

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Jonathan Haskell, Hayley Lambourn

The Next Meeting will be April 5, 2023 - 1:30 – 3:15 p.m. in person and via Zoom. Please join us in person, if possible.

AGENDA – March 1, 2023

- I. **Welcome and Call to Order.**
 - a. *Attendance and Introductions*
 - b. *Reminders.* Please let Hayley Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list.
(hlambourn@wadeash.com)
 - c. *Approval of Minutes:* February 1, 2023 Meeting

- II. **Chairperson’s Report.**

- III. **Legislative Liaison’s Report**

- IV. **Announcements**

- V. **Subcommittee Reports**
 - a. *Active Matters Pending Approval*
 - i. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster). Committee will vote on proposed legislation March 2023.
 - ii. Electronic Estate Planning Documents Act (Chair: none)
 - iii. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams)
 - iv. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster). Indefinitely on hold until taken up by the legislature.
 - v. Beneficiary Deeds Statute Update (Chair: Carl Stevens)
 - vi. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3) (Chair: Letitia Maxfield)

 - b. *Inactive Matters*
 - i. **Approved.** Disclosure of Fiduciary Fees, C.R.S. §§15-10-602 and 15-10-705. Approved in 2015-2016. Jonathan Haskell forwarded approved

language to Steve Brainerd. Gordan Williams will work with Steve Brainerd on presentation to LPC.

- ii. **Approved, but not moving forward.** Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. (Chair: Pete Bullard). The language approved by the committee was much broad (7 categories of estate planning documents) than the State Court Administrator was able to achieve (1 category, Wills). The State Court Administrator created a pilot program, which was scheduled to be implemented on February 1, 2023. This matter will remain inactive pending the pilot program. When the program is complete, the committee will consider whether to attempt to reincorporate the broader language to include the other 6 categories of estate planning documents (as described in HB 19-1229 as introduced on 3/8/2019) should be added to the Act by amendment.

- iii. **Unapproved.** Child Support in Probate (Chair: Pat Mellen)

VI. Section Reports

- a. *Elder Law*
- b. *Other*

VII. New Matters

VIII. Approved Proposals for Inclusion in Omnibus Bill or stand alone legislation

- a. Lodged Wills Statutes, C.R.S. §§ 15-12-304, 15-12-402, and 15-10-305.5
- b. C.R.S. § 15-5-103(10) “Interested person” means a qualified beneficiary or other person having a property right in or claim against a trust estate, which right or claim may reasonably and materially be affected by a judicial proceeding pursuant to this code. The term also includes fiduciaries and other persons having authority to act under the terms of the trust. The meaning as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES – February 1, 2023

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Jonathan Haskell, Hayley Lambourn

The Next Meeting will be March 1, 2023 - 1:30 – 3:15 p.m. in person and via Zoom.

I. Welcome and Call to Order.

- a. Jonathan Haskell called the meeting order at 1:35pm. The committee members in attendance introduced themselves.
- b. Please let Hayley M. Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list (hlambourn@wadeash.com)
- c. Bette Heller made a motion to approve the minutes of the January 4, 2023 meeting. Erica Johnson made a second motion. The meeting minutes from the January 4, 2023 meeting were approved.

II. Chairperson’s Report. Jonathan announced that the meeting would adjourn early for a Trust and Estate Section Welcome Back Happy Hour. The committee encourages members to attend in person.

III. Legislative Liaison Report. Tyler Mounsey provided his report.

- a. There is currently a Democratic supermajority.
- b. Legislator Tipper will remain on the Uniform Law Commission at an at-large member.
- c. Uniform Community Property Disposition at Death Act. UCC amendments were released.
- d. HB1019 regarding judicial discipline will move forward and be voted on.
- e. Tyler Mounsey will provide an update next month on the abandon wills legislation implementation, which was scheduled to begin on February 1, 2023.
- f. There was discussion regarding the contents of the committee’s omnibus bill. Steve Brainerd suggested that it contain benign modifications to the probate and trust code, that other technical corrections could be handled in a revisor’s bill, and more substantial proposed changes should be introduced in independent bills. For example, the changes to the lodged wills statutes should be proposed in their own, separate bill once approved by LPC. Bette Heller will assist Steve Brainerd with presentation of those changes.

IV. Announcements. None.

V. Subcommittee Reports

- a. Uniform Community Property Disposition at Death Act. Connie Eyster provided a review of the proposed uniform act incorporating the subcommittee's proposed revisions.
 - i. **The committee will vote on this legislation at the meeting on 3/1/2023.**
 - ii. The bill was introduced on 1/31/2023, incorporating the subcommittee's recommendations.
 - iii. There is not a delayed effective date to the proposed legislation because the proposed law is substantially similar to the current law.
 - iv. The proposed legislation is substantially similar to the old law, but it is more robust and contains more guidance regarding probate/nonprobate assets. Contains clarification that you may bring community property with you to Colorado, and community property retains its character once located in Colorado. Nothing prevents reclassification of community property once in Colorado. Retains presumption that all property acquired while domiciled in community property jurisdictions is community property.
 - v. Change to current law: In current law, if property is owned as joint tenants with rights of survivorship, it was not community property. Under proposed legislation, there is no presumption for real property, and you are to look to the law of the jurisdiction where the community property was created to determine whether or not it is/is not community property.
 - vi. Rights of parties are governed by section 7. Nonprobate transfer interest transfer to third party or retained by survivor, if the other person has a claim, claim exists and court can apply equitable principles to determine interests.
 1. Questions: Gordan Williams – which jurisdiction determines basis for cause of action?
 - a. Can bring a claim in jurisdiction where decedent died, but can apply equitable principles or law from origin jurisdiction 7(b)(2)
 2. Gordon Williams: May court consider law of originating state?
 - a. Real property example. If real property is purchased in Colorado with existing community property, Colorado's new statute applies. Under the statute, if the court has jurisdiction over the issue and property is community property, there may be a choice of law consideration. Proposed statute does not prevent that consideration. Connie Eyster noted that principle is not a change from existing law. It is not explicitly stated in the law.

- vii. Section 8. Rights of surviving spouse – making a claim against third party who receives community property or estate. Action must be brought not later than 3 years after date of death. Demand is made to the personal representative within the time limit. Time limit is tied to creditor deadlines set out in 15-12-803, C.R.S. If a personal representative has not been appointed, the deadline is tied to 15-12-1006, C.R.S. (actions against distributee’s estate).
- viii. Section 9. Heir, devisee, nonprobate transferee. Rights in decedent’s community property demand to personal representative must be made within 3 years against survivor. Demand is made to personal representative consistent with creditors deadlines, and if no personal representative demand is made consistent with 15-12-1006, C.R.S.
- ix. Section 10. Protects bona fide transferees that receives community property for value, purchased in good faith.
- x. Conforming amendment to augmented estate 15-11-208(4), C.R.S. Suggest revision relating to allocating expenses related to community property.
- xi. Frank Hill brought concerned that if bill has dropped, better have amendments prepared. Connie Eyster reported that the subcommittee’s recommended revisions were incorporated into the bill drop. Frank Hill moves to approve the revisions as presented. The proposed bill already includes the changes recommended by the subcommittee. Committee will vote in March.

VI. Section Reports. None.

VII. New Matters. None.

UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

1. SECTION 1	
2. SUBJECT	SHORT TITLE
3. PROPOSED TEXT	
Approved 1.5.22	
4. CURRENT CO STATUTE §15-20-101	15-20-101. Short Title. This article shall be known and may be cited as the “Uniform Disposition of Community Property Rights at Death Act.”
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	None.
6. COLORADO LAW.	N/A
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the
Uniform Community Property Disposition at Death Act**

UCPDDA Section	Section 2
Section Title	Definitions
Statutory Language	<p>In this [act]:</p> <p>(1) “Community-property spouse” means an individual in a marriage or other relationship:</p> <p style="padding-left: 40px;">(A) under which community property could be acquired during the existence of the relationship; and</p> <p style="padding-left: 40px;">(B) that remains in existence at the time of death of either party to the relationship.</p> <p>(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.</p> <p>(3) “Jurisdiction” means the United States, a state, a foreign country, or a political subdivision of a foreign country.</p> <p>(4) “Partition” means voluntarily divide property to which this [act] otherwise would apply.</p> <p>(5) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.</p> <p>(6) “Personal representative” includes an executor, administrator, successor personal representative, special administrator, and other person that performs substantially the same function.</p> <p>(7) “Property” means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.</p> <p>(8) “Reclassify” means change the characterization or treatment of community property to property owned separately by community-property spouses.</p> <p>(9) “Record” means information:</p> <p style="padding-left: 40px;">(A) inscribed on a tangible medium; or</p> <p style="padding-left: 40px;">(B) stored in an electronic or other medium and retrievable in perceivable form.</p>

	<p>(10) “Sign” means, with present intent to authenticate or adopt a record:</p> <p>(A) execute or adopt a tangible symbol; or</p> <p>(B) attach to or logically associate with the record an electronic symbol, sound, or process.</p> <p>(11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.</p>
<p>Uniform Law Commission Comment</p>	<p>(1) <i>Community-property spouse</i>. The term “community-property spouse” is defined expansively to include not only married persons, of either sex, but also partners in other arrangements, such as domestic or registered partnerships, under which community property may be acquired. <i>See, e.g.,</i></p> <ul style="list-style-type: none"> • Cal. Fam Code § 297.5 (stating that domestic partners “have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses”); • Nev. Rev. Stat. § 122A.200(a) (“Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.”); • Wash. Rev. Code Ann. §26.16.030 (“Property ... acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property.”). <p>The reason for employing a broad definition in this act is not to expand or alter the definition of a spouse in an enacting state but rather to preserve the vested property rights of each person in a relationship that allowed for the acquisition of community property prior to moving to a non-community property state.</p> <p>The term “community-property spouse,” may also encompass putative spouses and spouses under common law or informal marriages. The putative spouse doctrine is a remedial doctrine recognized in many states that allows a person in good faith to enjoy community property and other civil effects of marriage,</p>

	<p>despite not being a party to a legally valid marriage. <i>See, e.g., Model Marriage & Div. Act § 209.</i></p> <p>Although few, if any, community property states recognize common law marriage, Texas does recognize “informal marriages,” and thus parties to such an arrangement could also be included in the definition of a “community-property spouse” under this act. <i>See, e.g., Tex. Fam. Code § 2.401.</i></p> <p>Although Washington law allows individuals in a “committed intimate relationship” to receive an equitable distribution of property upon the termination of the relationship, it is not the intent of this act to include such relationships within its ambit.</p> <p>Under Washington law, “committed intimate relationships” are given recognition under Washington courts’ equitable power and are not treated as legal arrangements that give rise to a marriage relationship. <i>See, e.g., Oliver v. Fowler</i>, 168 P.3d 348, 355 (Wash. 2007) (“Washington common law has evolved to look beyond how property is titled, requiring equitable distribution of property that would have been community property had the partners been married. But equity is limited; <i>only</i> jointly acquired property, but not separate property, can be equitably distributed.”).</p> <p>(2) <i>Electronic</i>. The definition of “electronic” is the standard Uniform Law Commission definition.</p> <p>(3) <i>Jurisdiction</i>. The term “jurisdiction” is included in this act in order to ensure the applicability of this act to individuals who acquired community property in a foreign country. For example, if a couple were married in Cuba, a community property jurisdiction, and acquired stock while domiciled there but sold the stock after moving to Florida, a non-community jurisdiction, the widow of the community-property spouse in whose name the stock was registered would have a one-half interest in the property. <i>See, e.g., Quintana v. Ordone</i>, 195 So. 2d 577 (Dist. Ct. Fla. 3d Cir. 1967); <i>see also Estate of Bach</i>, 548 N.Y.S.2d 871 (Sur. Ct. 1989) (applying the New York version of the UDCPRDA to a decedent who died in New York in 1987, after having moved with his wife from Bolivia in 1957).</p> <p>(4) <i>Partition</i>. The term “partition” is defined to mean a severance or division by community-property spouses of property that was community property or treated as community property. A partition may occur while the parties are domiciled in a community property state or after they move to a non-community property state. In the latter case, a partition can still occur irrespective of whether the property retains its community property character in the new state or is</p>
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	<p>merely treated as community property for purposes of application of this act.</p> <p>(5) <i>Person</i>. The definition of “person” is the standard Uniform Law Commission definition.</p> <p>(6) <i>Personal representative</i>. The definition of “personal representative” is based upon a similar definition in the Uniform Probate Code. <i>See</i> Unif. Prob. Code § 1-201(35).</p> <p>(7) <i>Property</i>. The definition of “property” is based upon a similar definition in the Uniform Trust Code. <i>See</i> Unif. Trust Code § 103(12).</p> <p>(8) <i>Reclassify</i>. The definition of “reclassify” is necessary to recognize that community-property spouses may “transmute” or change the treatment of property from community to separate after they move from a community property jurisdiction to a non-community property jurisdiction. Although community property jurisdictions also have rules in effect for changing separate property to community property, such a change would be outside the scope of this act, which seeks only to maintain the treatment of community property acquired by community-property spouses after moving to a non-community property jurisdiction.</p> <p>(9) <i>Record</i>. The definition of “record” is the standard Uniform Law Commission definition.</p> <p>(10) <i>Sign</i>. The definition of “sign” is the standard Uniform Law Commission definition.</p> <p>(11) <i>State</i>. The definition of “state” is the standard Uniform Law Commission definition.</p>
Current Colorado Law	<p>(1) “Community-property spouse”</p> <ul style="list-style-type: none"> • Presently, C.R.S. § 15-20-102(1) states that, “This article applies to the disposition at death of the following property acquired by a married person: <ul style="list-style-type: none"> (a) All personal property, wherever situated: <ul style="list-style-type: none"> (I) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or (II) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

	<p style="text-align: center;">(III) Traceable to that community property.</p> <p>(b) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.”</p> <ul style="list-style-type: none"> • C.R.S. § 15-15-216(1) states “(1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or section 15-15-212 may not be altered by will.” • C.R.S. § 15-15-212(1) states in part “(1) Except as otherwise provided in this section, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 15-15-211 belongs to the surviving spouse.” • C.R.S. § 14-15-101, <i>et seq.</i>, codifies the Colorado Civil Unions Act. • C.R.S. § 14-2-111 refers to “putative spouse” and “legal spouse.” • C.R.S. § 14-2-101, <i>et seq.</i>, codifies the Uniform Marriage Act. • C.R.S. § 14-2-301, <i>et seq.</i>, codifies the Uniform Premarital and Marital Agreements Act. <p>(2) “Electronic”</p> <ul style="list-style-type: none"> • Many of the uniform acts in Colorado Revised Statutes contain language similar to that of C.R.S. § 15-5-1402: “The provisions of this article 5 governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the federal “Electronic Signatures in Global and National Commerce Act”, 15 U.S.C. sec. 7002, and supersede, modify, and limit the
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requirements of the federal “Electronic Signatures in Global and National Commerce Act”, 15 U.S.C. sec. 7001 et seq.”

(3) “Jurisdiction”

- C.R.S. § 15-20-102(1) refers to property acquired as community property in other jurisdictions, and to real property acquired in Colorado with resources traceable to community property under the laws of another jurisdiction.

(4) “Partition”

- Under C.R.S. § 15-12-911, Partition for purpose of distribution, “When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.”
- Under C.R.S. § 38-28-101, Action – who may maintain, “Actions for the division and partition of real or personal property or interest therein may be maintained by any person having an interest in such property.”

(5) “Person” under C.R.S. § 15-10-201(38) “means an individual or an organization.”

(6) “Personal representative” under C.R.S. § 15-10-201(39) “includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. ‘General personal representative’ excludes special administrator.”

(7) “Property”

- Under C.R.S. § 15-5-103(15) “means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.”
- under C.R.S. § 15-10-201(42) “means both real and personal property or any interest therein and anything that may be the subject of ownership.”

	<p>(8) “Reclassify”</p> <ul style="list-style-type: none"> • C.R.S. § 14-2-301, <i>et seq.</i>, codifies the Uniform Premarital and Marital Agreements Act. • C.R.S. § 15-15-213, Alteration of rights, states “(1) Rights at death under section 15-15-212 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party’s lifetime. “(2) A right of survivorship arising from the express terms of the account, section 15-15-212, or a POD designation, may not be altered by will.” <p>(9) “Record” under C.R.S. § 15-10-201(44.5) “means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”</p> <p>(10) “Sign” under C.R.S. § 15-10-201(47.5) “means, with present intent to authenticate or adopt a record other than a will: (a) To execute or adopt a tangible symbol; or (b) To attach to or logically associate with the record an electronic symbol, sound, or process.”</p> <p>(11) “State” under C.R.S. § 15-10-201(49) “means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or insular possession subject to the jurisdiction of the United States.”</p>
<p>Colorado Subcommittee Comment</p>	<ul style="list-style-type: none"> • As with most reviews of Uniform laws, the subcommittee anticipates revisiting these definitions as review of each of the other sections is completed. • Regarding the ULC’s broad definition of <u>community property spouse</u>, the Colorado Supreme Court states in <i>Hogsett v. Neale</i>, 478 P.3d 713 (Colo. 2021) at para. 42: “Today, many unmarried couples live together. <i>Stone</i>, 833 S.E.2d at 269 (“[N]on-marital cohabitation is exceedingly common and continues to increase among Americans of all age groups.”). Indeed, this court recognized the growing frequency of nonmarital cohabitation two decades ago. <i>Salzman v. Bachrach</i>, 996 P.2d 1263, 1267 (Colo. 2000) (noting the number of unmarried-couple households had increased 571% from 1970 to 1993 (citing Bureau of the Census, <i>Marital Status and Living Arrangements: March 1993</i>

	<p>VII–VIII, tbl.D (May 1994))). In response to that sea change in social norms, we announced the enforceability of contracts between unmarried cohabitating couples, <i>id.</i>, while at the same time cautioning that "mere cohabitation does not trigger any marital rights," <i>id.</i> at 1269 (emphasis added). In other words, since <i>Lucero</i>, we have recognized that cohabitation is no longer synonymous with marriage.”</p> <ul style="list-style-type: none"> • Regarding <u>jurisdiction</u>, Treas. Reg. § 20.2033-1(a) defines a decedent’s gross estate as containing the value of the decedent’s interest in property “wherever situated.” Some 10th Circuit and other tax cases from the 1960s referenced earlier versions of the Internal Revenue Code which used the term “foreign.”
Colorado Subcommittee Recommendation	

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 3	Approved 3.2.22, with additional language
2. SUBJECT	Included and Excluded Property
3. PROPOSED TEXT	<p>(a) Subject to subsection (b), this [act] applies to the following property of a community-property spouse, without regard to how the property is titled or held:</p> <p style="padding-left: 40px;">(1) if a decedent was domiciled in this state at the time of death:</p> <p style="padding-left: 80px;">(A) all or a proportionate part of each item of personal property, wherever located, that was community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:</p> <p style="padding-left: 120px;">(i) was acquired; or</p> <p style="padding-left: 120px;">(ii) after acquisition, became community property;</p> <p style="padding-left: 80px;">(B) income, rent, profit, appreciation, or other increase derived from or traceable to property described in subparagraph (A); and</p> <p style="padding-left: 80px;">(C) personal property traceable to property described in subparagraph (A) or (B); and</p> <p style="padding-left: 40px;">(2) regardless of whether a decedent was domiciled in this state at the time of death:</p> <p style="padding-left: 80px;">(A) all or a proportionate part of each item of real property located in this state traceable to community property or acquired with community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:</p> <p style="padding-left: 120px;">(i) was acquired; or</p> <p style="padding-left: 120px;">(ii) after acquisition, became community property; and</p> <p style="padding-left: 80px;">(B) income, rent, profit, appreciation, or other increase, derived from or traceable to property described in subparagraph (A).</p>

	<p>(b) If community-property spouses acquired community property by complying with the law of a jurisdiction that allows for creation of community property by transfer of property to a trust, this [act] applies to the property only to the extent the property is held in the trust or characterized as community property by the terms of the trust or the law of the jurisdiction under which the trust was created.</p> <p>(c) This [act] does not apply to property that:</p> <p style="padding-left: 40px;">(1) community-property spouses have partitioned or reclassified; or</p> <p style="padding-left: 40px;">(2) is the subject of a waiver of rights granted by this [act].</p> <p style="padding-left: 40px;">(3) <u>is acquired by spouses domiciled in this state that is not property identified in [paragraphs] (a) and (b) of this section.</u></p>
	<p>(1) This article applies to the disposition at death of the following property acquired by a married person:</p> <p>(a) All personal property, wherever situated:</p> <p style="padding-left: 40px;">(I) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or</p> <p style="padding-left: 40px;">(II) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or</p> <p style="padding-left: 40px;">(III) Traceable to that community property.</p> <p>(b) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.</p>
<p>5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>See attached</p>
<p>6. COLORADO LAW.</p>	<p>Colorado law generally provides that community property will retain its characteristics in Colorado for purposes of</p>

	disposition upon death. No published cases have cited to CRS §15-20-102.
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	Committee recommends adding (c)(3) to make clear that new community property is generally not created while spouses are domiciled in Colorado, except as otherwise provided in (a) and (b) of this section.

Uniform Law Commissioners Comment

This section makes the act applicable to community-property spouses who were formerly domiciled in a community property jurisdiction. The term “jurisdiction” is used, rather than the narrower term “state,” to be clear that this act would apply to a community-property spouse who was domiciled in foreign jurisdictions where community property may be acquired. *See, e.g., Quintana v. Ordone*, 195 So. 2d 577 (Dist. Ct. Fla. 3d Cir. 1967); *see also Estate of Bach*, 548 N.Y.S.2d 871 (Sur. Ct. 1989). Moreover, this act is applicable whenever a community-property spouse was domiciled at any time in the past in a community property jurisdiction, has acquired property there, and has moved to another jurisdiction. Thus, if A and B were married in state X (a community property state) and acquired personal property there, but then moved to state Y (a non-community property state) prior to moving again to state Z (also a non-community property state) where they acquired real property before A eventually died, state Z should apply this act to the property acquired by A and B in state X and state Z.

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

Under subsection (a)(1)(B), this act applies to “income, rent, profit, appreciation, or other increase” derived from or traceable to community property under (a)(1)(A) after moving to a non-community property jurisdiction. In some community property jurisdictions, income from separate property is community property. Although not included in subsection (a)(1)(B), “income, rent, profit, appreciation, and other increase” from separate property in those states where such income is considered community property is included under subsection (a)(1)(A), as that property would be “community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled” prior to moving to the non-community property state. In addition, subsection (a)(1)(A) applies to appreciations or other increases in separate property that result from community effort or expenditures of time, toil, or talent of a community-property spouse in community, provided that the appreciation or other increase would be characterized as community property by the relevant community property jurisdiction. *See, e.g., Pereira v. Pereira*, 103 P. 488 (Cal. 1909). This result would not obtain, however, when a couple moves from one of the community property states where such an appreciation or other increase would not give rise to a community property interest in separate property but would instead give rise to a claim for reimbursement by one community-property spouse against the other. *See, e.g., Jensen v. Jensen*, 665 S.W. 2d 107 (Tex. 1984); La. Civ. Code. art. 2368. Reimbursement claims of this nature are governed by Section 7 of this act rather than this section.

Subsection (a)(1)(B) includes “income,” “rent,” and “profit,” from community property, as well as things produced from community property (i.e., appreciations and other increases), even if not technically revenue producing. Thus, if a \$500,000 house were purchased completely with community funds and increased in value to \$700,000 after the community-property spouses moved to a non-community property state, then the entire house, not merely \$500,000 in value, is

classified as community property. Upon sale of the house, the entire \$700,000 in proceeds would be classified as community property and would be subject to this act. Similarly, crops produced from a community property farm and a foal produced from a horse that is owned as community property are also treated as community property.

Subsection (a)(1)(B) applies to “income, rent, profit, appreciation, or other increase” from community property produced after moving to a non-community property jurisdiction. Indeed, prior to a move, such a rule is unnecessary as all community property states already characterize “income, rent, profit, appreciation, or other increase” derived from community property as community property, and thus such “income, rent, profit, appreciation, or other increase” is already included under subsection (a)(1)(A). The rule in subsection (a)(1)(B), however, is necessary to be clear that even after community-property spouses move to a non-community property state, the “income, rent, profit, appreciation, or other increase” produced by community property acquired prior to the move is treated as community property after the move to a non-community property state. Thus, interest produced from a community property savings account after A and B move from state X (a community property state) to state Z (a non-community property state) is still treated as community property, irrespective of the location of the account.

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

Similarly, if A and B while domiciled in state X (a community property state) acquired real estate with community property in state Y (a non-community property state that has not adopted this act) and in state Z (a non-community property state that has adopted this act) but then moved to state Q (a non-community property state that has not adopted this act) where A eventually died, then the real estate in state Z would be subject to this act, but the real estate in state Y would not be. Nevertheless, under the law of state Y, the former community property rights of the community-property spouses may be subject to a constructive or resulting trust under traditional equity and conflict-of-laws principles. *See, e.g., Quintana v. Ordone*, 195 So. 2d 577 (Fla. App. 1967); *Edwards v. Edwards*, 233 P. 477 (Okla. 1924); *Depas v. Mayo*, 11 Mo. 314 (1848)

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

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

Even among states that employ a “pro rata” approach, there is considerable variation in how the apportionment is made. As the comments in the UDCPRDA stated, “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 UCPDDA follows the same approach. Thus, if A acquires \$100,000 of life insurance, pays five of the monthly \$1000 premiums from funds prior to marriage, pays ten of the premiums with community property after marrying B, and pays ten more premiums (before dying) from earnings acquired by B after A and B move to a non-community property state, then some portion of the life insurance policy should be considered community property, if the law of the community property state so treated it. This act leaves to the courts how the determination of the apportionment is to be made.

Under subsection (a)(1)(C), this act applies not only to property that was community property under the law of the community property state but also to any property that is traceable to property that was community property or treated as community property. Simply stated, property is “traceable” to community property if the property changes form without changing character. WILLIAM A. REPPY, CYNTHIA A. SAMUEL, AND SALLY BROWN RICHARDSON, COMMUNITY PROPERTY IN THE UNITED STATES 161 (8th ed. 2015) (quoting W. BROCKELBANK, THE COMMUNITY PROPERTY LAW OF IDAHO 134 (1964)). By way of illustration, if after moving from state X (a community property state) to state Z (a non-community property state), A and B transfer money from a community property bank account opened in state X to a bank in their new domicile, state Z, then the bank account in state Z is subject to this act because it is traceable to community property. Similarly, if A and B are married in state X (a community property state), open a bank account there funded solely with community property and buy a car with that money after moving to state Y (a non-community property state), then the car would still be subject to this act because it is traceable to community property. The same result would obtain even if A and B moved again from state Y to state Z (another non-community property state) and exchanged their prior car for a new one in state Z. The new car

would still be subject to this act because it is traceable to the community property originally acquired in state X.

Subsection (b) of this section applies to so-called “opt-in” states where community-property spouses can elect community property by establishing a community property trust. *See, e.g.,* Alaska Stat. § 34.77.100; Fla. Stat. § 736.1501; Ky. Rev. Stat. Ann. § 386.620; S.D. Codified Laws § 55-17-3; Tenn. Code Ann. § 35-17-101. The intent of this act is not to override the terms of a community property trust but rather to treat as community property only that property held in a community property trust or characterized as community property by the terms of the trust or the relevant state law. Different community property trust provisions and different state laws may offer different rules for what constitutes community property. Alaska law, for example, provides that “appreciation and income of property transferred to a community property trust is community property if declared in the trust to be community property.” Alaska Stat. § 34.77.030(i). Most other community property trust statutes are silent on the treatment of income from community property. Kentucky law, however, provides that “[a]ll property owned by a community property trust shall be considered community property,” but “[w]hen property is distributed from a community property trust, it shall no longer constitute community property.” Ky. Rev. Stat. Ann. § 386.622(7) & (8). The intent of this act is to apply only to the property held in trust or treated as community property by the law of the jurisdiction where the trust was created. Once it is ascertained what is characterized or treated as community property, then this act would apply to that property and to property traceable to it under subsection (a). It is notable, however, that Section 6 of this act generally does not govern the disposition on death of property that has been transferred by the decedent to the decedent’s surviving community-property spouse by “nonprobate transfer instrument,” which would include property transferred on death pursuant to the provisions of a community property trust.

At least one state allows for the acquisition of community property by spouses pursuant to an agreement, including an agreement that provides “that all property acquired by either or both spouses during the marriage is community property.” Alaska Stat. §34.77.100. In such a case, subsection (a) of this section, rather than subsection (b), is applicable.

Subsection (c) of this section makes clear that this act does not apply in cases where community-property spouses have themselves divided former community property by means of a partition or when community-property spouses have changed the classification of their property from community to separate. Such a division or change in classification could occur either before or after the community-property spouses move from the community property jurisdiction to a non-community property jurisdiction. Similarly, this act does not apply to property as to which rights have been waived. Section 4 of this act prescribes the necessary form and procedures for partition, reclassification, or waiver of rights.

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 4	Approved 2.2.22
2. SUBJECT	FORM OF PARTITION, RECLASSIFICATION, OR WAIVER
3. PROPOSED TEXT	<p>(a) Community-property spouses domiciled in this state may partition or reclassify property to which this [act] otherwise would apply. The partition or reclassification must be in a record signed by both community-property spouses.</p> <p>(b) A community-property spouse domiciled in this state may waive a right granted by this [act] only by complying with the law of this state, including this state’s choice-of-law rules, applicable to waiver of a spousal property right.</p>
4. CURRENT CO STATUTE CRS §15-20-109.	<p>Acts of married persons. This article does not prevent married persons from severing or altering their interests in property to which this article applies.</p>
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached
6. COLORADO LAW.	Uniform Premarital and Marital Agreements Act, CRS §14-2-301, et seq.. governs waiver of spousal rights by agreement. Such a waiver must meet certain requirements, such as that the agreement be in writing, voluntary, and a result of full disclosure between the spouses.
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

Uniform Law Commissioner's Comment

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

For a waiver of rights under this act, the parties must comply with the standards for enforceability of a waiver of spousal property rights under the law of this state. *See, e.g.*, Unif. Prob. Code § 2-213. Under the law of many states, a waiver of spousal rights is governed by the Uniform Premarital Agreement Act (1983). Florida, for example, requires that such a waiver be “in writing and signed by both parties.” Fla. Stat. § 61.079(3). More recently, the Uniform Law Commission has promulgated the Uniform Premarital and Marital Agreement Act (2012). Section 9 of that act requires, among other things, that a waiver not be involuntary or executed under duress, that a party have access to independent legal representation, and that a party have had adequate financial disclosure. Unif. Premarital & Marital Agr. Act § 9.

Failure to comply with the requirements of this section will preclude partition, reclassification, or waiver under this section but may give rise to an equitable claim under Section 7 of this act.

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

This section does not attempt to specify the requisite form or procedure for a partition prior to moving to the enacting state, which should be governed by the law of the community property

state rather than this act. If parties have partitioned or reclassified previously acquired community property after moving to a non-community property state, this act would not apply to any such property owned by the decedent at death. The terms “partition” and “reclassify” are defined in Section 2 of this act. A waiver of rights granted by this act prior to moving to the non-community property state should be evaluated under the choice-of-law rules of the non-community property state.

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 5	Approved 2.2.22
2. SUBJECT	Community Property Presumption
3. PROPOSED TEXT	<p style="text-align: center;">All property acquired by a community-property spouse when domiciled in a jurisdiction where community property then could be acquired by the community-property spouse by operation of law is presumed to be community property. This presumption may be rebutted by a preponderance of the evidence.</p>
4. CURRENT CO STATUTE §15-20-103	<p>Rebuttable presumptions. (1) In determining whether this article applies to specific property, the following rebuttable presumptions apply:</p> <p>(a) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this article applies; and</p> <p>(b) Real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this article applies.</p>
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	<p style="text-align: center;">This section applies to so-called “opt out” states that provide for the acquisition of community or marital property by operation of law and as an incident of marriage. Scholars have noted that in the nine “opt out” states, community or marital property is not created by contract, although community-property spouses can “opt out” by contract. Caroline Bermeo Newcombe, <i>The Origin and Civil Law Foundation of the Community Property System, Why California Adopted It and Why Community Property</i></p>

Principles Benefit Women, 11 U. MD. L.J. RACE RELIG. GENDER & CLASS 1 (2011) (One “characteristic of community property systems is that they arise by operation of law.”). This section adopts a blanket presumption in favor of treating all property acquired by a community-property spouse while domiciled in a community property jurisdiction as community property, provided, of course, that the laws of the community property state allowed community property to “then ... be acquired” by *that* person. In other words, the presumption applies only to those persons who could acquire community property under the laws of the relevant jurisdiction by virtue of marriage or similar relationship. The term “community property spouse” is defined in section 2(1) and recognizes that in some jurisdictions domestic or registered partners may acquire community property. **The presumption does not apply to noncommunity-property spouses** or to those who have opted out of the community regime even if they acquire property while domiciled in a community property jurisdiction, as those individuals could not then acquire community property in that jurisdiction.

Although stated in various ways, the blanket presumption of this section is common in community property jurisdictions. *See, e.g.*, N.M. Stat. Ann. § 40-3-12(A) (“Property acquired during marriage by either husband or wife, or both, is presumed to be community property.”); Wisc. Stat. § 766.31(2) (“All property of spouse is presumed to be marital property.”); Tex. Fam. Code § 3.003(a) (“Property possessed by either spouse during or on dissolution of marriage is presumed to be community property”); La. Civ. Code art. 2340 (“Things in the possession of a spouse during the existence of a regime of community of acquets and gains are presumed to be community, but either spouse may prove they are separate property.”); Cal. Fam. Code § 760; Model Marital Prop. Act. § 4(a) (“All property of spouses is marital property except that which is classified otherwise by this Act.”).

Despite the above presumption, a party may prove that the relevant property was separate, even though acquired during the existence of a community regime, such as by demonstrating that the property was acquired by inheritance. Although different community property states provide different standards

	<p>for rebutting the presumption of community property, this act adopts a preponderance standard for rebutting the presumption, as have a number of community property states. <i>See, e.g., Marriage of Etefagh</i>, 59 Cal. Rptr. 3rd 419 (Cal. App. 2007); <i>Talbot v. Talbot</i>, 864 So. 2d 590 (La. 2003); <i>Brandt v. Brandt</i>, 427 N.W. 2d 126 (Wisc. App. 1988); <i>Sanchez v. Sanchez</i>, 748 P.2d 21 (N.M. App. 1987); <i>But see</i> Tex. Fam. Code § 3.003(b) (“The degree of proof necessary to establish that property is separate property is clear and convincing evidence.”); <i>Reed v. Reed</i>, 44 P.3d 1108 (Idaho 2002) (requiring “reasonable certainty and particularity” to rebut the presumption).</p> <p>Unlike Section 2(2) of the UDCPRDA, this act does not impose a presumption against the applicability of this act for property acquired in a non-community property state and held in a form that creates rights of survivorship. <i>See, e.g., Trenk v. Soheili</i>, 273 Cal. Rptr. 3d 184 (Ct. App. 2020) (stating that “the manner in which a married couple holds title to real property is not sufficient in itself to rebut the statutory presumption that is community property”). Taking title to property in various forms is often a unilateral act that should not by itself serve as a presumption of partition of interests in a community asset. After all, a community-property spouse may move to a non-community property state and open a bank account with a pay-on-death designation to a friend or a sibling. Such an account should not be presumed to be excluded from the applicability of this act, as the relevant account may have been funded with community property acquired prior to the move. The ultimate treatment of the relevant account will depend upon whether it can be proved that the money in the account was traceable to community property.</p>
<p>6. COLORADO LAW.</p>	<p>C.R.S. §15-20-103 is not cited in case law. It is cited in three Colorado Lawyer articles:</p> <p>Shelley’s 2002 Colorado Lawyer article cites CRS §15-20-103(b) (the presumption that jointly held property is not community property), and notes some community property jurisdictions (at that time, Texas, Washington, Nevada, New Mexico, and California) had enacted legislation enabling community property to be held jointly.</p>

	<p>John Brant’s 1996 Colorado Lawyer article cites a DU professor who suggests CRS §15-20-103(a) is useful for port-mortem planning when good records have not been maintained. Moreover, he begins his article explaining that revisions to the augmented estate statute “make it arguable that Colorado is now a community property state.”</p> <p>Smith, Woods, and McVey cite CRS §15-20-103 in their 2007 Colorado Lawyer article about marital agreements to support their statement "Colorado is not a community property state and no new community property can be created in Colorado by Colorado residents."</p>
<p>7. COLORADO COMMITTEE COMMENTS</p>	<p>The last sentence of the commissioner’s comments explains that the relevant factor is whether property can be traced to community property. The issue of traceability is addressed in Section 3. Is it worth stating what Smith, Woods, and McVey spelled out? That residents of Colorado cannot create community property in Colorado?</p>
<p>8. RECOMMENDATION</p>	

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 6	Approved 3.2.22, and 7.6.22 as amended
2. SUBJECT	Section 6. Disposition of Property at Death
3. PROPOSED TEXT	<p style="text-align: center;">(a) One-half of the property to which this [act] applies belongs to the surviving community-property spouse of a decedent and is not subject to disposition by the decedent at death or <u>distribution under the laws of succession of this state as a result of the decedent's death.</u></p> <p style="text-align: center;">(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 or <u>distribution under the laws of succession of this state.</u></p> <p style="text-align: center;">Alternative A</p> <p style="text-align: center;">(c) The property that belongs to the decedent under subsection (b) is not subject to the elective-share right of the surviving community-property spouse.</p> <p style="text-align: center;">Alternative B</p> <p style="text-align: center;">(c) For the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse:</p> <p style="text-align: center;">(1) property under subsection (a) is deemed to be property of the surviving community-property spouse; and</p> <p style="text-align: center;">(2) property under subsection (b) is deemed to be property of the decedent.</p> <p style="text-align: center;">End of Alternatives</p> <p style="text-align: center;">(d) Except for the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse under C.R.S. 15-11-201 et. seq., this section does not apply to property transferred by right of</p>

	<p>survivorship or under a revocable trust or other nonprobate transfer.</p> <p>(e) This section does not limit the right of a surviving community-property spouse to the statutory allowances set forth under C.R.S..15-11-402; 15-11-403; and 15-11-404.</p> <p>(f) If at death a decedent purports to transfer to a third person property that, under this section, belongs to the surviving community-property spouse and transfers other property to the surviving community-property spouse, this section does not limit the authority of the court under other law of this state to require that the community-property spouse elect between retaining the property transferred to the community-property spouse or asserting rights under this [act].</p> <p><i>Legislative Note: A traditional elective-share state should adopt Alternative A and adopt the language beginning with “This” in subsection (d).</i></p> <p><i>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.</i></p>
<p>4. CURRENT CO STATUTE §15-20-104</p>	<p>Upon death of a married person, one-half of the property to which this article 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. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.</p>
<p>5. NATIONAL CONFERENCE OF COMMISSIONERS ON</p>	<p>See attached</p>

UNIFORM STATE LAWS COMMENTS	
6. COLORADO LAW.	<p>Colorado’s Elective Share statute provides that the Elective Share is a portion of the Decedent’s Augmented Estate. § 15-11-203. Composition of the marital-property portion of the augmented estate</p> <p>Subject to section 15-11-208, the value of the augmented estate consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitutes:</p> <ul style="list-style-type: none"> (a) The decedent's net probate estate; (b) The decedent's nonprobate transfers to others; (c) The decedent's nonprobate transfers to the surviving spouse; and (d) The surviving spouse's property and nonprobate transfers to others. <p>Based on this, Alternative B should be selected for the new statute.</p>
7. COLORADO COMMITTEE COMMENTS	<p>The Colorado committee recommends adding language to (b) to make clear that intestate succession laws could apply to the decedent’s one-half of community property.</p> <p>Homestead, family and exempt property allowances were added to (e).</p>
8. RECOMMENDATION	

Uniform Law Commissioners Comment

Comment

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

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

Under subsection (b), at the death of one community-property spouse, one-half of the property to which this act applies belongs to the decedent. Again, this is the universal approach of community property states. As a result, the decedent can dispose of that property by any probate or nonprobate mechanism. Elective share rights that are common in non-community property states do not apply in community property states, at least not with respect to community property in those states. With respect to elective shares rights, however, there is great variation among non-community property states. In some states, a surviving community-property spouse's elective share rights are a fractional share (often 1/3) in the decedent's probate property. In such a case, states should elect Alternative A under subsection (c), which precludes further application of elective share rights in the decedent's property under this act. Other states, however, grant elective share rights in an "augmented estate," which is frequently composed of all the decedent's property, all the decedent's nonprobate transfers, and all the surviving community-property spouse's property and nonprobate transfers to others. *See* Unif. Prob. Code § 2-203. In those states, Alternative B under subsection (c) should be elected so that the both the property of the decedent and the surviving community-property spouse are considered part of the augmented estate, but then the surviving community-property spouse's portion of the property is credited in satisfaction of the surviving community-property spouse's elective share rights. *See, e.g.,* Unif. Prob. Code § 2-209(a)(2).

If the decedent dies intestate, then one-half of the property covered by this act is included in the decedent's intestate estate. The intestate law of most states would grant to the surviving community-property spouse a lump sum plus at least one half of the remainder of the decedent's property, which would be in addition to the one-half interest granted to the surviving community-property spouse in property to which this act applies.

By way of illustration of this section, assume A and B were formerly domiciled in state X (a community property jurisdiction) where all their property was community property and have subsequently moved to a state Y (a non-community property state that has adopted this act). Upon moving to state Y, A and B acquired a home in state Y, titled solely in B's name but with funds from the proceeds of the sale of the home in state X. A and B also acquired stock while domiciled in state X, but held it in safety deposit boxes located in states U and V (two other non-community property states). A and B also retained a summer house in state X, which they acquired while domiciled there and which was titled solely in B's name. A and B also acquired real property in state Z (a non-community property state that has not adopted this act) for investment purposes. Finally, B acquired bonds held in B's name issued by the company that employed B and acquired with earnings from B's job in state Y.

At B's death, the home in state Y and the stock located in states U and V would be property subject this act, and consequently, B would have the right under this section to dispose of half. The home retained in state X would be community property under the law of state X, but this act applies only to real property located in the adopting state. The investment property located in state Z would not be subject to this act because state Z has not adopted the act. Finally, the bonds held in B's name would not be subject to this act because they were acquired with property earned and acquired in state Y, a non-community property state.

Subsection (c) provides two alternatives. In states that grant a surviving community-property spouse an elective share only in the probate estate, this section excludes elective share rights in

property subject to this act, as the surviving community-property spouse is already provided a one-half interest in the relevant property. In states that have adopted an augmented-estate approach to the elective share, this subsection makes clear that for purposes of calculating the augmented estate, one-half of the property assigned to the decedent is treated as the decedent's property and the other one-half is treated as the property of the surviving community-property spouse.

Subsection (d) provides that, with one exception, this section does not apply to any property transferred by means of a nonprobate transfer or a right of survivorship designation. For example, if property is transferred by the decedent to a third person by means of a nonprobate transfer, the surviving community-property spouse may pursue a claim under Section 7 of this act, rather than this section. Moreover, if the property is transferred to a surviving community-property spouse by the decedent, then the surviving community-property spouse should not have further rights to that property or claims against the decedent's estate by virtue of the transfer. The one exception is for purposes of ascertaining elective-share rights in those states that have adopted an augmented-estate approach to the elective share.

Under subsection (e), this act does not limit a surviving community-property spouse's claim for other statutory allowances, such as homestead allowances, allowances for exempt property, and family allowances. *See, e.g.*, Unif. Prob. Code §§ 2-402, 2-403, and 2-404.

Subsection (f) preserves the common law right of election, which provides that if the decedent disposes of the surviving community-property spouse's share of property under this act but transfers other property to the surviving community-property spouse, a court may require the surviving community-property spouse to make an equitable election to retain the disposition from the decedent or to assert rights under this act. In the words of one authority, "[t]he doctrine of election is a broad principle of equity, which holds that one who has acquired inconsistent rights from one or more sources, has his choice or election as to which he will take, but he cannot have both." W.S. MCCLANAHAN, *COMMUNITY PROPERTY LAW IN THE UNITED STATES* §11.6 (1982). In this context, "the principle [of election] requires that one who accepts a benefit conferred by a will must accept all the terms of a will so far as they concern him, renouncing any rights which he may have which are inconsistent with the will; or if he elects to stand on his rights which are inconsistent with those under the will, he thereby renounces his rights conferred by the will." *Id. See also* J. THOMAS OLDHAM, *TEXAS MARITAL PROPERTY RIGHTS* 481 (5th ed. 2011) ("If a spouse attempts to devise more than one-half of any item of community property, and the other spouse is devised something under the will, the spouse is put to an 'election' whether to take the benefits under the will (and to permit the devise of more than 50% of the item of community property), or whether to reject the benefit under the will and take 50% of each item of community property.").

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 7	Approved 4.6.22
2. SUBJECT	Other Remedies Available at Death
3. PROPOSED TEXT	<p>(a) At the death of a community-property spouse, the surviving community-property spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a right based on an act of:</p> <p style="padding-left: 40px;">(1) the surviving community-property spouse or decedent during the marriage or other relationship under which community property then could be acquired; or</p> <p style="padding-left: 40px;">(2) the decedent that takes effect at the death of the decedent.</p> <p>(b) In determining a right under subsection (a) and corresponding remedy, the court:</p> <p style="padding-left: 40px;">(1) shall apply equitable principles; and</p> <p style="padding-left: 40px;">(2) may consider the community property law of the jurisdiction where the decedent or surviving community-property spouse was domiciled when property was acquired or enhanced.</p>
4. CURRENT CO STATUTE	None. Section 7 is new.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See below.
6. COLORADO LAW.	See attached.

7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

Uniform Law Commissioners Comment

Subsection (a) confirms that comparable rights that would be available to protect a community-property spouse in a community property jurisdiction remain available at death in a non-community property state under this act. The term “community-property spouse” is defined in section 2(1) and recognizes that in some jurisdictions domestic or registered partners may acquire community property and thus should have remedies available to protect vested property rights under this section. It is not intended to grant rights to cohabitants or to individuals in relationships other than those in which community property could be acquired under the law of the state in which the community-property spouses are domiciled. Two rights often provided to community-property spouses by community property jurisdictions are rights of reimbursement and rights associated with monetary claims against a community-property spouse for marital waste, fraud, or bad faith management. These rights should be available to a community-property spouse without regard to whether the act of the other community-property spouse giving rise to the claim occurred in the community property jurisdiction, prior to a move, or in the non-community property jurisdiction, after a move. Furthermore, nonprobate transfers of community property to a third person without the consent of the surviving community-property spouse may also give rise to claims by the surviving community-property spouse under this section.

Claims for reimbursement are commonly available when community property has been used to satisfy a separate obligation or when separate property has been used to improve community property or vice versa, *see, e.g.*, La. Civ. Code art. 2364, 2366, and 2367; Cal. Fam. Code § 2640; Tex. Fam. Code §§ 3.401-3.410. Different community property states calculate the amount of reimbursement differently. *See, e.g., Hiatt v. Hiatt*, 487 P.2d 1121 (Idaho 1971) (awarding reimbursement based upon the enhanced value of the property even if it exceeds the amount spent); *Portillo v. Shappie*, 636 P.2d 878 (N.M. 1981) (assessing reimbursement based upon the enhanced value of the improved property even if it exceeds the amount of money expended); La. Civ. Code art. 2366 (providing for reimbursement based upon the amount expended); *Marriage of Sedlock*, 849 P.2d 1243 (Wash. App. 1993) (awarding reimbursement based upon the amount spent); *Estate of Kobyliski v. Hellstern*, 503 N.W.2d 369 (Wis. App. 1993) (assessing reimbursement based upon the greater of the amount spent or the value added). This section grants courts flexibility in assessing the amount of the reimbursement.

The rights granted by this section are operable at the death of an individual and may not be asserted during the existence of the marriage. This approach is consistent with the law of various community property jurisdictions. *See, e.g.*, La. Civ. Code art. 2358 (“A claim for reimbursement may be asserted only after termination of the community property regime, unless otherwise provided by law.”). *But see* Model Marital Property Act § 15 (allowing claims for breach of the duty of good faith and for an accounting to be brought by spouses during an ongoing marriage). The relief sought under this section may, however, be for actions of a community-property spouse taken

either during life or that take effect at death. For instance, during life, a community-property spouse may use community funds to augment a separate property asset. Moreover, a community-property spouse during the marriage may have inappropriately donated property to a third person. Similarly, at the death of the decedent, the decedent may have inappropriately transferred property belonging to the surviving community-property spouse to a third person by nonprobate transfer. Although community property states generally enforce such transfers, they correspondingly grant a right to claim damages, a right to recover the property, or a right to reimbursement by the surviving community-property spouse. Again, this section grants a court broad authority to craft legal or equitable remedies to protect a community-property spouse. Of course, the application of this section must yield when appropriate to federal law. *See, e.g.*, Employment Retirement Income Security Act, 29 U.S.C. § 1001 et seq.; *Boggs v. Boggs*, 520 U.S. 833 (1997) (holding that ERISA preempted state community property law and remedies, even though the relevant ERISA-governed retirement plan was funded with community property).

Subsection (b) provides that a court in evaluating a claim under subsection (a) should apply “equitable principles” to craft rights and remedies and “may consider” the law of the community property jurisdiction where the decedent or the surviving community-property spouse was formerly domiciled at the time the property was acquired or enhanced in deciding what rights to recognize and what remedies to provide to a community-property spouse. A court, however, is not limited by this section to proceed only in the manner or exactly as the court in a community property jurisdiction would proceed. Often ascertaining the existence and scope of a right that could have been asserted in a community property jurisdiction is an exceedingly difficult task and could involve difficult investigations of the law of different states or foreign jurisdictions from years or even decades in the past. Such laws might not be readily available to or ascertainable by a court under this act, given barriers in publication and language. For example, ascertaining the nuances of French community property law for a couple that has moved from Paris to New York in the 1960s would be a daunting task indeed. Thus, subsection (b) is intended to provide flexibility to a court to consider the laws of the community property jurisdiction but not necessarily proceed as a court would in that jurisdiction.

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

Equitable doctrines, such as a “constructive trust,” are common remedies used by courts to protect the interest of a spouse. In California, for example, a court may award a defrauded spouse a percentage interest or an amount equal to a percentage interest in any asset transferred in breach of a spouse’s fiduciary duty. Cal. Fam. Code § 1101. In Texas, the doctrine of “fraud on the community” protects one spouse when the other wrongfully depletes community property through actual or constructive fraud by allowing a court to allocate other property to the defrauded spouse through any legal or equitable remedy necessary, including a money judgment or a constructive trust. *See, e.g.*, Tex. Fam. Code § 7.009; see also *Osuna v. Quintana*, 993

S.W.2d 201 (Tex. Ct. App. Corpus Christi 1999) (“The breach of a legal or equitable duty which violates the fiduciary relationship existing between spouses is termed ‘fraud on the community,’ a judicially created concept based on the theory of constructive fraud.”). In Louisiana, a spouse may be awarded damages when the other spouse acted fraudulently or in bad faith. See La. Civ. Code art. 2354 (“A spouse is liable for any loss or damage caused by fraud or bad faith in the management of the community property.”). In addition to damages and equitable relief, some community property states statutorily grant courts authority to add the name of a spouse to a community asset titled solely in the name of the other spouse in order to protect the interest of the previously unnamed spouse. See, e.g., Cal. Fam. Code § 1101 (c); Wisc. Stat. § 766.70(3). This section provides the court with broad authority to grant damages or to craft any other appropriate equitable remedy necessary to protect a community-property spouse. Available legal and equitable remedies available in courts of this state may not be co-extensive with the legal and equitable remedies available in the relevant community property jurisdiction.

Because the grant of authority to courts under subsection (b)(2) is a discretionary one, a higher court should review a trial court’s application of this subsection only under an “abuse of discretion” standard.

This section must be read in conjunction with Section 10 of this act, which protects good faith transferees of property who give value. Thus, good faith transferees for value will be protected by Section 10 of this act, such that a community-property spouse’s claim for bad faith management would solely be cognizable against the other community-property spouse. If, however, one community-property spouse improperly donates or transfers property to which this act applies to a third person who is not acting in good faith, equitable relief against a third person may, in the discretion of the court, be available to the community-property spouse whose rights are impaired. After all, improper gifts of community property by one community-property spouse are generally voidable as against a third person in community property jurisdictions. See, e.g., Polk v. Polk, 39 Cal. Rptr. 824 (Ct. App. 1964); Wisc. Stat. § 766.70; La. Civ. Code art. 2353; Mezey v. Fioramonti, 65 P.3d 980 (Ariz. App. 2003); Model Marital Property Act § 6(b).

Section 11. Principles of Law and Equity The principles of law and equity supplement this [act] except to the extent inconsistent with this [act].

Uniform Law Commissioners Comment This act is intended to provide a uniform process for recognition at death of community property rights acquired in another state. As a result, this act necessarily provides new rules for recognition of rights and remedies that may be unconventional in non-community property states. The elaboration of such rules, however, is not intended to displace traditional common law and equitable rights, remedies, and procedures that may be available in a non-community property state, except to the extent that they would be inconsistent with the provisions of this act. For example, care has been taken not to delineate an exhaustive list of legal or equitable remedies that a court may fashion in applying Section 7 of this act. Rather, Section 7 provides that a court shall employ general equitable principles available in the enacting state in evaluating a claim brought under that section. Similarly, Sections 8 and 9 provide limitation periods within which certain claims must be brought by a community-property spouse, heir, devisee, or nonprobate beneficiary of the decedent. Those sections, however, do not attempt to comprehensively catalogue all possible claims for relief that may be brought by those or other parties. For instance, this act does not provide for limitation periods for creditors of the decedent to assert claims and instead resorts to general principles of law and equity in the enacting jurisdiction.

SELECT CASE LAW

Beren v. Beren, 2015 CO 29, ¶ 18

“The purpose of a court sitting in equity is to promote and achieve justice with some degree of flexibility, according to the particular circumstances of each case.” *Id.*, citing *Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 855 (Colo.1992)

“Equity plays a critical role in providing a probate court with authority to account for the unique circumstances of a particular proceeding and to ensure that parties are treated fairly and the decedent's will is upheld.”

Beren v. Beren, 2015 CO 29, ¶ 12

“The power to fashion equitable remedies lies within the discretion of the trial court.” *Beren*, at ¶ 12, citing *Lewis v. Lewis*, 189 P.3d 1134, 1140 (Colo.2008). An appellate court will not disturb equitable rulings on review absent an abuse of discretion. *Beren*, at ¶ 12.

In re Estate of Fuller, 862 P.2d 1037, 1039 (Colo.App.1993)

Where no legal remedy is adequate, “equity may then intervene to fashion a remedy”.

Fed. Deposit Ins. Corp. v. Mars, 821 P.2d 826, 832 (Colo.App.1991)

“There can be no wrong without a remedy.”

Sandstead v. Sanstead, 2018 CO 26, ¶ 45. - Imposition of constructive trust

EXAMPLE IN ARTICLE 15 WHERE COURT MAY PROVIDE LEGAL/EQUITABLE REMEDIES

15-5-1001. Remedies for breach of trust.

- (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
- (2) To remedy a breach of trust that has occurred or may occur, the court may:
 - (a) Compel the trustee to perform the trustee's duties;
 - (b) Enjoin the trustee from committing a breach of trust;
 - (c) Compel the trustee to redress a breach of trust by paying money, restoring property, being surcharged or sanctioned, or other means;
 - (d) Order a trustee to account, provide a status or financial report, or provide an inventory;
 - (e) Appoint a special fiduciary to take possession of the trust property and administer the trust;
 - (f) Restrain, restrict, or suspend the trustee;
 - (g) Remove the trustee as provided in section 15-5-706;
 - (h) Reduce or deny compensation to the trustee or require the trustee to disgorge compensation previously paid;
 - (i) Subject to section 15-5-1012, void an act of the trustee, impose a lien or constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 - (j) Order other appropriate relief.
- (3) If a remedy for a breach of trust is sought by a cotrustee, beneficiary, or interested person, or the court acts sua sponte, the provisions of part 5 of article 10 of this title 15 apply.

**EXAMPLES IN ARTICLE 15 WHERE PRINCIPLES OF LAW AND EQUITY
SUPPLEMENT (More relevant to Section 11)**

15-2.5-104. Supplementation by common law and principles of equity.

Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

15-16-804. Common law and principles of equity.

The common law and **principles of equity** supplement this part 8, except to the extent modified by this part 8 or law of this state other than this part 8.

15-11-1303. Law applicable to electronic wills - principles of equity.

An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and **principles of equity** apply to an electronic will, except as modified by this part 13.

15-5-106. Common law of trusts - principles of equity - other statutes.

Unless displaced by the particular provisions of this code, the common law of trusts and principles of law and equity, and other statutes of this state, supplement its provisions.

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 8	Approved 8.2022
2. SUBJECT	RIGHT OF SURVIVING COMMUNITY-PROPERTY SPOUSE
3. PROPOSED TEXT	<p style="text-align: center;">(a) The surviving community-property spouse of the decedent may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:</p> <p style="text-align: center;">(1) In an action asserting a right in or to property, the surviving community-property spouse must:</p> <p style="text-align: center;">(A) not later than [three years] after the death of the decedent, commence an action against an heir, devisee, or nonprobate transferee of the decedent that is in possession of the property; or</p> <p style="text-align: center;">(B) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.</p> <p style="text-align: center;">(2) In an action other than an action under paragraph (1), the surviving community-property spouse must:</p> <p style="text-align: center;">(A) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or</p> <p style="text-align: center;">(B) if a personal representative is not appointed, commence the action not later than [three years]</p>

	<p>after the death of the decedent.</p> <p>(b) Unless a timely demand is made under subsection (a)(1)(B) or (2)(A), the personal representative may distribute the assets of the decedent’s estate without personal liability for a community-property spouse’s claim under this [act].</p> <p><i>Legislative Note: A state should insert in subsection (a)(1)(A) and (2)(B) and Section 9(1)(A) and (2)(B) the time for asserting a claim to a nonprobate asset, probating a will, or challenging a revocable trust and in subsection (a)(1)(B) and (2)(A) and Section 9(1)(B) and (2)(A) the time for asserting a claim in a probate proceeding.</i></p>
<p>4. CURRENT CO STATUTE</p>	<p>Section 8 is new.</p> <p>In the June 28, 2021 memorandum from the Committee Chair, the Chairperson stated that Section 8 is similar to Sections 4 and 5 of the UDCPRDA (Sections 15-20-105 and 15-20-106). Unlike the UDCPRDA, the new act provides limitations periods within which a party must act to preserve rights.</p> <p>§15-20-106 (2) Written demand in this section and in section 15-20-105 shall be made by a surviving spouse, the spouse's successor in interest, or the decedent's heirs or devisees not later than six months after the decedent's will has been admitted to probate, or not later than six months after the appointment of an administrator if there is no will, or not later than six months after the decedent's death if the property to which this article applies is held in an inter vivos trust created by the decedent; and written demand by a creditor of the decedent shall be made not later than six months from the decedent's date of death.</p>
<p>5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>The time periods suggested in this section are borrowed from other areas of law.</p> <p>Specifically, a six-month period is a typical period for a non-claim statute for creditors, and the three-year period is adapted from statutes of limitations on claims challenging</p>

	<p>revocable trusts and for actions against distributees of an estate. <i>See</i> Unif. Trust Code § 604; Unif. Prob. Code § 3-1006. This section fills a gap that existed in the UDCPRDA, which did not provide for specific statute of limitations periods for bringing claims under the act. Thus, courts were left to speculate as to what time periods applied. <i>See, e.g., Johnson v. Townsend</i>, 259 So. 3d 851 (Fla. Ct. App. 2018) (holding that in the absence of a specific statute of limitations in the Florida version of the UDCPRDA, the general statute of limitation for asserting a claim or cause of action against the decedent applied).</p> <p>Subsection (a)(1) of this section allows a surviving community-property spouse to protect rights in or to specific assets under this act and provides a statute of limitation for doing so. It provides time frames for a surviving community-property spouse to assert a right under this act either directly against an heir, devisee, or nonprobate transferee of the decedent who is in possession of property that belongs to the surviving community-property spouse under this act (see (a)(1)(A)) or in a probate proceeding by sending a demand to the court-appointed personal representative of the decedent (see (a)(1)(B)). For example, if after the death of B, B’s community-property spouse, A, asserts a claim to personal property subject to this act that has been given by B in a will to C, then A, whose claim is an action in or to property, may assert that claim directly against C under subsection (a)(1)(A) or in the probate proceeding under subsection (a)(1)(B)). A surviving community-property spouse, however, is not foreclosed from pursuing the option in (a)(1)(A) if a claim under subsection (a)(1)(B) is first brought and is unsuccessful.</p> <p>Subsection (a)(2) of this section provides a procedure and statute of limitation for all other claims of the surviving community-property spouse under this act that are not claims in or to specific assets. For example, if A’s claim is one for reimbursement of community funds under Section 7, then A’s claim is a claim as a creditor and not one in or to specific property. As a result, A would have to assert the claim under subsection (a)(2).</p>
<p>6. COLORADO LAW.</p>	<p>See attached</p>

**7. COLORADO COMMITTEE
COMMENTS**

APPROVED 8.3.22

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

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

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

(B) not later than the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

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

(A) not later than the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

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

	<p>(b) Unless a timely demand is made under subsection (a)(1)(B) or (2)(A), the personal representative may distribute the assets of the decedent’s estate without personal liability for a community-property spouse’s claim under this [act].</p> <p><i>Legislative Note: A state should insert in subsection (a)(1)(A) and (2)(B) and Section 9(1)(A) and (2)(B) the time for asserting a claim to a nonprobate asset, probating a will, or challenging a revocable trust and in subsection (a)(1)(B) and (2)(A) and Section 9(1)(B) and (2)(A) the time for asserting a claim in a probate proceeding.</i></p>
8. RECOMMENDATION	

Colorado Law

C.R.S. § 15-12-108 – Later of three years from DOD or twelve months after informal probate:
Deadline for commencing formal probate proceedings to extent provided by C.R.S. § 15-12-108.

C.R.S § 15-12-108 Probate, testacy, and appointment proceedings – ultimate time limit.

(1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(a) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings;

(b) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and

(c) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.

(2) These limitations do not apply to:

(a) Proceedings to construe probated wills; or

(b) Proceedings to determine heirs of an intestate and related appointment proceedings; or

(c) Appointment proceedings and testacy proceedings if no previous testacy proceedings or proceedings determining heirship relating to the decedent's estate have been concluded in this state.

(3) In cases under subsection (1) of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purpose of other limitation provisions of this code which relate to the date of death.

C.R.S. § 15-11-211 - Nine months from the decedent's death or within six months of the probate of the will, whichever is later, subject to court-granted extensions.

C.R.S. § 15-11-211 Proceeding for elective share – time limit.

(1) Except as provided in subsection (2) of this section, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective-share within nine months after the date of the decedent's death or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give written notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective-share.

(2) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court, for cause shown by the surviving spouse, may extend the time for election.

(3) If the spouse makes an election by filing a petition for the elective-share more than nine months after the decedent's death, the decedent's nonprobate transfers to others are not included within the augmented estate unless the spouse had filed a petition for extension prior to the expiration of the nine-month period and the court granted the extension.

C.R.S. §15-12-803 Limitations on presentation of claims.

(1) (a) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state of Colorado and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statutes of limitations, are barred against the estate, the personal representative, any transferee or other person incurring liability under section 15-15-103, and the heirs and devisees of the decedent, unless presented as follows:

(I) As to creditors barred by publication, within the time set in the published notice
creditors;

(II) As to creditors barred by written notice, within the time set in the written
notice;

(III) As to all creditors, within one year after the decedent's death.

(b) In addition to the limitations on presentation of claims in paragraph (a) of this subsection (1), claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.

(2) All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, any transferee or other person incurring liability under [section 15-15-103](#), and the heirs and devisees of the decedent, unless presented as follows:

(a) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(b) Any other claim, within four months after it arises.

(3) Nothing in this section affects or prevents:

(a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

(4) This section is a nonclaim statute that cannot be waived or tolled, and it shall not be considered a statute of limitations.

(5) Unless [section 15-10-106](#) is determined to apply, and subject to the provisions of subsection (3) of this section, claims that are not presented in accordance with subsections (1) and (2) of this section are barred even if addressing the merits of the claim would not delay the settlement and distribution of the estate.

C.R.S. § 15-12-801 Notice to Creditors.

(1) Unless one year or more has elapsed since the death of the decedent, a personal representative shall cause a notice to creditors to be published in some daily or weekly newspaper published in the county in which the estate is being administered, or if there is no such newspaper, then in some newspaper of general circulation in an adjoining county. Such notice shall be published not less than three times, at least once during each of three successive calendar weeks. The notice shall be substantially as follows:

NOTICE TO CREDITORS

Estate of (Deceased)

No.

All persons having claims against the above-named estate are required to present them to the undersigned or to the District Court of County, Colorado (or Probate Court of the City and County of Denver, Colorado), on or before

(a date not earlier than four months from date of first publication or the date one year from date of death, whichever occurs first),

.....
20..., or said claims may be forever barred.

.....
Personal Representative

(2) A personal representative may give written notice by mail or other delivery to any creditor. Written notice shall be the notice described in subsection (1) of this section or a similar notice. Such written notice shall notify the creditor to present his claim within the later of the following time periods or be forever barred:

(a) Within the time set in the notice to creditors by publication in compliance with subsection (1) of this section; or

(b) Within sixty days from the mailing or other delivery of such notice, but not later than the date one year from date of death.

(3) A personal representative shall not be liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

C.R.S. § 15-5-604 Limitation on action contesting validity of revocable trust.

(1) (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(I) Three years after the settlor's death; or

(II) One hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. A trustee is not liable to any person for giving or failing to give notice under this section.

(b) The applicable time limit described in subsection (1)(a) of this section is an absolute bar that may not be waived or tolled.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust;
or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) Unless a distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a beneficiary of a trust that is determined to have been invalid, or a distributee of property improperly distributed or paid, or a claimant who is improperly paid, is liable for the return of the property improperly received and its income, if any, since the distribution, if he or she has the property. If he or she does not have the property, then he or she is liable for the return of the value as of the date of his or her disposition of the property improperly received, and its income and gain, if any received by him or her.

C.R.S. §15-15-103 Liability of nonprobate transferees for creditor claims and statutory allowances.

(1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), as used in this section, “nonprobate transfer” means a valid transfer effective at death by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(b) This section shall not apply to:

(I) A survivorship interest in joint tenancy real estate; and

(II) Property transferred by the exercise or default in the exercise of a power of appointment, including a power of withdrawal, created by a person other than the transferor; and

(III) Proceeds transferred pursuant to a beneficiary designation under a life insurance, accident insurance, or annuity policy contract; and

(IV) Property or funds held in or payable from a pension or retirement plan, individual retirement account, deferred compensation plan, [internal revenue code section 529](#) plan, or other similar arrangement.

(2) Except as otherwise provided by paragraph (b) of subsection (1) of this section, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed

claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) of this section in the following order of priority:

(a) A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other acts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) Other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devisees under that will.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another instrument, the provision of the later instrument shall prevail.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the decedent's surviving spouse or a child of the decedent, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section shall be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty-three days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

(10) The receipt of funds derived from nonprobate transferees by a person as provided in this section in satisfaction of such person's claim for a debt or statutory allowances does not constitute the receipt of nonprobate property by such person for purposes of this section or part 2 of article 11 of this title.

(11) In the event of any conflict in the provisions of this section with the provisions of parts 2 and 4 of article 11 of this title, the provisions of this section shall control.

C.R.S. 15-15-411 Limitations on actions and proceedings against grantee-beneficiaries.

(1) Unless previously adjudicated or otherwise barred, the claim of a claimant to recover from a grantee-beneficiary who is liable to pay the claim, and the right of an heir or devisee or of a personal representative acting on behalf of an heir or devisee, to recover property from a grantee-beneficiary or the value thereof from a grantee-beneficiary is forever barred as follows:

(a) A claim by a creditor of the owner is forever barred at one year after the owner's death.

(b) Any other claimant or an heir or devisee is forever barred at the earlier of the following:

(I) Three years after the owner's death; or

(II) One year after the time of recording the proof of death of the owner in the office of the clerk and recorder in the county in which the legal property is located.

(2) Nothing in this section shall be construed to bar an action to recover property or value received as the result of fraud.

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 9	Approved 8.2022
2. SUBJECT	Right of Heir, Devisee, or Nonprobate Transferee
3. PROPOSED TEXT	<p>An heir, devisee, or nonprobate transferee of a deceased community-property spouse may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:</p> <p>(1) In an action asserting a right in or to property, the heir, devisee, or nonprobate transferee must:</p> <p>(A) not later than [three years] after the death of the decedent, commence an action against the surviving community-property spouse of the decedent who is in possession of the property; or</p> <p>(B) not later than [six months] after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.</p> <p>(2) In an action other than an action under paragraph (1), the heir, devisee, or nonprobate transferee must:</p> <p>(A) not later than [six months] after the appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or</p> <p>(B) if a personal representative is not appointed, commence the action not later than [three years] after the death of the decedent.</p> <p><i>From Section 8: Legislative Note: A state should insert in subsection (a)(1)(A) and (2)(B) and Section 9(1)(A) and (2)(B) the time for asserting a claim to a nonprobate asset, probating a will, or challenging a revocable trust and in subsection (a)(1)(B) and (2)(A) and Section 9(1)(B) and (2)(A) the time for asserting a claim in a probate proceeding.</i></p>
4. CURRENT CO STATUTE §15-20-106	Perfection of title of personal representative, heir, or devisee. (1) If the title to any property to which this article applies is held

<p>§15-20-105</p>	<p>by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this article applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.</p> <p>(2) Written demand in this section and in section 15-20-105 shall be made by a surviving spouse, the spouse's successor in interest, or the decedent's heirs or devisees not later than six months after the decedent's will has been admitted to probate, or not later than six months after the appointment of an administrator if there is no will, or not later than six months after the decedent's death if the property to which this article applies is held in an inter vivos trust created by the decedent; and written demand by a creditor of the decedent shall be made not later than six months from the decedent's date of death.</p> <p>(3) Written demand in this section and in section 15-20-105 shall be delivered in person or by registered mail to the personal representative. As used in this article, the personal representative may also mean the trustee of an inter vivos trust created by the decedent who has legal title to, or possession of, the property to which this article applies.</p> <p>Perfection of title of surviving spouse. If the title to any property to which this article applies was held at the time of the decedent's death by the decedent or by a trustee of an inter vivos trust created by the decedent, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. The personal representative shall have no duty to discover or attempt to discover whether property held by the decedent is property to which this article applies,</p>
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	unless a written demand is made by the surviving spouse or the spouse's successor in interest.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	<p>The time periods suggested in this section are borrowed from other areas of law. Specifically, a six-month period is a typical period for a non-claim statute for creditors, and the three-year period is adapted from statutes of limitations on claims challenging revocable trusts and for actions against the distributees of an estate. See Unif. Trust Code § 604; Unif. Prob. Code § 3-1006. This section fills a gap that existed in the UDCPRDA, which did not provide for specific statute of limitations periods for bringing claims under the act. Thus, courts were left to speculate as to what time periods applied. See, e.g., <i>Johnson v. Townsend</i>, 259 So. 3d 851 (Fla. Ct. App. 2018) (holding that in the absence of a specific statute of limitations in the Florida version of the UDCPRDA, the general statute of limitation for asserting a claim or cause of action against the decedent applied).</p> <p>Paragraph (1)(A) of this section allows an heir, devisee, or nonprobate transferee of the decedent to protect rights in or to specific assets under this act and provides a statute of limitation for doing so. It provides time frames for an heir, devisee, or nonprobate transferee to assert a right under this act either directly against a surviving community-property spouse of the decedent who is in possession of property that belongs to an heir, devisee, or nonprobate transferee under this act (see (1)(A)) or in a probate proceeding by sending a demand to the court-appointed personal representative of the decedent (see (1)(B)). For example, if after the death of B, B's heir, C, asserts a claim to personal property subject to this act that is in the possession of A (B's community-property spouse), then C, whose claim is an action in or to property, may assert that claim directly against A under paragraph (1)(A) or in the probate proceeding under paragraph (1)(B)). An heir, however, is not foreclosed from pursuing the option in (1)(A) if a claim under paragraph (1)(B) is first brought and is unsuccessful. Unlike in</p>

	<p>Section 8, the personal representative of the decedent has an obligation to attempt to ascertain whether the decedent has property rights that should be protected under this act, even if no claim is asserted by an heir, devisee, or nonprobate transferee. See, e.g., Unif. Prob. Code §§ 3-703 (general duties) & 3-706 (duty to prepare an inventory). <i>(AES comment: Our current law, §15-20-106 (see above), alleviates the personal representative of this liability unless PR receives a written demand for notice.)</i></p> <p>Paragraph (2) of this section provides a procedure and statute of limitation for all other claims of an heir, devisee, or nonprobate transferee of the decedent under this act that are not claims in or to specific assets. For example, if C’s claim is one for reimbursement of community funds under Section 7, then C’s claim is a claim as a creditor and not one in or to specific property. As a result, C would have to assert the claim under paragraph (2).</p>
<p>6. COLORADO LAW.</p>	<p><u>Statutes of limitation to consider for timelines:</u></p> <ul style="list-style-type: none"> • Current UDCPRDA statute (CRS §15-20-106): six months as to the perfection of title to property - as to heirs, surviving spouse, within six months of appointment or probate of a will if there is a probate, or within six months of death if property is in a trust • CRS §15-12-108 ultimate time limit to contest an informally probated will: the later of twelve months from the informal probate or three years from the decedent’s death • Creditor claim period (CRS 15-12-803): four months from publication; 60 days from the mailing of delivery of notice; or one year from decedent’s death • Spouse: six months, nine months, one year <ul style="list-style-type: none"> • Family allowance & exempt property (CRS §15-11-405): six months from publication or one year from decedent’s death

	<ul style="list-style-type: none"> • Elective share (CRS §15-11-211): six months from probate of will or nine months from DOD; or within extension granted by court if notice given within nine months of death • Breach of fiduciary duty by PR (CRS §15-12-1001 <i>et seq</i>): <ul style="list-style-type: none"> • six months from closing statement • one year from distribution • three years from DOD • Action to contest validity of a trust (CRS §15-5-604) <ul style="list-style-type: none"> • Three years from settlor’s death or • 120 days after trustee gives notice of existence of trust and time allowed to commence a proceeding • Breach of trust (CRS §15-5-1005): <ul style="list-style-type: none"> • 1 year if disclosure (previous statute was six months, §15-16-307 <i>repealed</i>) • 3 years if no accounting and notice of potential claim and time to bring claim
<p>7. COLORADO COMMITTEE COMMENTS</p>	
<p>8. RECOMMENDATION AFTER 7.6.22</p> <p>APPROVED 8.3.2022</p>	<p>(a) An heir, devisee, or nonprobate transferee of a deceased community-property spouse may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:</p> <p>(1) In an action asserting a right in or to property, the heir, devisee, or nonprobate transferee must:</p> <p>(A) not later than three years after the death of the decedent, commence an action against the</p>

surviving community-property spouse of the decedent who is in possession of the property; or
(B) not later than the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

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

(A) not later than the time periods set forth in section 15-12-803(1) after the appointment of the personal representative of the decedent, send a demand in a record to the personal representative;
or

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

(b) Unless a timely demand is made under subsection (a)(1)(B) or (2)(A), the personal representative may distribute the assets of the decedent's estate without personal liability for an heir's, devisee's, or nonprobate transferee's claim under this [act].

Note: at the end of the July meeting, we had concluded that we were going to face a long discussion about this Section regardless of the chosen timelines or reasoning behind our choices. We opted to return to the original formatting of the UCPA and to insert, as suggested, "the time for asserting a claim in a probate proceeding" at (1)(B) and (2)(A); and three years as "the time for asserting a claim to a nonprobate asset,

	<p><i>probating a will, or challenging a revocable trust” at (2)(A) and (1)(B)</i></p> <p><i>Note 8.3.22: After reviewing current CRS 15-20-106, the committee decided to extend the limited liability to PRs for distributions to persons other than the surviving spouse (as in Section 8) and because the time limits under Section 9 afford heirs, devisees, and nonprobate transferees with sufficient protection.</i></p>
<p>8. RECOMMENDATION AFTER 5.4.22</p>	<p>An heir, devisee, or nonprobate transferee of a deceased community-property spouse may assert a claim for relief with respect to a right under this [act] in accordance with the following rules:</p> <ul style="list-style-type: none"> (1) In an action asserting a right in or to property, the heir, devisee, or nonprobate transferee must, within the earlier of three years after the death of the decedent or one year after the appointment of the personal representative of the decedent: <ul style="list-style-type: none"> (A) send a demand in a record to the personal representative asserting the claim for relief; or (B) commence an action against the surviving community-property spouse of the decedent who is in possession of the property. (2) In an action other than an action under paragraph (1), the heir, devisee, or nonprobate transferee must: <ul style="list-style-type: none"> (A) if a personal representative is appointed, send a demand in a record to the personal representative not later than the time periods set forth in section 15-12-803; or (B) if a personal representative is not appointed, commence the action not later than one year after the death of the decedent.

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 10	Approved 1.4.23
2. SUBJECT	Protection of Third Person
3. PROPOSED TEXT	<p>(a) With respect to property to which this [act] applies, a person is not liable under this [act] to the extent the person:</p> <ul style="list-style-type: none"> (1) transacts in good faith and for value: <ul style="list-style-type: none"> (A) with a community-property spouse; or (B) after the death of the decedent, with a surviving community-property spouse, personal representative, heir, devisee, or nonprobate transferee of the decedent; <u>or</u> <u>(C) a fiduciary acting on behalf of any such person, or a trustee of a trust holding community property;</u> 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. <p>(b) Good faith under subsection (a)(1) does not require the person to inquire into the extent or propriety of the exercise of authority by the other party to the transaction.</p>
4. CURRENT CO STATUTE	<p>In the June 28, 2021 UCPCCA Committee’s memo to the ULC, the Committee states, “This Section has no analogue in the UDCPRDA.” However, Colorado’s UDCPRDA included the following statute:</p> <p>15-20-107 – Purchaser for value or lender:</p> <p>(1) If a surviving spouse has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.</p>

	<p>(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.</p> <p>(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.</p> <p>(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.</p>
<p>5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>This section is based upon Section 1012 of the Uniform Trust Code. Like the Uniform Trust Code, this section does not define “good faith.” It does, however, require that a third person be without knowledge or a reason to know that the other party to the transaction is acting without authority with respect to property to which this act applies. For a definition of knowledge, see Unif. Trust Code § 104. Moreover, this section provides that a person dealing with another party is not charged with a duty to inquire as to the extent or the propriety of the exercise of the purported power or authority of that party. This section, like the Uniform Trust Code, acknowledges that a definition of good faith that is consistent with a state’s commercial statutes, such as Section 1-201 of the Uniform Commercial Code, would be consistent with the purpose of this section. This section should be read in conjunction with Section 7 of this act, which provides that courts retain the ability at the death of one community-property spouse to grant equitable relief to the other for actions that have impaired rights granted by this act.</p> <p>This section protects third persons in two different situations. First, during life, both community-property spouses may engage in a variety of transactions with third parties concerning the property to which this act applies. This section protects third persons who deal with either community-property spouse concerning property to which this act applies, provided the third person gives value, acts in good faith, and does not have knowledge or reason to know that the community-property spouse who is a party to the transaction is improperly exercising authority over the property. Although third persons in community property jurisdictions are ordinarily allowed to deal with a spouse who has apparent title concerning a martial [sic] asset during the existence of the marriage, no good reason could be found for protecting bad faith third persons with knowledge or reason to know of the commission of fraud on the rights of the other community-property spouse. For example, if A retitles community property belonging partly to B solely in A’s name</p>

	<p>and sells it to C, C is protected from any claim by B with respect to the property, provided C gave value, acted in good faith, and did not know that A improperly transferred property belonging to B. To the extent B has a cognizable claim under Section 7 of this act, it will be solely against A, not C. On the other hand, if A donated a community asset to C, C would not be protected by this section, and B’s claim under Section 7 of this act could be cognizable against A or C or both.</p> <p>Second, this section also applies after the death of a decedent. Section 8 of this act provides relevant time periods within which a surviving community-property spouse may assert rights against a personal representative of the decedent, as well as heirs, devisees, or nonprobate transferees of the decedent. Similarly, Section 9 provides relevant time periods within which the heirs, devisees, or nonprobate transferees of the decedent may assert rights against the surviving community-property spouse or the personal representative of the decedent. This section protects third persons who transact with those relevant parties in possession of apparent title to property, provided the third person gives value, acts in good faith, and is without knowledge that the other party to the transaction is improperly exercising authority. For example, if after A’s death, A’s surviving community-property spouse, B, sells Blackacre, which is titled solely in B’s name, to C, C will be protected from liability under this section, even if Blackacre was subject to this act because it was traceable to community property, provided, of course, C gave value, acted in good faith, and did not have knowledge or reason to know that B was exceeding his authority.</p>
<p>6. COLORADO LAW</p>	<p>Colorado enacted Section 1012 of the Uniform Trust Code (upon which this proposed section is based according to the Uniform Commissioners comments) at Section 15-5-1012, C.R.S., with one substantive addition (underlined in (2)):</p> <p>(1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee were properly exercising the power.</p> <p>(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise <u>and, in the absence of contrary knowledge, may assume the existence and proper use of the power being exercised.</u></p> <p>(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.</p> <p>(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has</p>

terminated, is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Other Colorado Probate Code statutes protecting third parties:

- 15-11-214(1) – in elective share context, protecting payor or other third party from liability when acting in “good-faith reliance on the validity of a governing instrument ... before the payor or other third party received written notice” of surviving spouse’s intent to seek elective share
- 15-11-706(4) – in the context of certain non-probate transfers where the beneficiary is deceased, protecting payor or other third party from liability for making a payment or transfer according to the governing instrument before two business days after receiving notice of the statute’s applicability. Payor/third party has no duty to inquire about or seek evidence regarding statutory substituted gift. Provides strict notice standards to impose liability on payor/third party.
- 15-11-706(5) – in the context of certain non-probate transfers where the beneficiary is deceased, protecting person who purchased property for value or receives in satisfaction of legally enforceable obligation from liability, but providing that person who received property or payment “not for value” must return the property or be personally liable for the amount of the property to the person entitled to it under this statute.
- 15-11-804(7) – in the context of probate or non-probate transfers affected by divorce, protecting payor/third party from liability for following governing instrument less than two business days after actual receipt of notice of applicability of statute, relieving the payor/third party of any duty to inquire or seek evidence regarding status of marriage. Provides strict notice standards.
- 15-11-804(8) – in the context of probate or non-probate transfers affected by divorce, protecting bona fide purchasers and purchasers for value or in satisfaction of legally enforceable obligation from liability or an obligation to return the property, but

	<p>providing that a recipient of property not for value must return the property or be personally liable for the amount of the property to the person entitled to it under this statute.</p> <ul style="list-style-type: none"> • 15-22-110 – in the context of designated beneficiary agreements, protecting third party who acts in good faith reliance from civil liability or administrative discipline for such reliance.
<p>7. COLORADO COMMITTEE COMMENTS</p>	<p>Colorado probate law includes several examples protecting a third party from liability when transacting in good faith and for value, and relieving the third party from a duty to investigate or inquire into the circumstances of the transferor. The proposed statute is consistent with these other statutes protecting a third party from liability.</p> <p>Unlike other third party liability statutes within the CPC, the proposed statute does not clearly state that a person transacting <u>not</u> for value must return the property or be personally liable. See, e.g., 15-11-706(5), 15-11-804(8).</p> <p>Existing CPC statutes often include additional language when relieving the third party from a duty to investigate, including no duty or obligation to “seek any evidence with respect to” the circumstances. See, e.g., 15-11-804(7).</p> <p>The applicability of the proposed statute is limited in scope to a person transacting with a community property spouse (while alive) or with a surviving community property spouse, personal representative, heir, devisee, or non-probate transferee of a decedent (after decedent’s death). Recommend expanding to transactions with any fiduciary holding community property (e.g., trustee of CP spouse’s revocable trust). (And now questioning why (a)(1)(B) is limited to that list?)</p>

8. RECOMMENDATION	
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**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 11	Approved 9.7.22
2. SUBJECT	Principles of Law and Equity
3. PROPOSED TEXT	The principles of law and equity supplement this [act] except to the extent inconsistent with this [act].
4. CURRENT CO STATUTE	None. Section 11 is new.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	This act is intended to provide a uniform process for recognition at death of community property rights acquired in another state. As a result, this act necessarily provides new rules for recognition of rights and remedies that may be unconventional in non-community property states. The elaboration of such rules, however, is not intended to displace traditional common-law and equitable rights, remedies, and procedures that may be available in a non-community property state, except to the extent that they would be inconsistent with the provisions of this act. For example, care has been taken not to delineate an exhaustive list of legal or equitable remedies that a court may fashion in applying Section 7 of this act. Rather, Section 7 provides that a court shall employ general equitable principles available in the enacting state in evaluating a claim brought under that section. Similarly, Sections 8 and 9 provide limitation periods within which certain claims must be brought by a community-property spouse, heir, devisee, or nonprobate beneficiary of the decedent. Those sections, however, do not attempt to comprehensively catalogue all possible claims for relief that may be brought by those or other parties. For instance, this act does not provide for limitation periods for creditors of the decedent to assert claims and instead resorts to general principles of law and equity in the enacting jurisdiction.
6. COLORADO LAW.	Article 15 of the Colorado Revised Statutes contains the following statutes with similar language: Uniform Powers of Appointment Act C.R.S. § 15-2.5-104: Unless displaced by the particular provisions of this article, the principals of law and equity supplement its provisions.

	<p>Colorado Uniform Trust Code C.R.S. § 15-5-106: Unless displaced by the particular provisions of this code, the common law of trusts and principles of law and equity, and other statutes of this state, supplement its provisions.</p> <p>Uniform Power of Attorney Act C.R.S. § 15-14-721: Unless displaced by a provision of this part 7, the principles of law and equity supplement this part 7.</p> <p>Colorado Probate Code C.R.S. § 15-10-103: Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.</p> <p>Colorado Uniform Electronic Wills Act C.R.S. § 15-11-1103: An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this part 13.</p> <p>Colorado Uniform Directed Trust Act C.R.S. § 15-16-804: The common law and principles of equity supplement this part 8, except to the extent modified by this part 8 or law of this state other than this part 8.</p>
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 12	Approved 9.7.22
2. SUBJECT	Uniformity of Application and Construction
3. PROPOSED TEXT	In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.
4. CURRENT CO STATUTE §15-20-111	This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	None
6. COLORADO LAW	There is no Colorado case law or secondary sources citing the existing statute C.R.S. § 15-20-111 (according to a Lexis Nexis search). Colorado includes similar statutes with other uniform acts (list may not be exhaustive): Colorado Uniform Trust Code: C.R.S. 15-5-1401 Uniform Power of Appointment Act: C.R.S. 15-2.5-601 UFIPA: C.R.S. 15-1.2-801 Uniform Directed Trust Act: C.R.S. 15-16-817 Uniform Trust Decanting Act: C.R.S. 15-16-928
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 13	Approved 9.7.22
2. SUBJECT	Saving Provision
3. PROPOSED TEXT	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].
4. CURRENT CO STATUTE	None. Section 13 is new.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	None.
6. COLORADO LAW	Similar language is found in the Colorado Probate Code and Colorado Uniform Trust Code: C.R.S. § 15-5-1404(2): If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run pursuant to any other statute before January 1, 2019, then the period prescribed by that statute as it existed prior to January 1, 2019, continues to apply to the right, even if the statute has been repealed or suspended. C.R.S. § 15-17-101(d): ...If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1974, or before the effective date of an amendment to this code, the provisions of that statute shall remain in force with respect to that right;
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 14	Approved 9.7.22
2. SUBJECT	Transitional Provision
3. PROPOSED TEXT	Except as provided in Section 13, this [act] applies to a judicial proceeding with respect to property to which this [act] applies commenced on or after [the effective date of this [act]], regardless of the date of death of the decedent.
4. CURRENT CO STATUTE	None. Section 14 is new.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	<p>This act is intended to have the widest possible effect within constitutional limitations. Specifically, this act applies to the property of a decedent who dies before the enactment of this act. This act cannot be fully retroactive, however. Constitutional limitations preclude retroactive application of rules of construction to alter vested property rights. Also, rights already barred by a statute of limitation or rule under former law are not revived by a possibly longer statute or more liberal rule under this act. Nor is an act done before the effective date of this act affected by the act's enactment.</p> <p>The language of this section is generally based upon Section 8-101 of the Uniform Probate Code and Section 1106 of the Uniform Trust Code.</p>
6. COLORADO LAW	<p><u>C.R.S. § 15-5-1404 (UTC 1106) states as follows:</u></p> <p>(1) Except as otherwise provided in this article 5, including section 15-5-508, on January 1, 2019:</p> <p style="padding-left: 40px;">(a) This article 5 applies to all trusts created before, on, or after January 1, 2019;</p> <p style="padding-left: 40px;">(b) This article 5 applies to all judicial proceedings concerning trusts commenced on or after January 1, 2019;</p> <p style="padding-left: 40px;">(c) This article 5 applies to judicial proceedings concerning trusts commenced before January 1, 2019, unless the court finds that application of a particular provision of this article 5 would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this article 5 does not apply and the superseded law applies;</p> <p style="padding-left: 40px;">(d) Any rule of construction or presumption provided in this article 5 applies to trust instruments executed before January 1, 2019, unless there is a clear indication of a contrary intent in the terms of the trust; and</p>

(e) An act done before January 1, 2019, is not affected by this article 5.

(2) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run pursuant to any other statute before January 1, 2019, then the period prescribed by that statute as it existed prior to January 1, 2019, continues to apply to the right, even if the statute has been repealed or suspended.

C.R.S. § 15-17-101 (Probate Code) states as follows:

(1) This code takes effect on July 1, 1974.

(2) Except as provided elsewhere in this code, including but not limited to sections 15-11-601, 15-11-701, 15-11-1106, and 15-17-103, on the effective date of this code or of any amendment to this code:

(a) The code or the amendment applies to governing instruments executed by decedents dying thereafter;

(b) The code or the amendment applies to any proceedings in court then pending or thereafter commenced, regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code or any amendment to this code;

(c) Every personal representative or other fiduciary holding an appointment on July 1, 1974, or before the effective date of an amendment to this code continues, to hold the appointment but has only the powers conferred by this code and by any amendment to this code and is subject to the duties imposed by this code and by any amendment to this code with respect to any act occurring or done thereafter;

(d) An act done before July 1, 1974, or before the effective date of an amendment to this code, in any proceeding is not impaired by this code or by any amendment to this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1974, or before the effective date of an amendment to this code, the provisions of that statute shall remain in force with respect to that right;

(e) Any rule of construction or presumption provided in this code or in any amendment to this code applies to governing instruments executed before July 1, 1974, or before

	<p>the effective date of an amendment to this code, unless there is a clear indication of a contrary intent;</p> <p>(f) No provision of this code or of any amendment to this code shall apply retroactively if the court determines that such application would cause the provisions to be retrospective in its operation in violation of section 11 of article II of the state constitution; and</p> <p>(g) The law in effect at the time of death identifies the heirs and determines the shares under intestacy in accordance with sections 15-11-101 to 15-11-103.</p>
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

Proposed Colorado Changes

Prepared by a Subcommittee of the Trust and Estate Section of the CBA

Summary

Currently, the disposition of community property at death is governed by C.R.S. §15-20-101, et seq., the “Uniform Disposition of Community Property Rights at Death Act,” first enacted in Colorado in 1973. The proposed statute, the “Uniform Community Property Disposition at Death Act” is an update to that 1973 law. The new law is substantially similar to the old law in that it allows individuals who hold community property, acquired in another state, to retain the community property character of those assets while in Colorado. The old law, however, only addressed community property that existed as part of a probate estate. As set forth in the official summary of the proposed new statute, an update was needed to address community property held in trust and/or disposed of by nonprobate transfers.

Our subcommittee, after careful review, proposes the modest changes to the uniform law identified below. We added a sentence to §15-20-103 that underscores the existing law that new community property cannot be created in Colorado. In §15-20-106 we added language to clarify that not only is the surviving community property spouse’s interest in community property not subject to disposition by the decedent or the decedent’s estate planning documents, in addition, it is not subject to disposition by the laws of intestacy as a result of the decedent’s death.

As suggested by the drafters of the uniform law, in sections §15-20-108 and -109, addressing the time period in which someone would have a right to make a claim based on an interest in community property, we (a) adopted the three year time period for a claim made against

a nonprobate asset, and (b) inserted the time periods for generally making a claim against a probate asset by notifying the personal representative of an estate. In section 109 we also added language expressly authorizing a personal representative to distribute an asset if not made aware of an interest in community property within the time period set forth in the statute. In C.R.S. §15-20-110, we added language to protect other fiduciaries acting without knowledge of a community property interest.

In the conforming amendments section, we suggested one amendment to the elective share statute to clarify that only the decedent's one-half of community property would be included in the augmented estate. We did not suggest an effective date, but our opinion is that no delayed effective date is needed for this statute.

Redline of Uniform Law with Proposed Changes

15-20-101. Short Title

This Article 20 ~~act~~ is known and may be cited as the Uniform Community Property Disposition at Death Act and is referred to in this Article 20 as “this act” or “act”.

15-20-102. Definitions

In this ~~act~~:

- (1) “Community-property spouse” means an individual in a marriage or other relationship:
 - (A) under which community property could be acquired during the existence of the relationship; and
 - (B) that remains in existence at the time of death of either party to the relationship.
- (2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (3) “Jurisdiction” means the United States, a state, a foreign country, or a political subdivision of a foreign country.
- (4) “Partition” means voluntarily divide property to which this [act] otherwise would apply.
- (5) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (6) “Personal representative” includes an executor, administrator, successor personal representative, special administrator, and other person that performs substantially the same function.
- (7) “Property” means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.
- (8) “Reclassify” means change the characterization or treatment of community property to property owned separately by community-property spouses.
- (9) “Record” means information:

(A) inscribed on a tangible medium; or

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

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

(A) execute or adopt a tangible symbol; or

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

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

15-20-103. Included and Excluded Property

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

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

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

i. was acquired; or

ii. after acquisition, became community property;

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

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

and

(2) regardless 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 community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property; and

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

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

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

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

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

(3) is acquired by spouses domiciled in this state that is not property identified in [paragraphs] (a) and (b) of this section.

15-20-104. Form of Partition, Reclassification, or Waiver

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

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

15-20-105. Community Property Presumption

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

15-20-106. Disposition of Property at Death

(a) One-half of the property to which this {fact} applies belongs to the surviving community-property spouse of a decedent and is not subject to disposition by the decedent at death or distribution under the laws of succession of this state as a result of the decedent's death.

(b) One-half of the property to which this {fact} applies belongs to the decedent and is subject to disposition by the decedent at death.

~~Alternative A-~~

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

~~Alternative B-~~

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

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

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

~~End of Alternatives-~~

(d) {Except for the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse under C.R.S. 15-11-201 et. seq.,

this ~~}{This}~~ section does not apply to property transferred by right of survivorship or under a revocable trust or other nonprobate transfer.

(e) This section does not limit the right of a surviving community-property spouse to ~~insert statutory allowances}~~ the statutory allowances set forth under C.R.S. 15-11-402; 15-11-403; and 15-11-404.

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

15-20-107. Other Remedies Available At Death.

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

- (1) the surviving community-property spouse or decedent during the marriage or other relationship under which community property then could be acquired; or
- (2) the decedent that takes effect at the death of the decedent.

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

- (1) shall apply equitable principles; and
- (2) may consider the community property law of the jurisdiction where the decedent or surviving community-property spouse was domiciled when property was acquired or enhanced.

15-20-108. Right of Surviving Community Property Spouse.

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

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

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

(B) not later than ~~six months~~the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

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

(A) not later than ~~six months~~the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

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

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

15-20-109. Right of Heir, Devisee, or Nonprobate Transferee.

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

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

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

A. not later than ~~{three years}~~ after the death of the decedent, commence an action against the surviving community-property spouse of the decedent who is in possession of the property; or

B. not later than ~~{six months}~~ the time periods set forth in section 15-12-803(1) after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

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

A. not later than ~~{six months}~~ the time periods set forth in section 15-12-803(1) after the appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

B. if a personal representative is not appointed, commence the action not later than ~~{three years}~~ after the death of the decedent.

(b) Unless a timely demand is made under subsection (a)(1)(B) or (2)(A), the personal representative may distribute the assets of the decedent's estate without personal liability for an heir's, devisee's, or nonprobate transferee's claim under this act.

15-20-110. Protection of Third Person.

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

(1) transacts in good faith and for value:

(A) with a community-property spouse; or

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

(C) a fiduciary acting on behalf of any such person, or a trustee of a trust holding community property; and

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

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

15-20-111. Principles of Law and Equity.

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

15-20-112. 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.

15-20-113. 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}.

15-20-114. Transitional Provision.

Except as provided in ~~Section 13~~§15-20-113, this {act} applies to a judicial proceeding with respect to property to which this {act} applies commenced on or after {the effective date of this {act}}, regardless of the date of death of the decedent.

15-20-115. Severability

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

15-20-116. Repeal; Conforming Amendments

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

{(b)} C.R.S. §15-11-208 is revised as follows:

15-11-208 (4) Community Property. If there is a disparity in the titling of property under sections 15-11-204, 15-11-205, 15-11-206, or 15-11-207, and the ownership of such property under article 20 of this title 15 regarding community property, then the community property ownership shall control and only one-half of such community property shall be included under each such section as applicable, and any administrative expenses relating to and enforceable claims against such community property shall be allocated equally between the decedent's and the surviving spouse's shares of the community property. ~~15-11-208 (4)~~

15-20-117. Effective Date

This [act] takes effect . . .

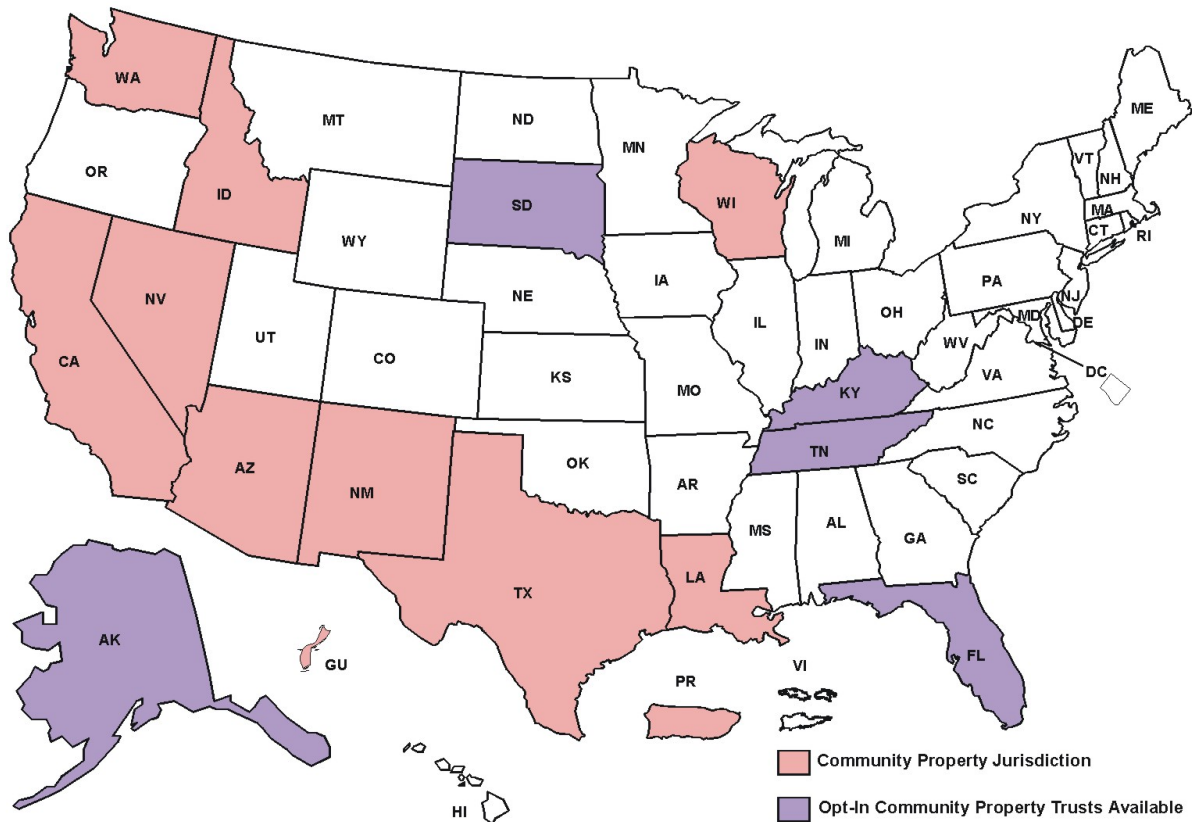


THE UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

- A Summary -

The law of marital property in the United States is far from uniform. The majority of jurisdictions use a system of property rights based on English common law, but nine states and two U.S. territories use a system based on civil law instead. In those jurisdictions, a married couple’s property is generally presumed to be “community property,” unless the couple agrees to a different distribution. At the time of the first spouse’s death, 50% of the community property is owned by the surviving spouse and 50% by the deceased spouse’s estate. Additionally, a few states have enacted laws that permit couples to opt-in to a community property system by creating a trust.

COMMUNITY PROPERTY JURISDICTIONS



As of October 2021

Non-uniform property laws can create problems when a married couple moves to another state. Though the governing law may be different, the nature of the couple’s previously acquired property is not changed. It stands to reason that many couples will accumulate both community and non-community property over time, complicating estate administration when the first spouse dies.

The Uniform Community Property Disposition at Death Act (UCPDDA) is appropriate for enactment in *non-community property states* (i.e., the states shown in white and purple on the map above) where trustees, judges, and estate administrators may be unfamiliar with the rules governing distribution of community property.

The UCPDDA provides a set of default rules to ensure the equitable distribution of community property when the first spouse dies. It assists courts in determining the character of property when there is a dispute between potential heirs. The act also clarifies the process for partitioning and reclassifying community property for couples who mutually agree to separate their interests, and provides a remedy to address bad-faith transfers intended to impair the property rights of one spouse.

The UCPDDA is an update of a 1971 law that specifically governed the *probate* of estates containing community property. The update was necessary due to the increased popularity of trusts and other vehicles for nonprobate transfers, and also because of the recognition of same-sex marriage throughout the United States. The act is intended for enactment in non-community property states where the legal status of community property may otherwise be unclear.

For more information about the Uniform Community Property Disposition at Death Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.