

# Uniform Community Property Disposition at Death Act\*

Drafted by the

Uniform Law Commission

and by it

Approved and Recommended for Enactment  
in All the States

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*Without Prefatory Note and Comments*



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*\*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.*

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

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

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

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

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

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

(7) “Record” means information:

(A) inscribed on a tangible medium; or

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

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

(9) “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.

(10) “Spouse” means an individual in a marriage or other relationship:

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

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

(11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular 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 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 spouse was domiciled when the property was acquired or when it became community property after acquisition;

(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 of 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 spouse was domiciled when the property was acquired or when it became community property after acquisition; and

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

(b) If spouses acquired community property by compliance 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 laws of the jurisdiction under which the trust was created.

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

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

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

### **Section 5. Community Property Presumption**

All property acquired by a spouse when domiciled in a jurisdiction where community property could then be acquired by the spouse by operation of law as an incident of marriage or other relationship under which community property could then be acquired 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 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 elective-share rights of the surviving spouse.

### **Alternative B**

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

(1) property under subsection (a) is deemed to be property of the surviving 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 rights of the surviving 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 spouse to [insert statutory allowances].

(f) If at death a decedent purports to dispose of property that, under this section, belongs to the surviving spouse to a third person and disposes of other property to the surviving spouse, this section does not limit the authority of the court under other law of this state to require that the spouse elect between retaining the disposition from the decedent 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 an individual, the surviving spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a right based on an act of:

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

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

(b) In determining rights under subsection (a) and corresponding remedies, the court:

(1) shall apply equitable principles; and

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

## **Section 8. Right of Surviving Spouse**

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

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

(A) commence an action against the heirs, devisees, or nonprobate transferees of the decedent who are in possession of the property not later than [three years] after the death of the decedent; or

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

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

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

(B) if no personal representative is appointed, commence an action not later than [three years] after the death of the decedent.

(b) Absent a timely demand under subsection (a)(1)(B) or (a)(2)(A), the personal representative may distribute the assets of the decedent's estate without personal liability for a spouse's claim under this [act].

**Legislative Note:** *A state should insert in subsection (a)(1)(A) and (a)(2)(B) the time for asserting a claim to a nonprobate asset, probating a will, or challenging a revocable trust and in subsections (a)(1)(B) and (a)(2)(A) the time for asserting a claim in a probating proceeding. The six-month period is not an uncommon period for a non-claim statute for creditors, and the three-year period is adapted from statute of limitations on claims challenging revocable trusts and for actions against distributees of an estate.*

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

An heir, devisee, or nonprobate transferee of the decedent may assert a claim for relief

with respect to rights under this act in accordance with the following rules:

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

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

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

(2) In all other actions, an heir, devisee, or nonprobate transferee must:

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

(B) if no personal representative is appointed, commence an action not later than [three years] after the death of the decedent.

***Legislative Note:*** A state should insert in subsection (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 subsections (1)(B) and (2)(A) the time for asserting a claim in a probating proceeding.

## **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 spouse; or

(B) after the death of the decedent, with a surviving 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) does not require a 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. Relation to Electronic Signatures in Global and National Commerce Act**

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

### **Section 14. 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 15. Transitional Provision**

Except as provided in Section 14, 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 the death of the decedent.

#### **[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 . . . .