

D R A F T  
FOR DISCUSSION ONLY

# UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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~~January 26~~ ~~February 11~~, 2020

## UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

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1                   **UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT**

2   **Prefatory Note**

3                   The Uniform Disposition of Community Property Rights at Death Act (UDCPRDA) was  
4 approved by the Uniform Law Commission in 1971. The UDCPRDA established a system for  
5 non-community property states to address the treatment of community property acquired by  
6 spouses before they moved from a community property state to the non-community property  
7 state. According to the UDCPRDA, its purpose was “to preserve the rights of each spouse in  
8 property which was community property prior to change of domicile, as well as in property  
9 substituted therefor where the spouses have not indicated an intention to sever or alter their  
10 ‘community’ rights.” Unif. Disp. Comm. Prop. Rights Death Act, Pref. Note, at 3 (1971). As of  
11 2020, sixteen states have enacted the UDCPRDA. Five states enacted the UDCPRDA in the  
12 1970s, shortly after its approval. Or. Rev. Stat. § 112.705; Hawaii Rev. Stat. § 510-21; Colo.  
13 Rev. Stat. Ann. § 15-20-101; Ky. Rev. Stat. § 391.210; Mich. Comp. L. Ann. § 557.261.  
14 Another eight states enacted the UDCPRDA in the 1980s. N.C. Gen. Stat. § 31C-1; N.Y. Est.  
15 Powers & Trusts Law § 6-6.1; Ark. Code. Ann. § 28-12-101; Va. Code § 64.1-197; Alaska Stat.  
16 § 13.41.005; Wyo. Stat. § 2-7-720; Conn. Gen. Stat. Ann. § 45a-458; Mont. Code Ann. § 72-9-  
17 101. One state enacted it in the 1992, (Fla. Stat. Ann. § 732.21), and two states – Utah and  
18 Minnesota – enacted the UDCPRDA in 2012 and 2013, respectively. Utah Code § 75-2b-101;  
19 Minn. Stat. § 519A.01.

20                   In its original form, the UDCPRDA offered substantial benefits for citizens in non-  
21 community property states that adopted the act, namely the recognition and protection of  
22 property rights acquired in a community property state in which citizens were formerly  
23 domiciled. Today, this is more important than ever, as Americans are more mobile today than  
24 ever before. It is estimated that 7.5 million people moved one state to another in 2016. *State-to-*  
25 *State Migration Flows: 2016*, available at [https://www.census.gov/data/tables/time-](https://www.census.gov/data/tables/time-series/demo/geographic-mobility/state-to-state-migration.html)  
26 [series/demo/geographic-mobility/state-to-state-migration.html](https://www.census.gov/data/tables/time-series/demo/geographic-mobility/state-to-state-migration.html). Undoubtedly, a significant  
27 subset of that 7.5 million involves Americans moving from one of the nine community property  
28 states to one of the forty-one non-community property states. As Americans migrate, the  
29 property previously acquired in a community property state “does not lose its character by virtue  
30 of a move to a common law state.” *In re Marriage of Moore & Ferrie*, 18 Cal. Rptr. 2d 543  
31 (Court of Appeal, First District, Division 2, 1993); *In re Kessler*, 203 N.E.2d 221 (Ohio 1964);  
32 *Commonwealth v. Terjen*, 90 S.E.2d 801 (Va. 1956). As some commentators have noted,  
33 “[O]nce [property] rights are fixed, they cannot be constitutionally changed during the lifetime of  
34 the owner merely by moving the personalty across one or more state lines, regardless of whether  
35 there is or is not a change of domiciles.” William Q. De Funiak, *Conflict of Laws in the*  
36 *Community Property Field*, 7 ARIZ. L. REV. 50, 51 (1966). The Prefatory Note to the  
37 UDCPRDA observes that this is both a matter of policy “and probably a matter of constitutional  
38 law.” Unif. Disp. Comm. Prop. Rights Death Act, Pref. Note (1971).

39                   Under traditional conflicts-of-law principles, the result is the same: a move from a  
40 community property state to a non-community property one does not change the nature of the  
41 property. Sarah N. Welling, *The Uniform Disposition of Community Property at Death Act*, 65  
42 KY. L. J. 541, 545 (1977). The Restatement (Second) of Conflicts counsels that “[a] marital

1 property interest in a chattel, or right embodied in a document, which has been acquired by either  
2 or both of the spouses, is not affected by the mere removal of the chattel or document to a second  
3 state, whether or not this removal is accompanied by a change of domicile to the other state on  
4 the part of one or both of the spouses.” RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 259  
5 (1971). Nevertheless, the existing law in non-community property states is often uncertain. The  
6 UDCRPDA provided a relatively simple solution that served to clarify an otherwise murky area  
7 of law.

8 Since its original promulgation in 1971, however, many changes in the law of marital  
9 property and in estate planning practice have occurred. The rise of the popularity of non-probate  
10 transfers and the recognition of same-sex marriage throughout the United State are just some of  
11 the significant changes in the law that could not have been foreseen or accounted for in the  
12 original UDCPRDA. Consequently, an update of the act is needed to accommodate these  
13 changes and others, as well as to reexamine some underlying policy choices made in the original  
14 act some fifty year ago.

15 This Uniform Community Property Disposition at Death Act (UCPDDA) revises and  
16 updates UDCPRDA. Like its predecessor, the UCPDDA preserves the community property  
17 character of property acquired by spouses while domiciled in a community property jurisdiction,  
18 even after their move to a non-community property state. Unlike its predecessor, however, the  
19 UCPDDA broadens the applicability of the act, insofar as it preserves some rights that spouses  
20 would have had in the community property jurisdiction for certain bad faith acts or acts of  
21 mismanagement of community property by a spouse, whereas the UDCPRDA “only define[d]  
22 the dispositive rights, at death, of a married person as to his interests at death in property” subject  
23 to the act.

24 Section 3 sets forth the applicability of the UCPDDA and the property to which it applies,  
25 namely, only the property acquired by spouses while domiciled in a community property  
26 jurisdiction, as well as any rents, profits, issues, or traceable mutations of that property. Once  
27 spouses move to a non-community property state, their newly acquired marital property is  
28 governed by the law in that state, unless it is traceable to property that was community property  
29 or treated as such.

30 Section 4 makes clear that if the spouses have partitioned or reclassified their community  
31 property or waived rights under ~~theis~~ act, the UCPDDA no longer applies to that property, as the  
32 spouses themselves have ended the community property classification of the property and  
33 mutually allocated to each other separate property interests that were previously held as  
34 community. It also provides the required form for a partition, reclassification, or waiver, as the  
35 laws of a state adopting this act are not likely to provide rules outside of ~~theis~~ act ~~that provide~~ for  
36 such matters.

37 Section 5 assists courts and the parties in evidentiary matters of proof in applying the  
38 UCPDDA. Specifically, even if two spouses are married under a community regime in a  
39 community property state, they may still acquire separate property that is owned individually and  
40 is not part of their community regime. Traditional “opt out” community property states  
41 generally impose a presumption that all property acquired by either spouse during the existence

1 of their community is presumed to be community, unless a spouse can demonstrate to the  
2 contrary. Section 5 adopts the same type of rebuttable presumption, such that a party asserting  
3 the applicability of the theis act would need to prove only that the property was acquired while  
4 domiciled in a community property jurisdiction- under a community property regime and not that  
5 the property was acquired while domiciled in a community property jurisdiction and that the  
6 relevant property was not acquired separately. It was thought that any other rule might make  
7 proof of application of the act too difficult, given the passage of time, the absence of records, and  
8 the fading of memories between the time when the property was originally acquired and the time  
9 of death of the decedent. The very same presumption is applicable in an “opt in” community  
10 property states, provided it is additionally shown that the spouses opted into the community  
11 regime while domiciled in that state.

12 Section 6 is the heart of the act. It provides that upon the death of one spouse, half the  
13 property to which the theis act applies belongs to the decedent and the other half to the surviving  
14 spouse. This is the same result that would be achieved at the death of one spouse in a  
15 community property jurisdiction.

16 Section 7 is new and has no analogue in the UDCPRDA. It expands the applicability of  
17 the theis act to allow a court to recognize rights of redress for certain bad faith actions by one spouse  
18 that might impair the rights of the other spouse with respect to property to which the theis act  
19 applies. One such example could be the unauthorized alienation of property to the prejudice of  
20 the other spouse. This section allows for a damage or equitable claim to be brought at the death  
21 of one spouse by the other or by the spouse's his personal representative, provided a spouse's  
22 interest in property was prejudiced by the actions of the other spouse.

23 Section 8 provides limitations periods within which a party must act to preserve rights  
24 under the theis act. This section recognizes that these periods may differ depending upon whether  
25 the party asserting a right is a creditor or a personal representative, heir, devisee, nonprobate  
26 transferee, or surviving spouse of the decedent. In addition, the periods may differ depending  
27 upon whether the claim is brought in a probate proceeding or in a separate judicial proceeding to  
28 perfect title to property.

29 Section 9 protects third persons who have transacted in good faith and for value.  
30 Otherwise, third persons could be subject to claims under Section 7 if one spouse had engaged in  
31 acts of bad faith management of community property while alive. Section 9 ensures that in most  
32 instances, a third persons will be protected from these claims.

33 Sections 10 through 14 concern uniform application of the theis act, electronic signatures,  
34 transitional and savings provisions, repeal of inconsistent laws, and the effective date of the theis act.  
35 Notably, Section 12 makes the theis act applicable – within permissible constitutional limitations – to  
36 any judicial proceeding commenced after the effective date of the theis act, even to those who have  
37 moved from a community property jurisdiction and died before ~~the~~ enactment of the theis act.

1           **UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT**

2           **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Community  
3 Property Disposition at Death Act.

4           **SECTION 2. DEFINITIONS.** In this [act]:

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

7           (2) “Partition” means a voluntary division by spouses of property that was community  
8 property or is treated under this [act] as community property at the time of the division.

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

11           (4) “Personal representative” includes an executor, administrator, successor personal  
12 representative, and special administrator, and a person that performs substantially the same  
13 function.

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

16           (6) “Record” means information that is inscribed on a tangible medium or that is stored in  
17 an electronic or other medium and is retrievable in perceivable form.

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

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

21                   (A) to execute or adopt a tangible symbol; or

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

1 (9) “Spouse” means an individual in a marriage or similar relationship under which  
2 community property could have been acquired at the time of the relationship and which is  
3 recognized as valid under conflicts of law principles in this state. [SEE MEMO]

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

### 7 **Comment**

8  
9 (1) *Jurisdiction.* The term “jurisdiction” is included in this act in order to ensure the  
10 applicability of this act to individuals who acquired community property in a foreign country.  
11 For example, if a couple were married in Cuba, a community property jurisdiction, and acquired  
12 stock while domiciled there but sold the stock after moving to Florida, a non-community  
13 jurisdiction, the widow of the spouse in whose name the stock was registered would have a one-  
14 half interest in the property. *See, e.g., Quintana v. Ordone*, 195 So. 2d 577 (Dist. Ct. Fla. 3d Cir.  
15 1967); *see also Estate of Bach*, 548 N.Y.S.2d 871 (Sur. Ct. 1989) (applying the New York  
16 version of the UDCPRDA to a decedent who died in New York in 1987, after having moved  
17 with his wife from Boliva in 1957).

18  
19 (2) *Partition.* The term “partition” is defined to mean a severance or division by spouses  
20 of property that was community property or treated as community property. A partition may  
21 occur while the parties are domiciled in a community property state or after they move to a non-  
22 community property state. In the latter case, a partition can still occur irrespective of whether the  
23 property retains its community property character in the new state or is merely treated as  
24 community property for purposes of application of this act.

25  
26 (3) *Person.* The definition of “person” is based upon the standard Uniform Law  
27 Commission definition.

28  
29 (4) *Personal representative.* The definition of “personal representative” is based upon a  
30 similar definition in the Uniform Probate Code. *See* Unif. Prob. Code § 1-201(35).

31  
32 (5) *Property.* The definition of “property” is based upon a similar definition in the  
33 Uniform Trust Code. *See* Unif. Trust Code § 103(12).

34  
35 (6) *Record.* The definition of “record” is based upon the standard Uniform Law  
36 Commission definition.

37  
38 (7) *Reclassify.* The definition of “reclassify” is necessary to recognize that spouses may  
39 “transmute” or change the treatment of property from community to separate after they move  
40 from a community property jurisdiction to a non-community property jurisdiction. Although

1 community property jurisdictions also have rules in effect for changing separate property to  
2 community property, such a change would be outside the scope of this act, which seeks only to  
3 maintain the treatment of community property acquired by spouses after moving to a non-  
4 community property jurisdiction.

5  
6 (8) *Sign*. The definition of “sign” is based upon the standard Uniform Law Commission  
7 definition.

8  
9 (9) *Spouse*. The term “spouse” is defined expansively to include not only married  
10 persons, of either sex, but also partners in other arrangements, such as domestic or registered  
11 partnerships, under which community property may be acquired. *See, e.g.*, Cal. Fam Code §  
12 297.5 (stating that domestic partners “have the same rights, protections and benefits, and are  
13 subject to the same responsibilities, obligations and duties under law, whether derived from  
14 statutes, administrative regulations, court rules, government policies, common law, or any other  
15 provisions or sources of law, as are granted to and imposed upon spouses”); Nev. Rev. Stat. §  
16 122A.200(a) (“Domestic partners have the same rights, protections and benefits, and are subject  
17 to the same responsibilities, obligations and duties under law, whether derived from statutes,  
18 administrative regulations, court rules, government policies, common law or any other provisions  
19 or sources of law, as are granted to and imposed upon spouses.”); Wash. Rev. Code Ann.  
20 §297.5(a) (2006) (“Property ... acquired after marriage or after registration of a state registered  
21 domestic partnership by either domestic partner or either husband or wife or both, is community  
22 property.”). The term may also encompass putative spouses and spouses under common law or  
23 informal marriages. The putative spouse doctrine is a remedial doctrine recognized in many  
24 states that allows a person in good faith to enjoy community property and other civil effects of  
25 marriage, despite not being a party to a legally valid marriage. *See, e.g.*, Unif. Marriage & Div.  
26 Act § 209. Although few, if any, community property states recognize common law marriage,  
27 Texas does recognize “informal marriages” and thus parties to such an arrangement could also be  
28 included in the definition of a “spouse” under this act. *See, e.g.*, Tex. Fam. Code § 2.401. In all  
29 events, recognition of the validity of the marriage or marriage-like arrangement by this state is  
30 dependent upon the treatment of that arrangement as valid under the conflict-of-law principles of  
31 this state. *See, e.g.*, Restatement (Second) of Conflict of Laws § 283 (“A marriage which satisfies  
32 the requirements of the state where the marriage was contracted will everywhere be recognized  
33 as valid unless it violates the strong public policy of another state which had the most significant  
34 relationship to the spouses and the marriage at the time of the marriage.”).

35  
36 (10) *State*. The definition of “state” is based upon the standard Uniform Law Commission  
37 definition.

### 38 **SECTION 3. INCLUDED AND EXCLUDED PROPERTY.**

39  
40 (a) This [act] applies to the following property [of a spouse], without regard to how the  
41 property is titled or held:

42 **[Reporter’s Note:** The Style Committee has suggested deletion of the phrase “of a

1 spouse” as redundant.]

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

3 (A) all or a proportionate part of each item of personal property, wherever  
4 located, that was community property under the law of the jurisdiction where the decedent or the  
5 surviving spouse of the decedent was domiciled when the property was acquired or became  
6 community property;

7 (B) income, rent, profit, appreciation, or other increase:

8 (i) derived from or traceable to property described in subparagraph  
9 (A); or

10 (ii) characterized as community property under the law of the  
11 jurisdiction where the decedent or the surviving spouse of the decedent was domiciled when it  
12 was earned; and

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

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

17 (A) all or a proportionate part of each item of real property located in this  
18 state ~~which was~~ traceable to community property or acquired with community property under the  
19 law of the jurisdiction where the decedent or the surviving spouse of the decedent was domiciled  
20 when the property was acquired or became community property;

21 (B) income, rent, profit, ~~and~~ appreciation, or other increase, derived from  
22 property described in subparagraph (A).

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

1 (1) ~~has been partitioned between~~ spouses have partitioned or reclassified by  
2 ~~spouses~~; or

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

#### 4 **Comment**

5  
6 This section makes the act applicable to spouses who were formerly domiciled in a  
7 community property jurisdiction. The term “jurisdiction” is used, rather than the narrower term  
8 “state,” to be clear that this act would apply to a spouse who was domiciled in foreign  
9 jurisdictions where community property may be acquired. Moreover, this act is applicable  
10 whenever a spouse was domiciled at any time in the past in a community property jurisdiction,  
11 has acquired property there, and has moved to another jurisdiction. Thus, if A and B were  
12 married in state X (a community property state) and acquired property there, but then moved to  
13 state Y (a non-community property state) prior to moving again to state Z (also a non-community  
14 property state) where A eventually dies, state Z should apply this act to the property acquired by  
15 A and B in state X.

16  
17 Under subsection (a)(1)(A), this act applies to all personal property that was originally  
18 classified as a community property by the state at the time in which it was acquired. The current  
19 location of the personal property is not relevant for application of this act. Thus, if A and B were  
20 married in state X (a community property state), acquired a car there, and eventually moved to  
21 state Z (a non-community property state) where A eventually dies, then the car would be subject  
22 to this act, even if the car was left in storage in state Y.

23  
24 Under subsection (a)(1)(B), this act applies to “income, rents, ~~or~~ profits, ~~and~~  
25 appreciation~~s~~ or other increases” derived from or traceable to community property under  
26 (a)(1)(B)(i) in addition to “income, rents, ~~or~~ profits, ~~and~~ appreciation~~s~~ and other increases” from  
27 separate property under (a)(1)(B)(ii) in those states where such income is considered community  
28 property but not those states where income of separate property is separate. At the same time,  
29 subsection (a)(1)(B)(ii) makes this act applicable to “appreciation~~s~~ or other increases” in  
30 separate property that result from community effort or expenditures of “time, toil, or talent” of a  
31 spouse in community.

32  
33 This reference in this subsection to “income” should be read to include net income, rather  
34 than the gross income, from community property, as well as things produced from community  
35 property (i.e., “appreciations and other increases”), even if not technically revenue producing.  
36 Thus, if a \$500,000 house were purchased completely with community funds and increased in  
37 value to \$700,000 after spouses moved to a non-community property state, then the entire house,  
38 not merely \$500,000 in value, is classified as community property. Similarly, crops produced  
39 from a community property farm and a foal produced from a horse that is owned as community  
40 property are also considered to be community property.

41  
42 Subsections (a)(1)(B) also applies not only to income, rents, and profits from community  
43 property produced prior to moving to a non-community property jurisdiction, but also after the

1 move. Indeed, in the former case, such a rule would be unnecessary as all community property  
2 states already characterize income, rents, or profits derived from, as well as appreciations or  
3 other increases in, community property as community property. The rule in subsection  
4 (a)(1)(B)(i), however, is necessary to be clear that even after spouses move to a non-community  
5 property state, the incomes, rents, and profits produced by community property acquired prior to  
6 the move are still community property after the move to a non-community property state. Thus,  
7 interest produced from a community property savings account is still treated as community  
8 property after A and B move from state X (a community property state) to state Z (a non-  
9 community property state), irrespective of the location of the account.

10  
11 Under subsection (a)(2), this act adopts the traditional situs rule for real estate and is  
12 made applicable to all real estate located in a state where this act has been adopted, irrespective  
13 of whether the party to whom the act applies is domiciled in the enacting state. Thus, if A and B,  
14 while domiciled in a state X (a community property state) acquire real estate with community  
15 funds in state Y (a non-community property state), but then move to state Z (also a non-  
16 community property state) where A eventually dies, then this act will apply to the real estate in  
17 state Y, assuming state Y has enacted this act. Whether or not state Z has enacted this act will be  
18 important in ascertaining how the personal property of A is distributed, but not in the disposition  
19 of the real estate located in state Y.

20  
21 Under both subsections (a)(1) and (a)(2), this act applies to “all or a proportionate part”  
22 of property that was acquired with community property. In other words, when an asset is  
23 acquired partly with community property and partly with separate property, at least some portion  
24 of the property should be characterized as community property. The issue of apportionment and  
25 commingling, however, is a complex one with many state variations applicable to different types  
26 of assets.

27 In some community property states, an “inception of title” theory is used, such that the  
28 characterization of the property is dependent upon the characterization of the right at the time of  
29 acquisition. For example, a house acquired in a credit sale before marriage would remain  
30 separate property under an “inception of title” theory even if the vast majority of the payments  
31 were made after marriage and with community funds. In this instance, the community would  
32 have a claim for reimbursement for the amount of funds expended for the separate property of  
33 the acquiring spouse. Section 7 of this act accommodates reimbursement claims, if such a claim  
34 would be appropriate under the law of the relevant jurisdiction. In other jurisdictions, a “pro  
35 rata” approach is employed, which provides for a combination of community and separate  
36 ownership based in proportion to the payments contributed by either the community or the  
37 spouses separately. The act accommodates this approach by not requiring an “all or nothing”  
38 classification of community property. Rather, the act is applicable when “all or the proportionate  
39 part” of property would be community property according to the law of a jurisdiction in which  
40 the spouse was formerly domiciled at the time of acquisition.

41 Even among states that employ a “pro rata” approach, there is considerable variation for  
42 how the apportionment is made. As the comments in the UDCPRDA stated, “[a]ttempts at  
43 defining the various types of situations which could arise and the varying approaches which  
44 could be taken, depending upon the state, suggest that the matter simply be left to court decision

1 as to what portion would, under applicable choice of law rules, be treated as community  
2 property.” The UCPDDA follows the same approach. Thus, if A acquires \$100,000 of life  
3 insurance, pays five of the monthly \$1000 premiums from funds prior to marriage, pays 10 of the  
4 premiums with community property after marrying B, and pays 10 more premiums (before  
5 dying) from earnings acquired by B after A and B move to a non-community property state, then  
6 some portion of the life insurance policy should be considered community property, if the law of  
7 the community property state so treated it. This act leaves discretion to the courts as to how the  
8 apportionment is made.

9 Under subsection (a)(1)(C), this act applies not only to property that was community  
10 property under the law of the community property state but also to any property that is ~~a~~  
11 traceable to property that was community property or treated as community property. Simply  
12 stated, property is “traceable” to community property if the property changes form without  
13 changing character. WILLIAM A. REPPY, CYNTHIA A. SAMUEL, AND SALLY BROWN RICHARDSON,  
14 COMMUNITY PROPERTY IN THE UNITED STATES 161 (2015) (quoting W. BROCKELBANK, THE  
15 COMMUNITY PROPERTY LAW OF IDAHO 134 (1964)). By way of illustration, if after moving from  
16 state X (a community property state) to state Z (a non-community property state), A and B  
17 transfer money from a community property bank account opened in state X to a bank in their  
18 new domicile, state Z, then the bank account in state Z is subject to this act because it is traceable  
19 to community property. Similarly, if A and B are married in state X (a community property  
20 state), open a bank account there funded solely with community property and buy a car with that  
21 money after moving to state Y (a non-community property state), then the car would still be  
22 subject to this act because it is traceable to community property. The same result would obtain  
23 even if A and B moved again from state Y to state Z (another non-community property state) and  
24 exchanged their prior car for a new one in state Z. The new car would still be subject to this act  
25 because it is traceable to the community property originally acquired in state X.  
26

27 Subsection (b) of this act makes clear that this act does not apply in cases where spouses  
28 have themselves divided former community property by means of a partition or when spouses  
29 have changed the classification of their property from separate to community. Similarly, this act  
30 does not apply to property that is subject to waiver of rights. Section 4 of this act prescribes the  
31 necessary form and procedures for partition, reclassification, or waiver of rights.  
32

#### 33 SECTION 4. FORM OF PARTITION, RECLASSIFICATION, OR WAIVER.

34 Spouses domiciled in this state may:

35  
36 (1) partition or reclassify property to which this [act] applies or waive a right granted by  
37 this [act] only in a record ~~that is~~ signed by both spouses; or

38 (2) waive a right granted by this [act] only by complying with the laws applicable to that  
39 otherwise would be enforceable for a waiver of a spousal right under the law of this state.

1  
2  
3 **Comment**

4 This Section specifies the necessary form or procedure for a partition or reclassification  
5 of property or waiver of rights under the act once the spouses have moved to the enacting state.  
6 This section requires that both spouses sign a record agreeing to any partition ~~or~~ reclassification;  
7 ~~or waiver~~. Both the terms “sign” and “record” are defined in Section 2 of this act. In ~~civil~~  
8 ~~law~~ community property jurisdictions, the change or reclassification of property acquired during  
9 marriage is known as “transmutation.” As noted by scholars, “[t]he law in many community  
10 property states has moved toward requiring married couples to spell out their intentions  
11 regarding their property in writing.” CHARLOTTE GOLDBERG, COMMUNITY PROPERTY 239  
12 (2014). *See, e.g.*, Cal. Fam Code § 852(a) (“A transmutation of real or personal property is not  
13 valid unless made in writing by an express declaration that is made, joined in, consented to, or  
14 accepted by the spouse whose interest in the property is adversely affected.”); Idaho Code § 32-  
15 917 (“All contracts for marriage settlements must be in writing and executed and acknowledged  
16 or proved in like manner as conveyances of land are required to be exercised and acknowledged  
17 or proved.”); *Hoskinson v. Hoskinson*, 80 P.3d 1049 (2003).

18 ~~Moreover, in addition to the form required by this Section, any partition, reclassification,~~  
19 ~~or~~ For a waiver of rights under this act, the parties must also meet comply the standards for  
20 enforceability of a waiver of spousal rights under the law of this state. Under the law of many  
21 states, a waiver of spousal rights is governed by the Uniform Premarital Agreement Act (1983).  
22 More recently, the Uniform Law Commission has promulgated the Uniform Premarital and  
23 Marital Agreement Act (2012). Section 9 of that act requires, among other things, that a waiver  
24 not be involuntary or executed under duress, that a party have access to independent legal  
25 representation, and that a party have had adequate financial disclosure. Unif. Premarital &  
26 Marital Agr. Act. § 9.

27  
28 A mere unilateral act by a spouse of holding property in a form, including a revocable  
29 trust, that has paid or has transferred property on death to a third person is not a partition of the  
30 property or an agreement waiving rights granted under this [act]. The mere taking of title to  
31 property that was previously acquired as community property in the form of a transfer-on-death  
32 deed, does not operate as a partition, reclassification, or waiver. For example, if after moving  
33 from a community property state to a non-community property state, A retitles a community  
34 property bank account owned with B into a bank account in A’s name exclusively with a pay-on-  
35 death designation to C, the retitling of former community property in the exclusive name of “A,  
36 pay-on-death, C” does not constitute a partition. For a partition or reclassification to occur, both  
37 spouses must agree to the severance of their community property interests and comply with the  
38 necessary form requirements imposed by this Section.

39  
40 This Section does not attempt to specific the requisite form or procedure for a partition  
41 prior to moving to the enacting state, which should be governed by the law of the community  
42 property state rather than this act. If parties have partitioned or reclassified previously acquired  
43 community property after moving to a non-community property state, this act would not apply to  
44 any such property owned by the decedent at death. The terms “partition” and “reclassify” are  
45 defined in Section 2 of this act.



1 presumed to be community property”); La. Civ. Code art. 2340 (“Things in the possession of a  
2 spouse during the existence of a regime of community of acquets and gains are presumed to be  
3 community, but either spouse may prove they are separate property.”); Cal. Fam. Code § 760;  
4 Unif. Marital Prop. Act. § 4(a) (“All property of spouses is marital property except that which is  
5 classified otherwise by this Act.”).  
6

7 Subsection (b) of this Section applies to so-called “opt-in” states where spouses can elect  
8 community property, provided specific affirmative steps are taken to acquire property during  
9 marriage as community property. In “opt in” jurisdictions, the presumption of community  
10 property under this section does not apply unless the parties have, in fact, opted into the  
11 community regime or, as stated under this section, “have complied with the necessary procedures  
12 in that state for acquiring community property.” See, e.g., Alaska Stat. § 34.77.030(a).  
13

14 Despite the above presumptions, a party may prove that the relevant property was  
15 separate, even though acquired during the existence of a community regime, such as by  
16 demonstrating that the property was acquired by inheritance. Although different community  
17 property states provide different standards for rebutting the relevant presumption of community  
18 property, this act adopts a preponderance standard for rebutting the presumption, as have a  
19 number of community property states. See, e.g., *Marriage of Ettefagh*, 59 Cal. Rptr. 3<sup>rd</sup> 419  
20 (Cal. App. 2007); *Talbot v. Talbot*, 864 So. 2d 590 (La. 2003); *Brandt v. Brandt*, 427 N.W. 2d  
21 126 (Wisc. App. 1988); *Sanchez v. Sanchez*, 748 P.2d 21 (N.M. App. 1987); *But see* Tex. Fam.  
22 Code § 3.03(b) (“The degree of proof necessary to establish that property is separate property is  
23 clear and convincing evidence.”); *Reed v. Reed*, 44 P.3d 1100 (Idaho 2002) (requiring  
24 “reasonable certainty and particularity” to rebut the presumption).  
25

26 Unlike the prior version of this act, this act does not impose a presumption against the  
27 applicability of this act for property acquired in a non-community property state and held in a  
28 form that creates rights of survivorship. See, e.g., *Trenk v. Soheili*, 273 Cal. Rptr. 3d 184 (Ct.  
29 App. 2d Cir. 2d Div. 2020) (stating that “the manner in which a married couple holds title to real  
30 property is not sufficient in itself to rebut the statutory presumption that is community  
31 property”). Taking title to property in various forms is often a unilateral act that should not by  
32 itself serve as a presumption of partition of interests in a community asset. After all, a spouse  
33 may move to non-community property state and open a bank account with a pay-on-death  
34 designation to a friend or a sibling. Such an account should not be presumed to be excluded from  
35 this applicability of this act, as the relevant account may have been funded with community  
36 property acquired prior to the move. The ultimate treatment of the relevant account will depend  
37 upon whether it can be proved that the money in the account was traceable to community  
38 property.  
39

## 40 SECTION 6. DISPOSITION OF PROPERTY RIGHTS AT DEATH.

41 (a) Except as otherwise provided in subsection (b), one-half of the property to which this  
42 [act] applies belongs to the surviving spouse of ~~the a~~ decedent and is not subject to disposition by  
43 the decedent at death.

1 (b) If, at death, a decedent purportsed to dispose of property belonging to the surviving  
2 spouse to a third person and disposed of other property to the surviving spouse, the court  
3 must~~may~~ require the surviving spouse to elect between retaining the disposition to the surviving  
4 spouse or asserting rights under this [act].

5 (c) Subject to subsection (d), one-half of the property to which this [act] applies belongs  
6 to the decedent and is subject to disposition by the decedent at death.

#### 7 **Alternative A**

8 (d) The property that belongs to the decedent under subsection (c) is not subject to  
9 elective-share rights of the surviving spouse.

#### 10 **Alternative B**

11 (d) For the purpose of calculating the augmented estate and elective-share rights, the  
12 property under subsection (a) is deemed to be property of the surviving spouse; and ~~the~~ property  
13 under ~~this~~-subsection (c) is deemed to be property of the decedent. The value of property under  
14 subsection (a) must be applied and credited in satisfaction of the elective share rights of the  
15 surviving spouse.

#### 16 **End of Alternatives**

17 (e) [Except for the purpose of calculating the augmented estate and elective-share rights,  
18 this ] [~~T~~his] section does not apply to property that:

19 (1) at the death of the decedent, was held by spouses with a right of survivorship  
20 and was paid or transferred to the surviving spouse of the decedent; or~~and~~

21 (2) is held in a form, including a revocable trust, that was paid or was transferred  
22 on death of the decedent to the surviving spouse.

23 (f) This section does not limit the right of a surviving spouse to [a homestead] [an

1 exempt property] [a family] allowance.

2 **Legislative Note:** *A traditional elective-share state should adopt Alternative A and should adopt the*  
3 *language beginning with the word “this” in subsection (e). An augmented-estate elective-share state*  
4 *should adopt Alternative B and should adopt the language beginning with word “except” in subsection*  
5 *(e).*

6  
7 **Comment**  
8

9 Under subsection (a), at the death of one spouse, one-half the property to which this act  
10 applies belongs to the surviving spouse. This is universal approach of community property  
11 states. As a result, the decedent cannot dispose of the property belonging to the surviving spouse  
12 by will or intestate succession. An attempt to do so would be ineffective.  
13

14 If, however, the decedent disposes of property subject to this act by non-probate transfer  
15 in favor of the third person, Section 7, rather than this section, applies. In other words, this act,  
16 like the law in community property states, provides that reimbursement or equitable claims may  
17 be available to a surviving spouse when a decedent improperly alienates the interest of a spouse  
18 by means of a non-probate transfer. *See, e.g., T.L. James & Co. v. Montgomery*, 332 So. 2d 834  
19 (La. 1975).  
20

21 Under subsection (b), if the decedent disposes of the surviving spouse’s share of property  
22 under this act but transfers other property to the surviving spouse, a court may require the  
23 surviving spouse to make an equitable election to retain the disposition from the decedent or  
24 assert rights under this act.  
25

26 Under subsection (c), at the death of one spouse, one-half the property to which this act  
27 applies belongs to the decedent. Again, this is universal approach of community property states.  
28 As a result, the decedent can dispose of that property by any probate or non-probate mechanism.  
29 Elective share rights that are common in non-community property states do not apply in  
30 community property states, at least not with respect to community property in those states. With  
31 respect to elective shares rights, however, there is great variation among non-community  
32 property states. In some states, a surviving spouses elective share rights are a fractional share  
33 (often 1/3) in the decedent’s property. In such a case, states should elect Option 1, which  
34 precludes further application of elective share rights in the decedent’s property under this act.  
35 Other states, however, grant elective share rights in some in an “augmented estate,” which is  
36 frequently composed of all the decedent’s property, all the decedent’s nonprobate transfers, and  
37 all the surviving spouse’s property and non-probate transfers to others. In those states, Option 2  
38 should be elected so that the both the property of the decedent and the surviving spouse are  
39 considered part of the augmented estate, but then the surviving spouse’s portion of the property  
40 is credited in satisfaction of his or her elective share rights. *See, e.g., UPC 2-209(a)(2).*  
41

42 If the decedent dies intestate, then one-half of the property covered by this act is included  
43 in the decedent’s intestate estate. Under many scenarios, the intestate law of most states would  
44 grant to the surviving spouse a lump sum plus at least one half of the remainder of the decedent’s  
45 property, which would be in addition to the one-half interest granted to the surviving spouse in  
46 property to which this act applies.

1 By way of illustration of this section, assume A and B were formerly domiciled in state X  
2 (a community property jurisdiction) where all their property was community property, and have  
3 subsequently moved to a state Y (a non-community property state). Upon moving to state Y, A  
4 and B acquired a home in state Z (also a non-community property jurisdiction), titled solely in  
5 B's name but with funds from the proceeds of the sale of the home in state X. A and B also  
6 acquired stock while domiciled in state X, but held it in safety deposit boxes located in states U  
7 and V (two other non-community property states). A and B also retained a summer house in  
8 state X, which they acquired while domiciled there and which was titled solely in B's name. A  
9 and B also acquired real property in state Z for investment purposes and held title as tenants by  
10 the entireties. Finally, B acquired bonds held in B's name issued by the company that employed  
11 B and acquired with earnings from B's job in state Z.

12  
13 At B's death, the home in state Z and the stock located in states U and V would be  
14 property subject this act, and consequently, B would have the right under this section to dispose  
15 of half. The home retained in state X would be community property under the law of state X, but  
16 this act applies only to real property located in the adopting state. Because the investment  
17 property located in state Z was held as tenants by the entireties, it is strongly presumed that A  
18 and B partitioned that property and thus made this act inapplicable to that asset. Finally, the  
19 bonds held in B's name would not be subject to this act because they were acquired with  
20 property earned and acquired in state Z, a non-community property state.

21  
22 As this section of the act provides that property subject to this act is partly owned by the  
23 surviving spouse of the decedent at the death of the decedent, subsection (d) provides property  
24 held with rights of survivorship or in transfer-on-death forms are excluded from this section  
25 when the property is paid or transferred to the surviving spouse. Section 7 of this act, however,  
26 may still be applicable if less than a one-half interest in the property has been transferred to the  
27 surviving spouse at death.

28  
29 Subsection (e) makes clear that this act does not limit a surviving spouse's claim for other  
30 statutory allowances, such as homestead allowances, allowances for exempt property, and family  
31 allowances. See, e.g., Unif. Prob. Code §§ 2-402, 2-403, and 2-404.

32  
33 **SECTION 7. OTHER ~~LEGAL AND EQUITABLE~~ REMEDIES AVAILABLE AT**  
34 **DEATH.**

35 (a) At the death of an individual, the surviving spouse or a personal representative, heir,  
36 or nonprobate transferees of the decedent may assert a right with respect to property to which  
37 this [act] applies based on an act of:

38 (1) the surviving spouse or decedent during the marriage; or

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

1 (b) In determining ~~rights and~~ remedies under subsection (a), a court shall apply equitable  
2 principles and, in its discretion, consider shall be guided but not bound by the community  
3 property law of the jurisdiction where the decedent or the surviving spouse was domiciled when  
4 the property was acquired or enhanced.

### 5 **Comment**

6 Subsection (a) confirms that comparable rights that would be available to protect a  
7 spouse in a community property jurisdiction remain available at death in a non-community  
8 property state under this act. Two rights often provided by community property jurisdictions are  
9 rights of reimbursement and rights associated with monetary claims against a spouse for marital  
10 waste, fraud, or bad faith management.

11  
12 Claims for reimbursement are commonly available when community property has been  
13 used to satisfy a separate obligation or when separate property has been used to improve  
14 community property or vice versa, *see, e.g.*, La. Civ. Code art. 2364, 2366, and 2367; Cal. Fam.  
15 Code § 2640. Different community property states calculate the amount of reimbursement  
16 differently. *See, e.g., Hiatt v. Hiatt*, 487 P.2d 1121 (Idaho 1971) (awarding reimbursement based  
17 upon the enhanced value of the property even if it exceeds the amount spent); *Portillo v.*  
18 *Shappie*, 636 P.2d 878 (N.M. 1981) (assessing reimbursement based upon the enhanced value of  
19 the improved property even if it exceeds the amount of money expended); La. Civ. Code art.  
20 2366 (providing for reimbursement based upon the amount expended); *Marriage of Sedlock*, 849  
21 P.2d 1243 (Wash. App. 1993) (awarding reimbursement based upon the amount spent); Estate of  
22 *Kobyliski v. Hellstern*, 503 N.W.2d 369 (Wis. App. 1993) (assessing reimbursement based upon  
23 the greater of the amount spent or the value added). This section grants courts flexibility in  
24 assessing the amount of the reimbursement.

25  
26 The rights granted by this section are operable at the death of an individual and may not  
27 be asserted during the existence of the marriage. This approach is consistent with the law of  
28 various community property jurisdictions. *See, e.g.*, La. Civ. Code art. 2358 (“A claim for  
29 reimbursement may be asserted only after termination of the community property regime, unless  
30 otherwise provided by law.”). *But see* Uniform Marital Property Act § 13 (allowing claims for  
31 breach of the duty of good faith and for an accounting to be brought by spouses during an  
32 ongoing marriage). The relief sought under this section may, however, be for actions of a spouse  
33 taken either during life or that take effect at death. For instance, during life, a spouse may use  
34 community funds to augment a separate property asset. Moreover, a spouse during the marriage  
35 may have inappropriately donated property to a third person. Similarly, at the death of the  
36 decedent, the decedent may have inappropriately transferred property belonging to the surviving  
37 spouse to a third person by non-probate transfer. Although community property states generally  
38 enforce such transfers, they correspondingly grant a right to claim damages, to recovery of the  
39 property, or to reimbursement to the surviving spouse. Again, this section grants a court broad  
40 authority to craft legal or equitable remedies to protect a spouse. Of course, the application of  
41 this section must yield when appropriate to federal law. *See, e.g.*, Employment Retirement

1 Security Act, 29 U.S.C. Section 1001 et seq.; *Boggs v. Boggs*, 520 U.S. 833 (1997) (holding that  
2 ERISA pre-empted state community property law and remedies, even though the relevant  
3 ERISA-governed retirement plan was funded with community property).  
4

5 Subsection (b) provides that a court in evaluating a claim under subsection (a) should be  
6 “guided ... by” to the law of the community property jurisdiction where the decedent or the  
7 surviving spouse was formerly domiciled at the time the property was acquired. The phrase  
8 “guided but not bound by” indicates that a court should look to the law of the community  
9 property jurisdiction in deciding whether to recognize not only the existence of a right asserted  
10 by a person under subsection (a) but also the extent and scope of the right. A court, however, is  
11 not limited by this Section to proceed only in the manner or exactly as the court in a community  
12 property jurisdiction would proceed. Often ascertaining the existence and scope of a right that  
13 could have been asserted in a community property jurisdiction is an exceedingly difficult task  
14 and could involve difficult investigations of the law of different states or foreign jurisdictions  
15 from years or even decades in the past. Such laws might not be readily available to or  
16 ascertainable by a court in this state, given barriers in publication and language. Thus,  
17 subsection (b) is intended to encourage a court to consider the laws of the community property  
18 jurisdiction but not to proceed only as a court would in that jurisdiction.  
19

20 Similarly, in ascertaining the remedies associated with the right under this section, a court  
21 should look to but not be bound by the law of the community property jurisdictions. Even  
22 among community property jurisdictions, the remedies associated with various rights often vary  
23 significantly when one spouse’s interest has been unduly impaired by another spouse with  
24 authority to manage or alienate community property. Although most instances of application of  
25 this section will involve monetary claims against by one spouse against another, this section does  
26 not limit a court’s power to great other equitable relief, which may involve recognition of rights  
27 against third persons to whom property has been transferred by one spouse without authorization  
28 of the other.  
29

30 Equitable doctrines, such as a “constructive trust,” are common remedies used by courts  
31 to protect the interest of a spouse. In California, for example, a court may award a defrauded  
32 spouse a percentage interest or an amount equal to a percentage interest in any asset transferred  
33 in breach of a spouse’s fiduciary duty. Cal. Fam. Code § 1101. In Texas, the doctrine of “fraud  
34 on the community” protects one spouse when the other wrongfully depletes community property  
35 through actual or constructive fraud by allowing a court to allocate other property to the  
36 defrauded spouse through any legal or equitable remedy necessary, including a money judgment  
37 or a constructive trust. See, e.g., Tex. Fam. Code § 7.009; *see also Osuna v. Quintana*, 993  
38 S.W.2d 201 (Tex. Ct. App. Corpus Christi 1999) (“The breach of a legal or equitable duty which  
39 violates the fiduciary relationship existing between spouses is termed ‘fraud on the community,’  
40 a judicially created concept based on the theory of constructive fraud.”). In Louisiana, a spouse  
41 may be awarded damages when the other spouse acted fraudulently or in bad faith. See La. Civ.  
42 Code art. 2354 (“A spouse is liable for any loss or damage caused by fraud or bad faith in the  
43 management of the community property.”). In addition to damages and equitable relief, some  
44 community property states statutorily grant courts authority to add the name of a spouse to a  
45 community asset titled solely in the name of the other spouse in order to protect the interest of  
46 the previously unnamed spouse. See, e.g., Cal. Fam. Code § 1101 (c); Wisc. Stat. § 766.70(3).

1 This section provides the court with broad authority to grant damages or to craft any other  
2 appropriate equitable remedy necessary to protect a spouse. Available legal and equitable  
3 remedies available in courts of this state may not be co-extensive with the legal and equitable  
4 remedies available in the relevant community property jurisdiction. To address this divergence,  
5 this section requires only that a court by “guided but not bound by” the law of the community  
6 property state and thus allows courts of this state to fashion appropriate remedies available under  
7 the law of this state as it sees fit.

8  
9 This section, however, must be read in conjunction with Section 9 of this act, which  
10 protects good faith transferees of property from one spouse who give value. Thus, good faith  
11 transferees for value will be protected by Section 9 of this act, such that a spouse’s claim for bad  
12 faith management would solely be cognizable against the other spouse. If, however, one spouse  
13 improperly donates or transfers property to which this act applies to a third person who is not in  
14 good faith, equitable relief against a third person may, in the discretion of the court, be available  
15 to the spouse whose rights are impaired. After all, improper gifts of community property by one  
16 spouse are generally voidable as against a third person in community property jurisdictions. *See,*  
17 *e.g., Polk v. Polk*, 39 Cal. Rptr. 824 (App. 1964); Wisc. Stat. § 766.70; La. Civ. Code art. 2353;  
18 *Mezey v. Fioramonti*, 65 P.2d 980 (Ariz. App. 2003); Uniform Marital Property Act § 6(b).

19  
20 **SECTION 8. RIGHT OF SURVIVING SPOUSE, HEIR, BENEFICIARY, ~~AND~~**  
21 **OR CREDITOR.**

22 (a) With respect to property to which this [act] applies, the surviving spouse of the  
23 decedent may assert a claim for relief according to the following rules:

24 (1) in a probate proceeding, a surviving spouse must ~~by sending~~ a demand in a  
25 record to the personal representative of the decedent not later than [six months] after the  
26 appointment of the personal representative, ~~but and, in the absence of such a claim,~~ the personal  
27 representative is not liable for failing ~~does not have a duty~~ to apply this [act] ~~if the surviving~~  
28 ~~spouse does not timely send a demand;~~

29 (2) in the absence of a probate proceeding, a surviving spouse must ~~by~~  
30 ~~commence~~ing an action against the heirs, devisees, or nonprobate transferees of the decedent not  
31 later than [three years] after the death of the decedent; and

32 (3) in an action to perfect title to property or to assert a right to a nonprobate asset,  
33 a surviving spouse must ~~by~~ ~~commence~~ing an action against the heirs, devisees, or nonprobate

1 transferees of the decedent not later than [three years] after the death of the decedent.

2 (b) With respect to property to which this [act] applies, an heir, devisee, or nonprobate  
3 transferee of the decedent may assert a claim for relief according to the following rules:

4 (1) in a probate proceeding, an heir, devisee, or nonprobate transferee of the  
5 decedent must by-sending a demand in a record to the personal representative of the decedent not  
6 later than [six months] after appointment of the personal representative;

7 (2) in the absence of a probate proceeding, an heir, devisee, or nonprobate  
8 transferee of the decedent must by commencing an action against the surviving spouse of the  
9 decedent not later than [three years] after the death of the decedent; and

10 (3) in an action to asserting a right to a nonprobate asset, an heir, devisee, or  
11 nonprobate transferee of the decedent must by commencing an action against the surviving  
12 spouse of the decedent not later than [three years] after the death of the decedent.

13 (c) With respect to property to which this [act] applies, the personal representative of the  
14 decedent may commence an action to perfect title to property or an action against the surviving  
15 spouse of the decedent asserting a right to a nonprobate asset not later than [three years] after the  
16 death of the decedent.

17 [(d) With respect to property to which this [act] applies, a creditor of the decedent may  
18 assert a claim within the earlier of:

19 (1) [one year] after the decedent's death;

20 (2) if notice is by publication, within [four months] after the date of first  
21 publication of notice of appointment of the personal representative; or

22 (3) if actual notice is given, not later than:

23 (A) [60 days] after the mailing or other delivery of notice to the creditor to

1 present the claim; or

2 (B) within [four months] after published notice.]

3 **Legislative Note:** A state should insert in subsections (a)(1) and (b)(1) the relevant time for  
4 asserting a claim in a probate proceeding and in subsections (a)(2) and (3), (b)(2) and (3), and  
5 (c) the relevant time frame for asserting a claim~~s~~ to a nonprobate asset or for probating a will or  
6 challenging a revocable trust.

7  
8 In Subsection (d), a state should insert or reference its existing non-claim statute with  
9 regard to the time for asserting a creditor's claim.

10  
11

### Comment

12 The time periods provided in this section are generally borrowed from other areas of law.  
13 Specifically, a six-month period is not an uncommon period for a non-claim statute for creditors,  
14 and the three-year period is adapted from claims challenging revocable trusts and for contesting  
15 nonprobated wills. See Unif. Trust Code § 604; Unif. Prob. Code § 3-108. This section fills a  
16 gap that existed in the UDCPRDA, which did not provide for specific statute of limitations  
17 periods for bringing claims under the act. Thus, courts were left to speculate as to what time  
18 periods applied. See, e.g., *Johnson v. Townsend*, 259 So. 3d 851 (Fla. 4<sup>th</sup> D. Ct. App. 2018)  
19 (holding that in the absence of a specific statute of limitations in the Florida version of the  
20 UDCPRDA, the general statute of limitation for asserting a claim or cause of action against the  
21 decedent).

22

23 Subsection (a) of this section allows a surviving spouse to protect rights under this act  
24 and provides a statute of limitation for doing so. It provides time frames for a surviving spouse  
25 asserting a right under this act either in a probate proceeding (see (a)(1)) or outside the probate  
26 process in the case of an action to perfect title to property, in the case of nonprobate assets, or in  
27 the case no probate proceedings occur (see (a)(2)). Unless the surviving spouse acts within the  
28 relevant period of time in a probate proceeding, the personal representative has no fiduciary duty  
29 to investigate or to attempt to ascertain whether this act applies to any property owned by the  
30 decedent.

31

32 Subsection (b) of this section allows an heir, devisee, or nonprobate transferee of the  
33 decedent to protect rights under this act and provides a statute of limitation for doing so. It  
34 provides time frames for asserting a right under this act either in a probate proceeding (see  
35 (b)(1)) or outside the probate process in the case of an action to perfect title to property, in the  
36 case of nonprobate assets, or in the case no probate proceedings occur (see (b)(2)). Unlike in  
37 subsection (a) of this section, the personal representative of the decedent has an obligation to  
38 attempt to ascertain whether the decedent has property rights that should be protected under this  
39 act, even if no claim is asserted under subsection (b) by an heir, devisee, or nonprobate  
40 transferee. See, e.g., Unif. Prob. Code §§ 3-703 (general duties) & 3-706 (duty to prepare an  
41 inventory).

42

43 Subsection (c) of this section allows personal representative of the decedent to protect

1 rights under this act and provides a statute of limitation for doing so. It provides a time frame for  
2 a personal representative of the decedent to recover nonprobate property or perfect title in  
3 probate property after being notified by heirs or devisees that probate property is held by the  
4 surviving spouse.

5  
6 Subsection (d) of this section provides a time frame for creditors of the decedent to bring  
7 claims. It is based upon Section 3-803 of the Uniform Probate Code, regarding the time frames  
8 for creditors asserting claims in probate proceedings.

9  
10 **SECTION 9. PROTECTION OF THIRD PERSON.**

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

13 (1) transacts in good faith and for value:

14 (A) with a spouse; or

15 (B) after the death of the decedent, with a surviving spouse, personal  
16 representative, heir, or beneficiary; and

17 (2) does not know that the other party to the transaction is exceeding or  
18 improperly exercising the party's authority.

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

21 **Comment**

22  
23 This section is based upon Section 1012 of the Uniform Trust Code. Like the Uniform  
24 Trust Code, this section does not define "good faith." It does, however, require that a third  
25 person be without knowledge that the other party to the transaction is acting without authority  
26 with respect to property to which this act applies. For a definition of knowledge, see Unif. Trust  
27 Code § 104. Moreover, this section makes clear that a person dealing with another party is not  
28 charged with a duty to inquire as to the extent of the property of the exercise of the purported  
29 power or authority of that party. This section, like the Uniform Trust Code, acknowledges that a  
30 definition of good faith that is consistent with a state's commercial statutes, such as Section 1-  
31 201 of the Uniform Commercial Code, would be consistent with the purpose of this section.  
32 This section should be read in conjunction with Section 7 of this act, which provides that courts  
33 retain the ability at the death of one spouse to grant equitable relief to the other for actions that  
34 have impaired rights granted by this act.

1 This section protects third persons in two different situations. First, during life, both  
2 spouses may engage in a variety of transactions with third parties concerning the property to  
3 which this act applies. This section protects third persons who deal with either spouse  
4 concerning property to which this act applies, provided the third person gives value, is in good  
5 faith, and does not have knowledge that the spouse who is a party to the transaction is improperly  
6 exercising authority over property. Although third persons are ordinarily allowed to deal with a  
7 spouse who has apparent title concerning a martial asset during the existence of the marriage, no  
8 good reason could be found for protecting bad faith third parties with knowledge of the  
9 commission of fraud on the rights of the other spouse. For example, if A retitles community  
10 property belonging partly to B solely in A's name and sells it to C, C is protected from any claim  
11 by A with respect to the property because C gave value and provided C is in good faith and does  
12 not know that A improperly transferred property belonging to B. To the extent B has a  
13 cognizable claim under Section 7 of this act, it will be solely against A, not C. On the other  
14 hand, if A donated a community asset to C, C would not be protected by this section and B's  
15 claim under Section 7 of this act could be cognizable against A or C or both.

16  
17 Second, this section also applies after the death of a decedent. Section 8 of this act  
18 provides relevant time periods within which a surviving spouse may assert rights against a  
19 personal representative of the decedent, as well as heirs or transferees of the decedent. Similarly,  
20 it also provides relevant time periods within which the heirs, beneficiaries, or creditors of the  
21 decedent may assert rights against the surviving spouse or the personal representative of the  
22 decedent. This section protects third persons who transact with those relevant parties in  
23 possession of apparent title to property, provided the third person gives value, is in good faith,  
24 and is without knowledge that the other party to the transaction is improperly exercising  
25 authority. For example, if after A's death, A's surviving spouse, B, sells Blackacre, which is  
26 titled solely in B's name, to C, C will be protected from liability under this section, even if  
27 Blackacre was subject to this act because it was traceable to community property, provided, of  
28 course, C was in good faith and without knowledge that B was exceeding his authority.

29  
30 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
31 applying and construing this uniform act, consideration must be given to the need to promote  
32 uniformity of the law with respect to its subject matter among states that enact it.

33 **SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
34 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal  
35 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,  
36 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or  
37 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
38 U.S.C. Section 7003(b).



1

## Comment

2

This section repeals the adopting State's present Uniform Disposition of Community  
3 Property Rights at Death Act. The effective date of this Section should be the same date selected  
4 by the state in Section 12 for the application of this act.

5

**SECTION 14. EFFECTIVE DATE.** This [act] takes effect . . . .