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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition
Community Property Rights of Death Act
(Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

This act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

Senator Robert H. Ziegler, Sr.

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January 29, 1979

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, (i.e., community property or property traceable to it), becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interest or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem

CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
BILLY G. BERRIER

February 27, 1980

Robert E. Ziegler, Sr., Chairman
Senate Judiciary Committee
Room 128 -- Capitol Building
Juneau, Alaska 99811

Dear Mr. Chairman:

First, thank you for taking the time to attend the commission luncheon last Thursday to discuss commission bills pending in your committee and future projects. As you know, the commission is certainly receptive to future directions from the Legislature.

I have received your letter and enclosure of February 22 and it has been distributed to commission members. We appreciate your prompt attention to scheduling hearings on SB 54 -- International Wills Act (Uniform Probate Code) and SB 58 -- Uniform Disposition of Community Property Rights at Death Act. Assistant Attorney General Arthur Peterson, formerly the Vice Chairman of the commission, will be attending the hearings on March 4 to present testimony on behalf of the commission.

I am enclosing, for your information, additional background material on SB 58. Enclosed are (1) a memorandum prepared by the Division of Legal Services reflecting changes that would be made to Alaska law; (2) a copy of the official version of the draft as prepared by the National Conference of Commissioners on Uniform State Laws, including the official commentary; and (3) a copy of the galley proof of an article from the Winter 1977/1978 edition of the Uniform Law Memo discussing community property conflicts.

Your office should have on hand copies of both bills and transmittal letters from the commission to Legislative Council. This material was distributed to your office prior to the luncheon.

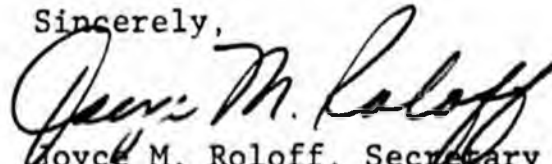
Robert E. Zieger, Sr.
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February 27, 1980

Another commission bill that was discussed at the luncheon and is to be considered by your committee is SB 55 -- Uniform Commercial Code, Articles 8 and 9. However, this bill is still pending in the Senate Commerce Committee awaiting action. We are hopeful that that bill will be reported out of the Commerce Committee. Once that action has been taken, I will again be in touch with you regarding additional background information.

With regard to SB 339 -- guardians and conservators, I have already started gathering material on this bill. At your convenience I would appreciate getting copies of any information you have available for future distribution to the commission.

If you need further information regarding our work or find that we can be of any other assistance, please do not hesitate to let us know.

Sincerely,



Joyce M. Roloff, Secretary
Code Revision Commission

JMSR/s
Enclosures

cc: Code Revision Commission
Arthur H. Peterson

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 16, 1978

SUBJECT: Uniform Disposition Community
Property Rights at Death Act
(Work Order #5748)

TO: Code Revision Commission

FROM: Kenneth M. Rosenstein
Legislative Counsel *KMR*

Attached please find a draft of the Uniform Disposition of Community Property Rights at Death Act prepared for introduction at the next session of the legislature. The act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The

presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, i.e. community property or property traceable to it, becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.035 merely states that the rights of creditors in property to which the chapter applies is not affected.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interests or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

Code Revision Commission

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November 16, 1978

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.41.055 provide for uniform construction and application and for citation for short title, respectively.

KMR:jdm

Attachment

UNIFORM DISPOSITION OF COMMUNITY PROPERTY
RIGHTS AT DEATH ACT

PREFATORY NOTE

Frequently spouses, who have been domiciled in a jurisdiction which has a type of community property regime, move to a jurisdiction which has no such system of marital rights. As a matter of policy, and probably as a matter of constitutional law, the move should not be deemed (in and of itself) to deprive the spouses of any preexisting property rights. A common law state may, of course, prescribe the *dispositive* rights of its domiciliaries both as to personal property and real property located in the state. California's development of its "quasi-community property" laws illustrates the distinction.

The common law states, as contrasted to California, have not developed a statutory pattern for disposition of estates consisting of both *separate* property of spouses and property which was community property (or derived from community property) in which both spouses have an interest. In these states there have been relatively few reported cases (although the number has been increasing in recent years); the decisions to date show no consistent pattern and the increasing importance of the questions posed suggests the desirability of uniform legislation to minimize potential litigation and to facilitate the planning of estates.

This Act has a very limited scope. If enacted by a common law state, it will only define the dispositive rights, at death, of a married person as to his interests at death in property "subject to the Act" and is limited to real property, located in the enacting state, and personal property of a person domiciled in the enacting state. The purpose of the Act 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. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of "his half" of the community property, while confirming the title of the surviving spouse in "her half."

It is intended to have no effect on the rights of creditors who become such before the death of a spouse; neither does it affect the rights of spouses or other persons prior to the death of a spouse. While problems may arise prior to the death of a spouse they are believed to be of

relatively less importance and the correlative of uniform treatment of such cases; thus this Act, at death, as an initial step.

The key operative dispositive rights in the Act. Section 2 and is designed to provide presumptions, in determining

No negative implication of other presumptions left to the normal process.

The first three sections might almost to clarify situations and sections but which might that nothing in the Act in community property during their effectively remove any to this Act. Similarly, rights upon a spouse and during the joint lives of of such property at a community property joint any part of the community. If the law of that jurisdiction of property, then the "property interest" which she did not provide is treated as since on death of a wife who right, the common law dispositive pattern of disposition; rather it simply "property rights," leaving of the community property.

relatively less importance than the delineation of dispositive rights (and the correlative effect on planning of estates). The prescription of uniform treatment in other contexts poses somewhat greater difficulties, thus this Act is designed solely to cover dispositive rights at death, as an initial step.

The key operative section of the Act is Section 3 which sets forth the dispositive rights in that property defined in Section 1, which is subject to the Act. Section 2 follows Section 1's definition of covered property and is designed to provide aid, through a limited number of rebuttable presumptions, in determining whether property is subject to the Act.

No negative implications were intended to be raised by lack of inclusion of other presumptions in Section 2; areas not covered were simply left to the normal process of ascertainment of rights in property.

The first three sections form the heart of the Act; the succeeding sections might almost be described as precatory and have been added to clarify situations which would probably follow from the first three sections but which might raise questions. Thus, Section 8 makes it clear that nothing in the Act prevents the spouses from severing any interest in community property or creating any other form of ownership of property during their joint lives; and, such action on their part will effectively remove any property from classification as property subject to this Act. Similarly, Section 9 makes it clear that the Act confers no rights upon a spouse where, by virtue of the property interests existing during the joint lives of the spouses, that spouse had no right to dispose of such property at death. By way of illustration, in at least one community property jurisdiction, the wife has no right to dispose of any part of the community property if she predeceases her husband. If the law of that jurisdiction is construed so as to treat this as a rule of property, then the move to the common law state should not alter the "property interest" of the spouses by conferring a right on the wife which she did not previously possess. On the other hand, if the provision is treated as simply establishing a pattern of dispositive rights on death of a wife who predeceases her husband, rather than a property right, the common law state of new domicile could prescribe an alternative pattern of dispositive rights. The Act does not resolve this question; rather it simply makes clear that it does not affect existing "property rights," leaving to the courts the interpretation of the effect of the community property state's law.

of the stock had always been registered in H's name. All of the shares, traceable to community property or the proceeds therefrom, constitute property subject to this Act.

Subsection (2): Real Property

Subsection (2) deals with real property and is confined to real property located within the enacting state (since presumably the law of the situs of the property will govern dispositive rights). The policy and operation of this subsection are intended to be the same as those set forth in subsection (1).

Example 2. H and W, while domiciled in California, purchased a residence in California. They retained the residence in California when they were transferred to Wisconsin. After becoming domiciled in Wisconsin they used community funds, drawn from a bank account in California, to purchase a Wisconsin cottage. H and W subsequently became domiciled in Michigan; they then purchased a condominium in Michigan for \$20,000 using \$15,000 of community property funds drawn from their bank account in California and \$5,000 earned by H after the move to Michigan. H died domiciled in Michigan; title to all of the real property was in H's name. Assuming Michigan had enacted this Act, three-fourths of the Michigan condominium would be property subject to this Act; the Michigan statute would not, however, apply to either the Wisconsin or California real estate. If Wisconsin had enacted this Act, the Wisconsin statute would apply to the Wisconsin cottage.

Subsections (1) and (2): Apportionment

In both subsections (1) and (2) an apportionment is required by the phrase "all or the proportionate part" where personal property, or real property situated in the enacting state, has been acquired partly with property described as subject to the Act and partly with other (separate) property. To put it succinctly, the phrase represents a condensation of an area covered by many pages in a prior draft and is simply a statement of policy; it leaves to the courts the difficult task of working out the precise interest which will be treated as the "proportionate part" of the property subject to the dispositive formula of Section 3. Simply by way of illustration, assume that a single man (domiciled in a community property state) purchased a life insurance policy with a face amount of \$100,000 and an annual premium of \$1,000. Assume further that he paid three premiums and then entered into marriage. Further assume that the next seven premiums were paid with his earnings while domiciled in the community property state and that he and his wife then moved to a common law state where the next ten premiums were paid from his earnings in that common law state; he then died after the payment of the twenty premiums. Under one interpretation of the law of Texas the contract would remain the separate property of the insured; the community would have a claim for community funds advanced to pay premiums and, during interest, it would appear that \$7,000 of the proceeds would be treated as community property and the remaining \$93,000 would be treated as the separate property of the deceased spouse. On the other hand, a state like California would probably treat the proceeds as being 65% separate and 35% community (basing the allocation of proceeds upon the percentage of separate and community funds contributed). Further variations could be mentioned. The illustration is one of the simpler problems. Much more difficult problems are encountered where benefits under a qualified pension and profit-sharing plan are involved and the employee has been domiciled in both community property and common law jurisdictions during the period in which benefits have accrued. Attempts at defining the various types of situations which could arise and the

varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

1 SECTION 2. ^{3.41.01C} ^{C.A. 23} *{Rebuttable Presumptions.}* In determining whether
2 this Act applies to specific property the following rebuttable pre-
3 sumptions apply:

4 (1) property acquired during marriage by a spouse of that
5 marriage while domiciled in a jurisdiction under whose laws
6 property could then be acquired as community property is pre-
7 sumed to have been acquired as or to have become, and re-
8 mained, property to which this Act applies; and

9 (2) real property situated in this State and personal property
10 wherever situated acquired by a married person while domiciled
11 in a jurisdiction under whose laws property could not then be
12 acquired as community property, title to which was taken in a
13 form which created rights of survivorship, is presumed not to be
14 property to which this Act applies.

COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

Example 1. H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

presumption is simply of nature of the property in the separate nature of the

Subsection (2) sets up a common law state acquired joint tenancy, tenancy by with right of survivorship, the Act. This presumption expectations of the spouses located in the enacting state

Example 2. John and Mary were domiciled in Illinois and acquired "John and Mary Jones as right of survivorship." Reg. would be presumed to be

1 SECTION 3. [Dis-
2 ried person, one-ha-
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4 mentary disposition
5 of succession of this
6 erty of the decedent
7 or distribution unde
8 respect to property
9 property which is th
10 surviving spouse's
11 dower or curtesy etc]

This section deals with the domiciled in the enacting state person, including a noncom located in the enacting state property subject to this Act.

The dispositive pattern is the states; the deceased spouse property, subject to the provisions
Example. H and W were domiciled in Michigan. All of the move from California to Michigan which had been purchased in California which had been community property in California was held in Illinois and Michigan. H and W acquired a Michigan

presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

Example 3. John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

1974-41-C15

- 1 Section 9. *{Disposition upon Death.}* Upon death of a mar-
- 2 ried person, one-half of the property to which this Act applies is
- 3 the property of the surviving spouse and is not subject to testa-
- 4 mentary disposition by the decedent or distribution under the laws
- 5 of succession of this State. One-half of that property is the prop-
- 6 erty of the decedent and is subject to testamentary disposition
- 7 or distribution under the laws of succession of this State. With
- 8 respect to property to which this Act applies, the one-half of the
- 9 property which is the property of the decedent is not subject to the
- 10 surviving spouse's right to elect against the will [and no estate of
- 11 descent or courtesy exists in the property of the decedent.]

COMMENT

This section deals with the dispositive rights, at death, of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person who was a domiciliary of the enacting state, as to real property located in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

Testate Disposition

The dispositive pattern is the usual one encountered in the community property state: the deceased spouse may dispose of his one-half of the community property subject to the provisions of Section 9.

Example 4. E and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At E's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home in California which had been community property. Stock acquired as community property in California was held in his name in safety deposit boxes located in Michigan. E and W had acquired a cottage in California as community property, held in E's name, and it was so held at the time of his death. E and W also owned a Michigan resort condominium, taking title as tenants by the

entireties. H acquired bonds issued by his employer with earnings in Michigan and held title in his own name.

The Michigan residence and the stock would be deemed property subject to this Act and H would have the right under Section 3 to dispose of half of that property by his will. The remaining property would not be deemed subject to this Act.

Intestate Succession

If the property subject to this Act passes by intestate succession, the law of the enacting state applies to the decedent's one-half, again subject to Section 9. If under the law of the enacting state, a surviving spouse is entitled to one-third of the decedent's property by intestate succession, the result of the Act is to give to her two-thirds of the property subject to the Act. For example, if the spouses had recently moved to a common law state and owned \$300,000 of property (all being personal property held in the husband's name and acquired as community property), the wife would be entitled to one-half of the property (\$150,000) and would receive a $\frac{2}{3}$ share of the husband's half (\$50,000) for a total of \$200,000. It is clearly within the power of the enacting state to prescribe any pattern of intestate succession deemed appropriate, and views may differ. In some community property states, the surviving spouse receives all of the decedent's community property upon intestate succession; in another she would receive none. Similarly, the common law state may alter the pattern to fit its own policy determination.

Dower, Curtesy, Elective Share

Dower and curtesy do not exist in community property and have been abolished in many common law states; policy considerations suggest that no such interest should exist in property subject to this Act, since the surviving spouse already has a one-half interest in such property. Similar reasons suggest a denial of any right in the surviving spouse to elect a statutory share in the one-half of the property over which the decedent had a power of disposition.

13. -1. C 25 C.M.P.
1 **Section 1. $\{$ Perfection of Title of Surviving Spouse $\}$** If the
2 title to any property to which this Act applies was held by the
3 decedent at the time of death, title of the surviving spouse may
4 be perfected by an order of the [court] or by execution of an
5 instrument by the personal representative or the heirs or devisees
6 of the decedent with the approval of the [court]. Neither the
7 personal representative nor the court in which the decedent's estate
8 is being administered has a duty to discover or attempt to discover
9 whether property held by the decedent is property to which
10 this Act applies, unless a written demand is made by the surviving
11 spouse or the spouse's successor in interest.

COMMENT

This section simply provides for perfection of title interests of the surviving spouse (e.g. where title was in the name of the deceased spouse) by orders of the court of appropriate jurisdiction (e.g. the probate court) in the enacting state. This section is designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to search for or to discover whether property held by the decedent is property defined in Section 1, unless a written

demand is made by the
several states the Court
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1 SECTION 5. [P
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This section is a corollary
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subject to this Act, absent
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1 SECTION 6. [P
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7 (b) If a perso
8 decedent has app
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11 surviving spouse.
12 (c) A purchas
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14 (d) The proce
15 be treated in the
16 purchaser for val

This section is design
interest, who acquire such
a person who appear to

demand is made by the surviving spouse or the spouse's successor in interest. In several states the Court administering a decedent's estate has a duty or undertakes to advise parties in interest of their legal and equitable rights, and this section is similarly designed to eliminate such Court's liability for failing to discover the community rights and to advise the interested party of his rights. Nothing contained in this section is to be construed to interfere with the Court's jurisdiction in a proper proceeding to perfect the title of the surviving spouse in and to property to which this Act applies.

13-41-025
1 SECTION 6. ^{PERFECT} {Perfection of Title of Personal Representative, Heir
2 or Devisee.} If the title to any property to which this Act applies
3 is held by the surviving spouse at the time of the decedent's death,
4 the personal representative or an heir or devisee of the decedent
5 may institute an action to perfect title to the property. The per-
6 sonal representative has no fiduciary duty to discover or attempt
7 to discover whether any property held by the surviving spouse is
8 property to which this Act applies, unless a written demand is
9 made by an heir, devisee, or creditor of the decedent.

COMMENT

This section is a corollary to Section 4. Since title is apparently in the surviving spouse, the section simply provides for an action by the personal representative, heir, or devisee and is again designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to discover or to attempt to discover whether property held by the surviving spouse is property subject to this Act absent a written demand by an heir, devisee or creditor of the decedent.

13-41-030
C.A.P.E.
1 SECTION 7. {Purchaser for Value or Lender.}
2 (a) If a surviving spouse has apparent title to property to
3 which this Act applies, a purchaser for value or a lender taking
4 a security interest in the property takes his interest in the prop-
5 erty free of any rights of the personal representative or an heir or
6 devisee of the decedent.
7 (b) If a personal representative or an heir or devisee of the
8 decedent has apparent title to property to which this Act applies,
9 a purchaser for value or a lender taking a security interest in the
10 property takes his interest in the property free of any rights of the
11 surviving spouse.
12 (c) A purchaser for value or a lender need not inquire whether
13 a vendor or borrower acted properly.
14 (d) The proceeds of a sale or creation of a security interest shall
15 be treated in the same manner as the property transferred to the
16 purchaser for value or a lender.

COMMENT

This section is designed to protect purchasers and lenders taking a security interest, who acquire such interest for value, after the death of the decedent, from a person who appears to have title to property to which this Act applies. The

only requirement is that the purchaser or lender have acquired his interest for value; there is no requirement of good faith absence of notice. The purpose of the section is to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid. Since, during the joint lives of the spouses, the spouse with apparent title would have been able to convey title (at least as to community property) though being held accountable to the other spouse for an appropriate allocation of the proceeds or any breach of fiduciary obligation, the Act simply extends this treatment to disposition of the assets after the death of a spouse.

- 1 ^{13.41.035 CAPS} SECTION 7. ~~{Creditor's Rights.}~~ This Act does not affect rights
- 2 of creditors with respect to property to which this Act applies.
- 1 ^{13.41.040 CAPS} SECTION 8. ~~{Acts of Married Persons.}~~ This Act does not pre-
- 2 vent married persons from severing or altering their interests in
- 3 property to which this Act applies.

COMMENT

The rights, and procedures, with respect to severance of community property vary markedly among the community property states. The Act simply makes clear that nothing in the Act itself in any way limits the rights of the spouses to sever community property or to create a form of co-ownership not subject to this Act.

- 1 ^{13.41.045 CAPS} SECTION 9. ~~{Limitations on Testamentary Disposition.}~~ This
- 2 Act does not authorize a person to dispose of property by will if
- 3 it is held under limitations imposed by law preventing testamen-
- 4 tary disposition by that person.

- 1 ^{13.41.050 CAPS} SECTION 10. ~~{Uniformity of Application and Construction.}~~
- 2 This Act shall be so applied and construed as to effectuate its
- 3 general purpose to make uniform the law with respect to the
- 4 subject of this Act among those states which enact it.

- 1 ^{13.41.055 CAPS} SECTION 11. ~~{Short Title.}~~ This Act may be cited as the
- 2 Uniform Disposition of Community Property Rights at Death Act.

- 1 SECTION 12. ~~{Repeal and Effective Date.}~~ The following acts
- 2 and laws are repealed as of the effective date of this Act:

- 3 (1) _____
- 4 (2) _____

- 1 SECTION 13. ~~{Time of Taking Effect.}~~ This Act shall take
- 2 effect _____.

The problem. In the method of selection of the jury panel 1963 Congress adopted which modified the courts. An attempt issues that might be unlawful. The major problem of whether considered for jury selection of citizens of that purpose. Many jurors in the various and avoidance of

Need for uniform of jury selection and with the validity of enactment of federal of a comparable manner of selection state, it is also de Duplication of effort There is need, there method of selection to serve and have

Solution proposed provides that no citizen of race, color, religion basic purpose of the random from a fair court. The uniform as the prime source of registered voters the most recent general the state is permitted when necessary to

from
Winter 1977/1978
Uniform Law
gally pr

Community property conflicts

When deciding if uniform legislation is needed to solve a problem common to all states, the Conference places major emphasis on the legal problems of that increasing number of Americans who move from one state to another.

For example, the Uniform Disposition of Community Property Rights at Death Act is aimed at the problems of spouses moving from the eight "community property" states to one of the 42 "common law" states. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

In those states, all property owned by married persons is classified as either "separate" or "community" property. Separate property is the exclusive possession of one spouse. This would include property acquired before marriage or during marriage through a personal gift, bequest, devise or descent. Separate property is "owned" by one spouse who has the right—except for the forced heirship statutes of Louisiana—to decide who to "leave" it to.

Community property

All property acquired by the spouses during the marriage partnership becomes community property of both spouses without regard to whose name is on the title or bank account. From the date of acquisition, each spouse has a "present, existing and equal interest" which can be characterized as a "vested interest."

In the community property states, there is equal management and control of community property. In common law states, each spouse manages and controls his or her property as if single. In community property states, each spouse has equal management and control of community property.

heirs of his choice, but the surviving spouse retains complete control over the other half interest. In most community property states, if the spouse makes no formal arrangements through a will or trust a. dies intestate, the half interest passes to the other spouse.

Problem illustrate

W.S. McClunahan, chairman of the Committee on Property Problems of the Migrant Client of the American Bar Association's Section of Real Property, Probate and Trust Law, used this illustration to show why the act is needed.

A husband and wife, married 20 years and having two children, acquire \$300,000 worth of personal property while they live in California. All of it is community property held in the name of the husband. If he should die while living in California, he could bequeath only his half interest in that property and only that half would be subject to federal and California taxes.

But if the husband were transferred by his firm to Illinois—a common law state—taking all community property along while continuing to hold it only in his name, the rules would change. But the husband probably wouldn't realize that the will, made in California leaving a substantial share of his estate—half of the community property—to heirs other than his wife, would take on new meaning in Illinois. There she would be "left out" and Illinois law would grant her only a right to opt for a "statutory share" of a third of the estate—\$100,000. This would deprive her of a portion of the property which she had earned as a "present, existing and equal interest" and the entire estate would be subject to federal and Illinois taxes.

Surviving Spouse shortchanged

Details would vary. But in most common law states, the surviving spouse would be the same. McClunahan said. The surviving spouse would

receive substantially less than her vested half-interest.

The Uniform Act solves this problem by providing that:

"Upon the death of a married person, one-half of the property to which this act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state." A spouse can't claim a common law right—such as dower, courtesy or statutory interests—in addition to the half interest.

McClunahan said enactment of the Uniform Disposition of Community Property Rights at Death Act in a common law state eliminates "inequitable results which flow from non-recognition of the nature of community property and the rights and interests of the spouses in that property during life and at death."

Some states act

Colorado, Hawaii, Kentucky, Michigan and Oregon have adopted the act since it was completed by the Conference in 1972. Legislative interest is reported in a number of states including New York, Pennsylvania, Wisconsin and Arkansas.

"While few situations involving this problem have reached the reviewing courts in common law states, recognition of the problem will probably cause increasing litigation," McClunahan said. "More than 20 per cent of the population of the U.S. now lives in the eight community property states, which means that one of every five families is acquiring and accumulating its property under the community property system. Considering the increasing mobility of American families, it seems certain that this problem will be presented to the trial courts and the reviewing courts of the common law states with increasing frequency. Enactment of this act in all common law states would avoid this unfair and inequitable situation."

CODE REVISION COMMISSION



128
State Judiciary Committee
Re: SB 58
FVI

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EXECUTIVE SECRETARY
BILLY G. BARRIER

December 5, 1978

MEMORANDUM

SUBJECT: Uniform Disposition of Community Property Rights at Death Act

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has reviewed the proposed Uniform Disposition of Community Property Rights at Death Act. The proposed Act does not create community property in Alaska. It prescribes the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska or property which is traceable to community property where the spouses have not indicated an intention that the community property rights be severed. Many Alaskans resided in a state which has community property rights before moving to Alaska. In order to have specific, uniform provisions for dealing with this property at death the Code Revision Commission recommends that the attached bill be introduced.

JWA/bb/jms

Attachment

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

This is to acknowledge the receipt of the three above-mentioned bills, along with your letter of February 21, 1979.

I do not take exception to Senate Bills 56 or 58 and I expect over the years there will be considerable more of this type of legislation which will define the rights of the husband and wife either before or after death.

As has been frequently observed, the Uniform Probate Code is premised upon the proposition that there would be one husband, one wife and one set of children and this does not seem to be borne out in the crucible of legal experience and practical living. It is to be expected that the legislature will from time to time recognize this fact, although, I suspect that it was quite obvious at the time the Uniform Probate Code was enacted.

Senate Bill 54, dealing with international wills, may be justified and to the extent that it takes us back to the 1949 Code, I suspect that it is useful. Under the 1949 Code, we used to have a Section 59.2.6, which provided in effect that a last will and testament executed outside of the Territory of Alaska and which complied with the laws of the place where it was executed or with the testator's domicile was deemed to be legally executed and was given the same force and effect as if it was executed in the mode prescribed by the Territory of Alaska provided that the last

will and testament was in writing and subscribed by the testator.

It would appear to me that Senate Bill 54, in part, turns back to that concept and then goes a little bit further and provides for execution by persons under disability of one kind or another, including those who are unable to write, conceivably as a result of physical disability. To the extent that the statute clarifies or enlarges on the right of a person to make a will who is under limited disability, I think the enlargement on our 1949 law is appropriate. The over-kill of Senate Bill 54 appears to me to be in Section 13.11.430 where the lieutenant governor is directed to establish a registry system by which authorized persons may register in a central information center their international wills. This is the type of tripe that bureaucrats love and inexperienced legislators think is the greatest thing since sliced bread. Bureaucrats love registration because it means the setting up of another office and filling a set of file cabinets with paper, which they may guard zealously for a number of years, hopefully, until the time they can attain early retirement through some generous disability clause in their contract of employment with the state or federal government. The legislators probably think that they have performed a noble function in that they have provided a depository for the world travelers who have cast in stone their last will and testament and should be protected because they have no suitable office, home or safety deposit mechanism where they can take care of their own personal papers. This world guardianship of irresponsible world travelers is in keeping with our national guilt complex which requires us to correct the sins and indiscretions of the human animal.

Any lawyer who has had the experience of managing a wills file over a period of years in a legal office will have discovered a great number of things that they should have known upon thought and reflection rather than being compelled to learn it by a repeat of the experience obtained by others. Some of those items are as follows:

A will is a document that is made based upon the facts of today and might very well be changed tomorrow and has a very good likelihood of being obsolete or changed within a very few years and, therefore, must be considered as a temporary document.

The holder of a will never knows when the maker of that will has changed his mind and has written a new will and, therefore, the longer the older will is on file the more doubtful its validity becomes and the more likely it becomes that it has been superceded by a subsequent document.

Unless there is established some type of uniform vital statistic act which incorporates the filing or the nonfiling of a will in a person's social security number, and we would expect that this would be some years away, there is a grave question as to whether the will will be found upon the death of the testator. If the testator keeps accurate records of where he has filed his wills during his life, it would probably be just as easy for him to keep his will on his person and pass that information on instead of the written memorandum advising as to where his filed or recorded will of the most recent date might be located.

One also learns that once you have a will on file, there is always the possibility that the will is valid even though you know not the address of testator nor whether he is living or dead and, therefore, once you have a will on file, presumably, you would have to keep it on file for the better part of one hundred years or so until you could safely assume that the person had died. You would thus have an accumulation of documents that reasonable people would conclude would have little or no value after ten years from the date of filing, yet, the possibility might exist for twenty-five or fifty years that they were in fact the last will and testament of the maker of the will.

The question then gets to be; why should any federal or state government burden itself with the guardianship of documents that they won't be able to get rid of and will have difficulty in determining whether they are valid or invalid.

My experience in maintaining wills files and attempting to contact persons whose wills have been prepared by lawyers now deceased lead me to believe that those few people who need service, either on an international basis or a local basis, for the filing of their wills are misled and would, in fact, be better served had they maintained their own documents.

I am taking the liberty of sending a copy of this rambling letter on to Bob Zigler in the senate for what it may be worth.

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3630

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition
Community Property Rights of Death Act
(Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

This act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

Senator Robert H. Ziegler, Sr.

Page 2

January 29, 1979

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, (i.e., community property or property traceable to it), becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interest or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem