. Taking title to property in various forms is
12 often a unilateral act that should not by itself serve as a presumption of partition of interests in a
13 community asset. For more on acts that do and do not effect a partition of property interests
14 under this act, see Section 8, *infra*.

15
16 **SECTION 5. DISPOSITION OF PROPERTY RIGHTS UPON DEATH.** At the

17 death of an individual, the following rules apply:

18 (1) one-half of the property to which this act applies belongs to the surviving spouse and
19 is not subject to disposition by the decedent through testament, intestate succession, or non-
20 probate transfer on death. If, however, the decedent makes a testamentary or non-probate
21 transfer on death of the property belonging to the surviving spouse and also disposes of other
22 property in favor of the surviving spouse, the court may require the surviving spouse to elect
23 between retaining the disposition or claiming rights under this act.

24 (2) one-half of the property to which this act applies belongs to the decedent and is
25 subject to disposition by the decedent through testament, intestate succession, or non-probate
26 transfer on death. The one-half of the property that belongs to the decedent is not subject to
27 elective-share rights of the surviving spouse, but nothing in this section limits the rights of a
28 surviving spouse to claim other applicable statutory allowances.

29 **Reporter’s Notes**

30
31 This section is substantially similar to Section 3 of the prior act. It deviates from the
32 prior act by including “non-probate transfers on death” in the ambit of methods by which
33 property can be distributed. It also makes clear that this subsection (b) does not limit a surviving

1 spouse's claim for "other applicable statutory allowances," such as homestead allowances,
2 allowances for exempt property, and family allowances. See, e.g., UPC §§ 2-402, 2-403, and 2-
3 404.

4
5 **SECTION 6. OTHER LEGAL AND EQUITABLE REMEDIES AVAILABLE AT**

6 **DEATH.** At the death of an individual, the personal representative of the decedent may bring an
7 action against the surviving spouse, or the surviving spouse may bring an action against the
8 personal representative of the decedent, for damages or equitable relief in the following
9 circumstances:

10 (1) in place of a reimbursement claim that, but for a change of domicile, could have been
11 asserted under the law of a jurisdiction in which the surviving spouse or the decedent was
12 previously domiciled.

13 (2) to assert the fraudulent or bad faith alienation or impairment of property to which this
14 act applies.

15 **Reporter's Notes**

16
17 This section confirms that comparable legal and equitable remedies that would be
18 available to protect a spouse in a community property jurisdiction remain available in a common
19 law state under this act. Two remedies often provided by community property jurisdictions are
20 claims for reimbursement and claims for fraud or bad faith management.

21
22 Claims for reimbursement are commonly available when community property has been
23 used to satisfy a separate obligation or when separate property has been used to improve
24 community property or vice versa, see, e.g., La. Civ. Code art. 2364, 2366, and 2367; Cal. Fam.
25 Code § 2640. Different community property states calculate the amount of reimbursement
26 differently. See, e.g., *Hiatt v. Hiatt*, 487 P.2d 1121 (Idaho 1971) (awarding reimbursement based
27 upon the enhanced value of the property even if it exceeds the amount spent); *Portillo v. Shappie*,
28 636 P.2d 878 (N.M. 1981) (assessing reimbursement based upon the enhanced value of the
29 improved property even if it exceeds the amount of money expended); La. Civ. Code art. 2366
30 (providing for reimbursement based upon the amount expended); *Marriage of Sedlock*, 849 P.2d
31 1243 (Wash. App. 1993) (awarding reimbursement based upon the amount spent); *Estate of*
32 *Kobyliski v. Hellstern*, 503 N.W.2d 369 (Wis. App. 1993) (assessing reimbursement based upon
33 the greater of the amount spent or the value added). This section grants courts in this State
34 flexibility in assessing the amount of the reimbursement.

35
36 Different community property states also provide different remedies to a spouse whose

1 community property interest has been unduly prejudiced by another spouse with authority to
2 manage or alienate community property. In California, for example, a court may award a
3 defrauded spouse a percentage interest or an amount equal to a percentage interest in any asset
4 transferred in breach of a spouse’s fiduciary duty. Cal. Fam. Code § 1101. In Texas, the
5 doctrine of “fraud on the community” protects one spouse when the other wrongfully depletes
6 community property through actual or constructive fraud by allowing a court to allocate other
7 property to the defrauded spouse through any legal or equitable remedy necessary, including a
8 money judgment or a constructive trust. See, e.g., Tex. Fam. Code § 7.009; see also *Osuna v.*
9 *Quintana*, 993 S.W.2d 201 (Tex. Ct. App. Corpus Christi 1999) (“The breach of a legal or
10 equitable duty which violates the fiduciary relationship existing between spouses is termed
11 ‘fraud on the community,’ a judicially created concept based on the theory of constructive
12 fraud.”). In Louisiana, a spouse may be awarded damages when the other spouse acted
13 fraudulently or in bad faith. See La. Civ. Code art. 2354 (“A spouse is liable for any loss or
14 damage caused by fraud or bad faith in the management of the community property.”). In
15 addition to damages and equitable relief, some community property states statutorily grant courts
16 authority to add the name of a spouse to a community asset titled solely in the name of the other
17 spouse in order to protect the interest of the previously unnamed spouse. See, e.g., Cal. Fam.
18 Code § 1101 (c); Wisc. Stat. § 766.70(3). This Section provides the court with broad authority to
19 grant damages or to craft any other appropriate equitable remedy necessary to protect a spouse.
20

21 The rights granted by this section are operable at the death of an individual and may not
22 be asserted during the existence of the marriage. This approach is consistent with the law of
23 various community property jurisdictions. See, e.g., La. Civ. Code art. 2358 (“A claim for
24 reimbursement may be asserted only after termination of the community property regime, unless
25 otherwise provided by law.”). But see Uniform Marital Property Act § 13 (allowing claims for
26 breach of the duty of good faith and for an accounting to be brought by spouses during an
27 ongoing marriage).
28

29 **SECTION 7. CLAIMS OF SURVIVING SPOUSE AGAINST THE ESTATE OF**

30 **THE DECEDENT.** To assert rights under this act, a surviving spouse or his successor may
31 bring an action against the heirs or legatees of the decedent not later than three years after the
32 death of the decedent. The personal representative of the decedent need not attempt to discover
33 the applicability of this act unless a surviving spouse or his successor files a written demand
34 asserting rights under this act not later than six months from the date of death of the decedent.

35 **Reporter’s Notes**
36

37 This section allows a surviving spouse to protect his rights under this act and provides a
38 statute of limitation for doing so. Namely, a surviving spouse must institute an action against the
39 successors of the decedent within three years of the date of death of the decedent. Although not
40 required, a surviving spouse may also attempt to protect his interest by filing a written demand

1 with the personal representative of the decedent. Unless the surviving spouse does so within six
2 months of the date of death of the decedent, the personal representative has no fiduciary duty to
3 investigate or to attempt to ascertain whether this act applies to any property owned by the
4 decedent.

5
6 **SECTION 8. CLAIMS BY HEIRS, LEGATEES, OR CREDITORS AGAINST**

7 **THE SURVIVING SPOUSE.** To assert rights under this act, the personal representative, an
8 heir, or a legatee of the decedent may bring an action against the surviving spouse not later than
9 three years after the death of the decedent. The heirs, legatees, or creditors of the decedent may
10 also file a written demand asserting rights under this act with the personal representative not later
11 than six months from the date of death of the decedent. The personal representative of the
12 decedent shall attempt to ascertain whether the decedent has property rights to which this act
13 applies.

14 **Reporter's Notes**

15
16 This section allows for the personal representative, an heir, or a legatee to protect rights
17 under this act and provides a statute of limitation for doing so. Namely, an action must be instituted
18 against the surviving spouse within three years of the date of death of the decedent. Although not
19 required, the heirs, legatees, or creditors of the decedent may attempt to protect their interests by
20 filing a written demand with the personal representative of the decedent within six months of the
21 date of death of the decedent. Unlike in Section 7, the personal representative of the decedent
22 under Section 8 does have a fiduciary duty to attempt to ascertain whether the decedent has
23 property rights that should be protected under this act.

24
25 **SECTION 9. PROTECTION OF BONA FIDE PURCHASERS.** A person who

26 transacts in good faith and for value with an individual acquires rights free of any claims under
27 this act. A person is in good faith if he has not knowingly been a party to fraud or illegality
28 affecting the rights of a spouse. A person gives value when property is acquired in exchange for
29 a binding commitment to extend credit, as security for or in total or partial satisfaction of pre-
30 existing claims, by accepting delivery pursuant to a pre-existing contract for purchase, or in
31 return for any other consideration sufficient to support a simple contract.

1 **Reporter's Notes**

2
3 This section is based upon Section 9 of the Uniform Marital Property Act. It is also
4 informed by similar provisions protecting good faith purchasers in Section 1012 of the Uniform
5 Trust Code and Section 2-803(i) of the Uniform Probate Code, as well as Section 2-403 of the
6 Uniform Commercial Code. This provision deviates from Section 6 of the former act insofar as
7 it adds an obligation of good faith. Although third parties are ordinarily allowed to deal with a
8 spouse who has apparent title concerning a marital asset during the existence of the marriage, no
9 good reason could be found for protecting bad faith third parties with knowledge of the
10 commission of fraud on the rights of the other spouse.
11

12 **SECTION 10. RIGHTS OF CREDITORS.** Except as otherwise provided, this act
13 does not affect the rights of a secured creditor.

14 **Reporter's Notes**

15
16 To the extent a secured creditor qualifies as a bona fide purchaser under Section 8, his
17 rights are governed by the general laws and procedures available to secured creditors under the
18 laws of this state. This act does not impair or affect the validity or ranking of a security interest
19 granted by one spouse to such a third party. The rights of unsecured creditors may be affected
20 by application of Sections 6 and 7 of this Act.
21

22 **SECTION 11. EFFECT OF WAIVER OR PARTITION.** This act neither prevents
23 the partition of interests in property to which this act applies nor the waiver of rights granted by
24 this act. A unilateral act by an individual, such as the holding of property in the form of a
25 revocable trust or in a form that allows for its payment or transfer on death, shall not constitute a
26 partition of the property or a waiver of rights to property to which this act applies.

27 **Reporter's Notes**

28
29 If parties have partitioned previously-acquired community property after moving to a
30 common law state, this act would not affect that partitioned property. See, e.g., Section 3 of this
31 Act. Partition is defined in Section 2 of this act as a “voluntary severance or division of jointly or
32 commonly held property interests undertaken mutually by both an individual and the individual’s
33 spouse.” As such, a unilateral act of an individual, such as taking title to property that was
34 previously acquired as community property in the form of a transfer-on-death deed, does not
35 operate as a partition or waiver.
36

