

## MEMORANDUM

To: Uniform Committee Property Disposition at Death Revision Committee

From: Ronald J. Scalise Jr., Reporter

Date: February 11, 2021

Re: Definition of “Spouse”

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The below provides three different proposals for the definition of “spouse” and provides a catalogue of the various definitions that have appeared in previous drafts.

### **February 16, 2021 Proposals**

#### **Variation 1:**

“Spouse” means an individual in a marriage or other relationship under which community property could have been acquired at the time of the relationship which is recognized as valid under the law of this state concerning conflicts of laws.

#### **Variation 2:**

“Spouse” means an individual in a marriage or other relationship at the time of death of either party and under which community property could have been acquired during the relationship.

#### **Variation 3:**

“Spouse” means an individual in a marriage or other relationship at the time of death of either party that is recognized as valid under the law of this state concerning conflicts of laws and under which community property could have been acquired during the relationship.

### **February 2, 2021 Draft**

“Spouse” means an individual in a marriage or similar relationship under which community property could have been acquired at the time of the relationship and which is recognized as valid under conflicts of law principles in this state.

### **January 2021 Style Committee Revisions**

“Spouse” means an individual in a marriage or similar relationship under which community property could have been acquired at the time of the relationship and which is recognized

as valid in this state.

### **January 2021 Draft**

“Spouse” means an individual who has entered into a valid marriage or a valid domestic or registered partnership under the laws of a jurisdiction and recognized as valid in this State. The term also includes an individual treated as a putative spouse.

### **December 1, 2020 Draft**

“Spouse” means an individual who is in a marriage or similar relationship under which community property could have been acquired at the time of the relationship and which is recognized as valid under conflicts of law principles in this state.

### **November 19, 2020 Draft**

“Spouse” means an individual who is in a relationship under which community property could have been acquired at the time of the relationship and which is recognized as valid under conflicts of law principles in this state.

### **November 10, 2020 Draft**

“Spouse” means an individual who is in a marriage or in a domestic or registered partnership recognized as valid in the jurisdiction in which it is entered into and treated as valid under the conflict of laws principles of this state.

### **May 2020 Style Committee Revisions**

“Spouse” means an individual who, under the law of a jurisdiction, is in a valid marriage or a valid domestic or registered partnership that is recognized as valid in this state.

### **April 2020 Draft**

“Spouse” means an individual who has entered into a valid marriage or a valid domestic or registered partnership under the laws of a jurisdiction and recognized as valid in this state.

### **October 2019 Issues Memo**

“Because the original Act was approved in 1971, it was drafted at a time long before same-sex marriage. By its terms, the original Act ‘applies to the disposition at death of the following property acquired by a *married* person.’ Obviously, the Act would apply today to property acquired either by same-sex or opposite-sex married couples, but some community property states also allow community property to be acquired pursuant to domestic or registered partnerships. Two community property states – California and Nevada – allow for community property to be acquired via registered domestic partnerships. Washington also provides in a more limited sense that certain domestic

partners may acquire community property as well. As Professor Karen Boxx notes, ‘The Act should be revised to reflect that.’ (footnotes omitted)

### **UDCPRDA (1971)**

No definition of “spouse,” but the act applied “to the dispositions at death of the following property acquired by a *married person...*” UDCPRDA, Section 1 (1971) (emphasis added)