

MEMORANDUM

TO: Uniform Law Commission

FROM: David English, Chair of the Uniform Community Property Disposition at Death Act Committee
Ronald J. Scalise Jr., Reporter of the Uniform Community Property Disposition at Death Act Committee

DATE: June 28, 2021

RE: Issues Memorandum for Second Reading

As background for the 2021 annual meeting of the Uniform Law Commission, the Reporter and Chair of the Uniform Community Property Disposition at Death Act (“UCPDDA”) drafting committee have prepared this memorandum, which summarizes and highlights the main provisions of the UCPDDA.

I. BACKGROUND

The original Uniform Disposition of Community Property Rights at Death Act (the “UDCPRDA”) was approved by the Uniform Law Commission in 1971. That act establishes a system for enabling non-community property states to address the treatment of property that was community property before the spouses moved from a community property state to the non-community property state. According to the 1971 UDCPRDA, its purpose “is to preserve the rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their ‘community’ rights.”¹ To date, 16 states have enacted the UDCPRDA. Five states enacted it in the 1970s, shortly after its approval.² Another nine states enacted the UDCPRDA in the 1980s.³ One state enacted it in the 1992,⁴ and two states – Utah and Minnesota – enacted it in 2012 and 2013, respectively.⁵

The UCPDDA revises and updates the 1971 UDCPRDA. Like its predecessor, the UCPDDA preserves the community property character of property acquired by spouses while domiciled in a community property jurisdiction, even after a move to a non-community property state. Unlike its predecessor, however, the UCPDDA:

¹ UNIF. COMM. PROP. RIGHTS AT DEATH ACT, Pref. Note, at 3 (1971).

² Or. Rev. Stat. § 112.705; Hawaii Rev. Stat. § 510-21; Colo. Rev. Stat. Ann. § 15-20-101; Ky. Rev. Stat. § 391.210; Mich. Comp. L. Ann. § 557.261.

³ N.C. Gen. Stat. § 31C-1; N.Y. Est. Powers & Trusts Law § 6-6.1; Ark. Code Ann. § 28-12-101; Va. Code § 64.1-197; Alaska Stat. § 13.41.005; Wyo. Stat. § 2-7-720; Conn. Gen. Stat. Ann. § 45a-458; Mont. Code Ann. § 72-9-101.

⁴ Fla. Stat. Ann. § 732.216.

⁵ Utah Code § 75-2b-101; Minn. Stat. § 519A.01.

- (1) broadens the UDCPRDA to recognize the non-probate revolution that has occurred over the past 50 years; the 1971 UDCPRDA applied only to probate assets.
- (2) broadens the UDCPRDA to expressly preserve some rights that spouses would have had in the community property jurisdiction for certain bad faith acts or acts of mismanagement of community property by a spouse, whereas the UDCPRDA “only define[d] the dispositive rights, at death, of a married person as to his interests at death in property” subject to the act.
- (3) resolves numerous uncertainties and ambiguities that have arisen over time concerning the specific language of the 1971 UDCPRDA.

II. SUBSTANCE OF THE UCPDDA

The substance of the proposed UCPDDA is discussed below.

Sections 1 and 2: Section 1 contains the short title of the UCPDDA. Section 2 contains some standard and some particularized definitions of terms that are used throughout the UCPDDA. Many of the definitions in Section 2 are standard ULC terms and definitions. A few of note that are particular to the UCPDDA are “Partition,” “Reclassify,” and “Spouse.” The terms “partition” and “reclassify” are necessary so that the UCPDDA does not apply to property that the spouses have divided or reclassified as separate. The term “spouse” is defined broadly to include those both marriages as well as other relationships, such as registered domestic partnerships, under which community property can be acquired. The term does not include cohabitants or individuals in “committed intimate relationships” under Washington law.

Section 3: Section 3(a) is similar to Section 1 of the UDCPRDA and sets forth the scope of the UCPDDA and the property to which it applies, namely only the property acquired by spouses while domiciled in a community property jurisdiction, as well as any income, rent, profit, appreciation, other increase, or traceable mutation of that property. Once spouses move to a non-community property state, their newly acquired marital property is governed by the law in that state. Subsection 3(a) covers personal property wherever located, but only real property located in the enacting state. Subsection 3(b) applies to “opt-in” community property states and makes the UCPDDA applicable only to the extent the property has been placed in a community property trust or characterized as community property by state law. Section 3(c) provides that the UCPDDA does not apply to property that has been partitioned or reclassified or property subject to waiver of rights.

Section 4: Section 4 specifies the requirements by which spouses may partition or reclassify community property or the procedure by which spouses may waive rights under the UCPDDA.

Section 5: Section 5 assists courts and the parties in evidentiary matters of proof in applying the UCPDDA. Specifically, even if two spouses are married under a community regime in a community property state, they may still acquire separate property that is owned individually and is not part of their community regime. Community property states generally impose a presumption that all property acquired by either spouse during the existence of their community is presumed to be community, unless a spouse can demonstrate to the contrary. Section 5 adopts the

same type of rebuttable presumption, such that a party asserting the applicability of the UCPDDA would need to prove only that the property was acquired while domiciled in a community property jurisdiction and not that the property was acquired while domiciled in a community property jurisdiction *and* that the relevant property was not acquired separately. It is believed that any other rule would make proof of the applicability of the act too difficult, given the passage of time, the absence of records, and the fading of memories between the time when the property was originally acquired and the time of death of the decedent. Section 5 does not apply to the “opt-in” community property jurisdictions because community property in those jurisdictions is acquired either by agreement or by trust, not “by operation of law as an incident of marriage or other relationship under which community property could then be acquired.” Section 5 is similar to Section 2 of the UDCPRDA. Unlike the UDCPRDA, however, the UCPDDA does not impose a presumption against the applicability of the act for property acquired in a non-community property state and held in a form that creates rights of survivorship.

Section 6: Section 6 is the core of the UCPDDA. It provides that upon the death of one spouse, half the property to which this act applies belongs to the decedent and the other half to the surviving spouse. This is the same result that would be achieved at the death of one spouse in a community property jurisdiction. Subsection (c) provides alternatives for states that have differing elective-share statutes. Subsection (d) makes this section generally inapplicable to transfers from the decedent to the surviving spouse by right of survivorship or by nonprobate transfer. Subsection (e) preserves a surviving spouse’s claim to homestead, exempt property, and family allowances. Subsection (f) preserves the common law right of election. This Section is similar to Section 3 of the UDCPRDA, although the terminology and concepts have been updated.

Section 7: Section 7 is new and has no analogue in the UDCPRDA. It expands the applicability of the act to allow a court to adjudicate claims for certain bad faith actions by one spouse that might impair the rights of the other spouse with respect to property to which the UCPDDA applies or for nonprobate transfers of community property to a third party to the prejudice of the other spouse. This section allows for a damage or equitable claim to be brought at the death of one spouse by the other or by his personal representative, provided a spouse’s interest in property was prejudiced by the actions of the other spouse.

Section 8: Section 8 provides a procedure by which spouses can act to preserve rights under the UCPDDA. It is similar to Sections 4 and 5 of the UDCPRDA. Unlike the UDCPRDA, however, this act also provides limitations periods within which a party must act to preserve rights. The periods of time are based upon comparable time periods in other parts of the law for asserting claims to nonprobate assets and for asserting claims in probate proceedings. The time periods differ depending upon the type of claim being asserted, i.e., a claim asserting a right to particular property or a credit claim.

Section 9: Section 9 provides a procedure by which heirs, devisees, or nonprobate transferees of the decedent can act to preserve rights under the UCPDDA. It is similar to Sections 4 and 5 of the UDCPRDA. Unlike the UDCPRDA, however, this act also provides limitations periods within which a party must act to preserve rights. The periods of time are based upon comparable time periods in other parts of the law for asserting claims to nonprobate assets and for

asserting claims in probate proceedings. The time periods differ depending upon the type of claim being asserted, i.e., a claim asserting a right to particular property or a credit claim.

Section 10: Section 10 protects third persons who have transacted in good faith and for value. Otherwise, third persons could be subject to claims by a spouse under Section 7 if the other spouse had engaged in acts of bad faith management of community property while alive. Similarly, in some instances, Sections 8 and 9 grant beneficiaries of the decedent or the surviving spouse of the decedent rights against third persons for unauthorized alienations. Section 10 ensures that in most instances third persons will be protected from these claims. This Section has no analogue in the UDCPRDA.

Sections 11: Section 11 provides that principles of law and equity supplement the UCPDDA to the extent not inconsistent with this UCPDDA. This provision is of particular importance in light of the reference in Section 7 to a court's ability to craft remedies in accordance with "equitable principles."

Sections 12, 13, 14, 15, 16, and 17: Section 12 provides for uniform application of the act. Section 13 is a standard section regarding electronic signatures. Section 14 provides that statute-of-limitation periods that began to run before the effective date of the UCPDDA shall continue to apply rather than the provisions of the UCPDDA. Section 15 makes the UCPDDA applicable to proceedings commenced after the effective date of the act, even if the decedent died prior to the enactment of the UCPDDA. Section 16 contains an optional provision for states that adopt the UCPDDA to repeal the UDCPRDA. Section 17 provides for the effective date of UCPDDA.