**Uniform Community Property Disposition at Death Act**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-THIRTIETH YEAR

MADISON, WISCONSIN

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*WITHOUT Prefatory Note and Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**Uniform Community Property Disposition at Death Act**

Section 1. Title

This [act] may be cited as the Uniform Community Property Disposition at Death Act.

Section 2. Definitions

In this [act]:

(1) “Community-property spouse” means an individual in a marriage or other relationship:

(A) under which community property could be acquired during the existence of the relationship; and

(B) that remains in existence at the time of death of either party to the relationship.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

(4) “Partition” means voluntarily divide property to which this [act] otherwise would apply.

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

(6) “Personal representative” includes an executor, administrator, successor personal representative, special administrator, and other person that performs substantially the same function.

(7) “Property” means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.

(8) “Reclassify” means change the characterization or treatment of community property to property owned separately by community-property spouses.

(9) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(10) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

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

Section 3. Included and Excluded Property

(a) Subject to subsection (b), this [act] applies to the following property of a community-property spouse, without regard to how the property is titled or held:

(1) if a decedent was domiciled in this state at the time of death:

(A) all or a proportionate part of each item of personal property, wherever located, that was community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property;

(B) income, rent, profit, appreciation, or other increase derived from or traceable to property described in subparagraph (A); and

(C) personal property traceable to property described in subparagraph (A) or (B); and

(2) regardless whether a decedent was domiciled in this state at the time of death:

(A) all or a proportionate part of each item of real property located in this state traceable to community property or acquired with community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property; and

(B) income, rent, profit, appreciation, or other increase, derived from or traceable to property described in subparagraph (A).

(b) If community-property spouses acquired community property by complying with the law of a jurisdiction that allows for creation of community property by transfer of property to a trust, this [act] applies to the property only to the extent the property is held in the trust or characterized as community property by the terms of the trust or the law of the jurisdiction under which the trust was created.

(c) This [act] does not apply to property that:

(1) community-property spouses have partitioned or reclassified; or

(2) is the subject of a waiver of rights granted by this [act].

Section 4. Form of Partition, Reclassification, or Waiver

(a) Community-property spouses domiciled in this state may partition or reclassify property to which this [act] otherwise would apply. The partition or reclassification must be in a record signed by both community-property spouses.

(b) A community-property spouse domiciled in this state may waive a right granted by this [act] only by complying with the law of this state, including this state’s choice-of-law rules, applicable to waiver of a spousal property right.

Section 5. Community Property Presumption

All property acquired by a community-property spouse when domiciled in a jurisdiction where community property then could be acquired by the community-property spouse by operation of law is presumed to be community property. This presumption may be rebutted by a preponderance of the evidence.

Section 6. Disposition of Property at Death

(a) One-half of the property to which this [act] applies belongs to the surviving community-property spouse of a decedent and is not subject to disposition by the decedent at death.

(b) One-half of the property to which this [act] applies belongs to the decedent and is subject to disposition by the decedent at death.

**Alternative A**

(c) The property that belongs to the decedent under subsection (b) is not subject to the elective-share right of the surviving community-property spouse.

**Alternative B**

(c) For the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse:

(1) property under subsection (a) is deemed to be property of the surviving community-property spouse; and

(2) property under subsection (b) is deemed to be property of the decedent.

**End of Alternatives**

(d) [Except for the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse, this] [This] section does not apply to property transferred by right of survivorship or under a revocable trust or other nonprobate transfer.

(e) This section does not limit the right of a surviving community-property spouse to [insert statutory allowances].

(f) If at death a decedent purports to transfer to a third person property that, under this section, belongs to the surviving community-property spouse and transfers other property to the surviving community-property spouse, this section does not limit the authority of the court under other law of this state to require that the community-property spouse elect between retaining the property transferred to the community-property spouse or asserting rights under this [act].

***Legislative Note:*** *A traditional elective-share state should adopt Alternative A and adopt the language beginning with “This” in subsection (d).*

*An augmented-estate, elective-share state whose statute does not address rights in community property adequately should adopt Alternative B and adopt the language beginning with “Except” in subsection (d). In subsection (e), a state should insert the statutory reference to the applicable allowances, such as homestead, exempt property, or family.*

Section 7. Other Remedies Available at Death

(a)At the death of a community-property spouse, the surviving community-property spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a right based on an act of:

(1) the surviving community-property spouse or decedent during the marriage or other relationship under which community property then could be acquired; or

(2) the decedent that takes effect at the death of the decedent.

(b) In determining a right under subsection (a) and corresponding remedy, the court:

(1) shall apply equitable principles; and

(2) may consider the community property law of the jurisdiction where the decedent or surviving community-property spouse was domiciled when property was acquired orenhanced.

Section 8. Right of Surviving Community-Property Spouse

(a) The surviving community-property spouse of the decedent may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:

(1) In an action asserting a right in or to property, the surviving community-property spouse must:

(A) not later than [three years] after the death of the decedent, commence an action against an heir, devisee, or nonprobate transferee of the decedent that is in possession of the property; or

(B) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

(2) In an action other than an action under paragraph (1), the surviving community-property spouse must:

(A) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

(B) if a personal representative is not appointed, commence the action not later than [three years] after the death of the decedent.

(b) Unless a timely demand is made under subsection (a)(1)(B) or (2)(A), the personal representative may distribute the assets of the decedent’s estate without personal liability for a community-property spouse’s claim under this [act].

***Legislative Note:*** *A state should insert in subsection (a)(1)(A) and (2)(B) and Section 9(1)(A) and (2)(B) the time for asserting a claim to a nonprobate asset, probating a will, or challenging a revocable trust and in subsection (a)(1)(B) and (2)(A) and Section 9(1)(B) and (2)(A) the time for asserting a claim in a probate proceeding.*

Section 9. Right of Heir, Devisee, or Nonprobate Transferee

An heir, devisee, or nonprobate transferee of a deceased community-property spouse may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:

(1) In an action asserting a right in or to property, the heir, devisee, or nonprobate transferee must:

(A) not later than [three years] after the death of the decedent, commence an action against the surviving community-property spouse of the decedent who is in possession of the property; or

(B) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

(2) In an action other than an action under paragraph (1), the heir, devisee, or nonprobate transferee must:

(A) not later than [six months] after the appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

(B) if a personal representative is not appointed, commence the action not later than [three years] after the death of the decedent.

Section 10. Protection of Third Person

(a) With respect to property to which this [act] applies, a person is not liable under this [act] to the extent the person:

(1) transacts in good faith and for value:

(A) with a community-property spouse; or

(B) after the death of the decedent, with a surviving community-property spouse, personal representative, heir, devisee, or nonprobate transferee of the decedent; and

(2) does not know or have reason to know that the other party to the transaction is exceeding or improperly exercising the party’s authority.

(b) Good faith under subsection (a)(1) does not require the person to inquire into the extent or propriety of the exercise of authority by the other party to the transaction.

# **Section 11. Principles of Law and Equity**

The principles of law and equity supplement this [act] except to the extent inconsistent with this [act].

Section 12. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

# Section 13. Saving Provision

If a right with respect to property to which this [act] applies is acquired, extinguished, or barred on the expiration of a limitation period that began to run under another statute before [the effective date of this [act]], that statute continues to apply to the right even if the statute has been repealed or superseded by this [act].

# Section 14. Transitional Provision

Except as provided in Section 13, this [act] applies to a judicial proceeding with respect to property to which this [act] applies commenced on or after [the effective date of this [act]], regardless of the date of death of the decedent.

# [Section 15. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

***Legislative Note:*** *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 16. Repeal; Conforming Amendments

[(a)]The [Uniform Disposition of Community Property Rights at Death Act] is repealed.]

[(b) . . .]

***Legislative Note:*** *A state should repeal its existing Uniform Disposition of Community Property Rights at Death Act, or comparable legislation, to be replaced by this act.*

*A state should examine its statutes to determine whether conforming amendments are required by provisions of this act.*

Section 17. Effective Date

This [act] takes effect . . .