

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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As Engrossed: H3/14/17 H3/20/17

A Bill

HOUSE BILL 2234

By: Representative Ballinger

For An Act To Be Entitled

AN ACT TO REPEAL DOWER AND CURTESY RIGHTS; TO CREATE
THE SURVIVING SPOUSE MARITAL SHARE; AND FOR OTHER
PURPOSES.

Subtitle

*TO REPEAL DOWER AND CURTESY RIGHTS; AND
TO CREATE THE SURVIVING SPOUSE MARITAL
SHARE.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §§ 9-11-602 – 9-11-604 are repealed.

~~*9-11-602. Sale of real estate free of dower or curtesy—Petition.*~~

~~*(a)(1) Any person owning lands in this state and whose spouse is adjudged insane may apply by petition to the circuit court of the county where the lands are situated for leave to sell the real estate, or any part thereof, discharged and unencumbered of the rights of dower or curtesy of the spouse.*~~

~~*(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, the nature and object of the conveyance desired to be made, describing the real estate and giving the name of the person to whom the conveyance is intended to be made, and the consideration thereof, and that the intention of the conveyance is not to deprive the spouse of dower or curtesy, as the case may be, but to dispose of the real estate in the usual and ordinary course of business.*~~

~~*(b) On the filing of the petition, the court shall appoint some*~~



~~reliable and disinterested citizen not related to either of the parties, nor interested directly or indirectly in the real estate or any part thereof described in the petition as guardian ad litem for the defendant. The guardian ad litem shall forthwith cause the appearance of the defendant to be entered of record in the case from time to time and make such pleadings in the case as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on the defendant.~~

~~9-11-603. Sale of real estate free of dower or curtesy—Order and deposit.~~

~~(a) Upon the hearing of the petition, if the court deems it to be in the best interest of the parties that the land be sold, it may make an order that the plaintiff may sell the land free and discharged and unencumbered of the right of dower or curtesy, as the case may be.~~

~~(b) In every such order, the court shall adjudge as part of the order that before the sale shall become effective, the petitioner or his or her grantee shall deposit in the registry of the court, in cash, one-third (1/3) of the purchase price of the lands to be disposed of as provided in this section. In all such sales, the sale shall be reported to the circuit court and the sale approved thereby.~~

~~(c)(1) The deposit of one-third (1/3) of the purchase price of the land shall be held in trust by the clerk of the court and loaned out by him or her under the order of the court from time to time at the highest obtainable rate of interest, upon security to be approved by the court or judge in vacation. The clerk shall be responsible therefor on his or her official bond.~~

~~(2) The interest on the money shall be paid over annually to the plaintiff. However, the court may make, upon application, of which the plaintiff shall be notified, and on reasonable showing, reasonable allowance out of the interest from time to time for the support of the defendant.~~

~~(d)(1) Should the insane defendant be survived by the plaintiff, the deposit shall be paid over to the plaintiff upon the plaintiff's application to the court. If the plaintiff survives the defendant but dies before an order of the court is actually made to pay the moneys over to the plaintiff, then the moneys shall descend to the plaintiff's heirs at law as realty and~~

~~shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.~~

~~(2) In the event that the plaintiff is survived by the defendant, the interest accruing on the deposit shall be paid over to the defendant only during the defendant's natural life. At the defendant's death the deposit shall descend to the heirs at law of the plaintiff as realty and shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.~~

~~9-11-604. Setting apart dower or curtesy as life estate in certain lands.~~

~~(a)(1) Any person owning lands in this state whose spouse is adjudged permanently insane may apply by petition to the circuit court of the county where the lands or the greater part thereof are situated to have a life estate in a part of the lands set apart to the spouse in lieu of the spouse's inchoate right of dower or curtesy, as the case may be, in all of the lands and the remaining lands discharged and unencumbered of the dower or curtesy interest of the spouse.~~

~~(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, describing all the real estate of the plaintiff, and that it will be to the best interest of all parties.~~

~~(b) On the filing of the petition, the court shall appoint some reliable person, a citizen of the county, not related to either of the parties nor interested directly or indirectly in the real estate nor in any part thereof as guardian ad litem for the spouse. The guardian ad litem shall forthwith cause the appearance of the spouse to be entered of record in the case and make such pleadings in the case from time to time as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on his or her ward.~~

~~(c) The court on hearing the petition and being satisfied that it will be to the best interests of the parties to have the life estate in a part of the lands set apart to the spouse in lieu of dower or curtesy in the whole of the lands shall appoint three (3) persons as commissioners not interested in the lands nor in any part thereof who shall set apart the life estate in lieu~~

~~of dower or curtesy, designating specifically the lands. They shall make their report to the court, which report shall be subject to the approval of the court.~~

~~(d) On approval of the report of the commissioners, the court shall make an order and decree divesting the dower or curtesy of the spouse out of the real estate of the plaintiff and in lieu thereof vesting in the spouse a life estate of the lands designated by the commissioners, and authorizing and empowering the plaintiff to sell the remainder of the lands or to mortgage and encumber the remainder of the lands free from any dower or curtesy rights of the spouse.~~

SECTION 2. Arkansas Code § 9-11-706(b)(3), concerning the property rights of a married person, is amended to read as follows:

(3) All property rights, including, but not limited to, conveyances, inheritance, intestate succession, ~~dower, curtesy,~~ the surviving spouse marital share, and all rights and duties between the parties themselves or third persons, are declared to be those of validly married persons.

SECTION 3. Arkansas Code § 9-12-315(a)(3)(C), concerning proceedings for enforcing a court order dividing marital property, is amended to read as follows:

(C) The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten (10) days' notice to the opposite party. Such order, judgment, or decree shall be a bar to all claims ~~of dower or curtesy in and~~ to any of the lands or personalty then owned or thereafter acquired by either party; and

SECTION 4. Arkansas Code § 15-73-408 is amended to read as follows:
15-73-408. Necessary parties – Effect of sale or lease.

All spouses of the various owners of interests in oil and gas rights shall be necessary parties to the suit in partition, and the sale of the property by the commissioner under the decree, or the leasing of the property by the receiver as provided in this subchapter, shall effectively cut off all

right of ~~dower, curtesy, and~~ a homestead of spouses in and to the property rights and interests therein conveyed, leased, or let.

SECTION 5. Arkansas Code § 16-47-102(b), concerning the property rights of a married person, is amended to read as follows:

(b) The acknowledgment of a married person, both as to the disposition of his or her own property and as to the relinquishment of ~~dower, curtesy, and~~ a homestead in the property of a spouse, may be made in the same form as if he or she were sole and without any examination separate and apart from a spouse, and without necessity for a specific reference ~~therein~~ in the acknowledgement to the interest so conveyed or relinquished.

SECTION 6. Arkansas Code § 16-47-105 is amended to read as follows:

16-47-105. Certificate of acknowledgment.

Every court or officer that ~~shall take~~ takes the proof or acknowledgment of any deed, instrument, or conveyance of real estate, ~~or the relinquishment of dower of any married woman in any conveyance of the real estate of her husband,~~ shall grant a certificate thereof and cause the certificate to be endorsed on the deed, instrument, or conveyance, ~~or relinquishment of dower, which certificate shall be signed by the clerk of the court where probate is taken in court or by the officer before whom the probate is taken and sealed, if he~~ or she has a seal of office.

SECTION 7. Arkansas Code § 16-47-110(a), concerning the conveyance of real property, is amended to read as follows:

(a) Every deed or instrument in writing ~~which~~ that conveys or affects real estate and ~~which~~ that is acknowledged or proved and certified as prescribed by this act ~~may~~, together with the certificate of acknowledgment, or proof, ~~or relinquishment of dower,~~ may be recorded by the recorder of the county where ~~such~~ the land to be conveyed or affected thereby is located, and when so recorded may be read in evidence in any court in this state without further proof of execution.

SECTION 8. Arkansas Code § 18-12-202(b), concerning the property rights of a married person, is amended to read as follows:

(b) The acknowledgment of a married person, both as to the disposition

of his or her own property and as to the relinquishment of ~~dower, curtesy,~~
~~and a homestead in the property of a spouse,~~ may be made in the same form as
 if that person were sole and without any examination separate and apart from
 a spouse, and without necessity for a specific reference therein to the
 interest so conveyed or relinquished.

SECTION 9. Arkansas Code § 18-12-209(a), concerning the conveyance of
 real property by a married person, is amended to read as follows:

(a) Every deed or instrument in writing ~~which~~ that conveys or affects
 real estate and ~~which~~ that is acknowledged or proved and certified as
 prescribed by this act ~~may~~, together with the certificate of acknowledgment,
~~or proof, or relinquishment of dower,~~ may be recorded by the recorder of the
 county where ~~such~~ the land to be conveyed or affected thereby is located, and
 when so recorded may be read ~~in~~ into evidence in any court in this state
 without further proof of execution.

SECTION 10. Arkansas Code § 18-12-402 is repealed.

~~18-12-402. Relinquishment of dower or curtesy in spouse's land.~~

~~A married person may relinquish dower or curtesy in any of the real
 estate of a spouse by joining with the spouse in the deed of conveyance
 thereof, or by a separate instrument executed to spouse's grantee or anyone
 claiming title under the spouse, and acknowledging it in the manner
 prescribed by law.~~

SECTION 11. Arkansas Code § 18-12-404 is repealed.

~~18-12-404. Conveyance of interest of husband with mental illness and
 guardian appointed — Relinquishment of dower.~~

~~In all cases under § 20-47-103 whereunder a husband is duly adjudged to
 be insane and a guardian appointed and wherein the guardian makes a sale of
 the husband's interest in any of the real estate belonging to his ward, and
 the wife of the husband with mental illness is entitled to dower, it shall be
 sufficient to pass the dower interest of the wife, if she shall duly join in
 the petition of the guardian for the sale, and by separate instrument, duly
 acknowledged, convey all her interest in the lands.~~

SECTION 12. Arkansas Code § 18-12-503 is amended to read as follows:

18-12-503. Relinquishment of ~~dower, curtesy, and~~ homestead rights.

(a) By joining with his or her spouse in the execution of power of attorney, or by separate instrument, a married person may appoint an agent or attorney in fact and authorize him or her, for and in the person's name and stead, to relinquish all rights and possibility of ~~dower, curtesy, and a~~ homestead to a spouse's grantee, lessee, or mortgagee in any lands, oil, gas, mineral, or timber and to execute for the person ~~such~~ the relinquishment of ~~dower, curtesy, and a~~ homestead in ~~any~~ an oil and gas lease or assignment thereof, mineral deed, timber deed, royalty contract, mortgage, or contract for the sale of ~~any~~ land, timber, or minerals, or ~~any~~ an interest therein, owned by a spouse and conveyed by the spouse to the grantee.

(b)(1) The act of an agent or attorney in fact, when authorized by properly executed and recorded power of attorney, in so relinquishing ~~dower, curtesy, and a~~ homestead of a married person by joining in ~~any~~ a deed, lease, conveyance of minerals, royalty contract, or other contract for the sale of ~~any~~ lands or lease of ~~any~~ lands for developing its minerals, or ~~any~~ an interest therein, or the assignment of ~~any~~ an oil and gas lease or interest therein shall be as effectual and binding as if the instrument or instruments had been executed in the first instance by the married person.

(2) The relinquishment of homestead rights by the attorney in fact may be by separate instrument or by the attorney in fact joining with the spouse in the execution of one (1) or more conveyances.

SECTION 13. Arkansas Code § 18-60-401(a), concerning the division of real property, is amended to read as follows:

(a) Under this subchapter, any persons having any interest in and desiring a division of land held in joint tenancy, tenancy in common, ~~as assigned or unassigned dower, as assigned or unassigned curtesy,~~ or in coparceny, absolutely or subject to the life estate of another, or otherwise, or under an estate by the entirety when the owners have been divorced, except when the property involved is a homestead and occupied by either of the divorced persons, shall file in the circuit court a written petition.

SECTION 14. Arkansas Code § 18-60-403(a), concerning the division of real property, is amended to read as follows:

(a) ~~Every~~ A person ~~having~~ who has an interest as is specified in § 18-

60-401, whether in possession or otherwise, ~~and every person entitled to dower or curtesy in the premises,~~ if it has not been admeasured, shall be made a party to the petition.

SECTION 15. Arkansas Code § 26-35-301(a), concerning a person's tax liability for the lands, town, or city lots of which the person is seized for life, is amended to read as follows:

(a) Every person shall be liable to pay tax for the lands, town, or city lots of which he or she may stand seized for life, ~~by curtesy, or in dower,~~ or may have the care of as guardian, executor, or administrator, or as agent or attorney, having the funds of the principal in his or her hands.

SECTION 16. Arkansas Code § 28-1-102(a)(17), concerning the definition of "net estate", is amended to read as follows:

(17) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, ~~dower,~~ family allowances, and enforceable claims against the estate;

SECTION 17. Arkansas Code § 28-1-102(a), concerning definitions of terms used in the Probate Code, is amended to add a new subdivision to read as follows:

(21) "Surviving spouse marital share" means the interest in the decedent's estate of a surviving spouse.

SECTION 18. Arkansas Code § 28-2-215(b), concerning an interest in or relating to real property that is disclaimed and recorded, is amended to read as follows:

(b) If an interest in or relating to real property is disclaimed and recorded as provided in this section, the spouse of the person entering the disclaimer, if the spouse has consented to the disclaimer in writing, shall be automatically debarred from any ~~dower or curtesy~~ interest in the real estate to which the spouse would have been lawfully entitled except for the disclaimer.

SECTION 19. Arkansas Code § 28-9-206(b)(1), concerning the right of an heir being subject to the dower or curtesy of the intestate's surviving

spouse, is amended to read as follows:

(1) ~~The dower or curtesy of the intestate's surviving spouse~~
surviving spouse marital share;

SECTION 20. Arkansas Code Title 28, Chapter 11, Subchapter 1, is amended to read as follows:

28-11-101. Definition.

As used in this chapter:

(1) "endowed" "Endowed" means invested and shall apply both to dower and curtesy; and

(2) "Surviving spouse marital share" means the interest in the decedent's estate of a surviving spouse.

28-11-102. Descent of land upon death of spouse having ~~dower or curtesy interest~~ a surviving spouse marital share.

~~At the death of any~~ When a surviving spouse who has dower or curtesy a surviving spouse marital share for life in land, the property shall descend in accordance with the will of the first deceased spouse or, if the first spouse died intestate, then to descend in accordance with the law for the distribution of intestates' estates.

SECTION 21. Arkansas Code Title 28, Chapter 11, Subchapter 1, is amended to add an additional section to read as follows:

28-11-103. Surviving spouse marital share.

(a)(1) Upon the death of a spouse, the surviving spouse is endowed with a surviving spouse marital share.

(2) If the decedent spouse does not have children, the surviving spouse under subdivision (a)(1) of this section shall be endowed in the estate against collateral heirs with:

(A) Either:

(i) A fee simple interest in one-half (1/2) of the real property of the estate that was vested in the decedent spouse and that is not an ancestral estate; or

(ii) A life estate interest in one-half (1/2) of the real property of the estate that was vested in the decedent spouse and that is an ancestral estate; and

(B) An absolute interest in one-half (1/2) of the personal property of the estate.

(3) If the decedent spouse has children, the surviving spouse under subdivision (a)(1) of this section shall be endowed in the estate against collateral heirs and creditors with:

(A) A life estate interest in one-third (1/3) of the real property of the estate that was vested in the decedent spouse and that is not an ancestral estate; and

(B) A fee simple interest in one-third (1/3) of the personal property of the estate.

(b) A surviving spouse marital share:

(1) Only vests in a deceased spouse's estate; and

(2) Does not grant a spouse an interest in a living spouse's real or personal property.

SECTION 22. Arkansas Code §§ 28-11-201 and 28-11-202 are repealed.

~~28-11-201. Actions of spouse not to bar right to dower or curtesy.~~

~~(a) No act, deed, or conveyance executed or performed by one (1) spouse without the assent of the other spouse, evinced by acknowledgment in the manner required by law, shall pass the estate of dower or curtesy.~~

~~(b) No judgment, default, covin, or crime of one (1) spouse shall prejudice the right of the other spouse to curtesy or dower, or preclude either spouse from the recovery thereof, if otherwise entitled thereto.~~

~~28-11-202. Surviving spouse of alien entitled to dower or curtesy.~~

~~The surviving spouse of an alien shall be entitled to dower in the estate of the deceased spouse in the same manner as if the alien had been a native born citizen of this state.~~

SECTION 23. Arkansas Code § 28-11-203 is amended to read as follows:

28-11-203. Right of ~~dower and curtesy~~ surviving spouse marital share barred.

~~(a) The inchoate right of dower or curtesy of any spouse~~ A surviving spouse marital share in real property in ~~the State of Arkansas~~ this state is barred in all cases ~~when or where the other~~ the surviving spouse has been barred of title or of any interest in the property for seven (7) years or

more and also in real property or interest conveyed by the husband or wife but not signed by the other spouse when the conveyance is made or has been made for a period of seven (7) years or more.

(b)(1) This section shall affect the inchoate right of ~~dower and curtesy of a spouse~~ the surviving spouse marital share in real property in this state only where or when the husband or wife has been barred of title for seven (7) years or more, or when a conveyance by the husband or wife, without the signature of the other spouse, has been made for a period of seven (7) years or more.

(2) However, this section shall not apply unless the instrument of conveyance by the husband or wife has been of record for at least seven (7) years.

SECTION 24. Arkansas Code §§ 28-11-301 and 28-11-302 are repealed.

~~28-11-301. Land generally.~~

~~(a) If a person dies leaving a surviving spouse and a child or children, the surviving spouse shall be endowed of the third part of all the lands for life whereof his or her spouse was seized, of an estate of inheritance, at any time during the marriage, unless the endowment shall have been relinquished in legal form.~~

~~(b) A person shall have a dower or curtesy right in lands sold in the lifetime of his or her spouse without consent of the spouse in legal form against all creditors of the estate.~~

~~28-11-302. Lands exchanged — Election.~~

~~If a person seized of an estate of inheritance in lands exchanges it for other lands, the surviving spouse shall not have curtesy or dower of both, but shall make an election to curtesy or dower in the lands given or of those taken in exchange. If the election is not evinced by the commencement of proceedings to recover curtesy or dower of the lands given in exchange within one (1) year after the death of the deceased spouse, the surviving spouse shall be deemed to have elected to take the curtesy or dower of the lands received in exchange.~~

SECTION 25. Arkansas Code §§ 28-11-303 and 28-11-304 are amended to read as follows:

28-11-303. Mortgaged land.

(a) When a person ~~seized of an~~ who has a vested interest in an estate of inheritance in land ~~shall have executed~~ executes a mortgage of the estate before marriage, ~~the surviving spouse, nevertheless, shall be entitled to dower or curtesy out of the lands mortgaged as against every person except the mortgagee and those claiming under him or her~~ a surviving spouse marital share is subject to the mortgagee or those claiming under the mortgagee.

(b)(1) When a person ~~shall purchase~~ purchases lands during coverture and ~~shall mortgage~~ mortgages his or her estate in the lands to secure the payment of the purchase money, the surviving spouse shall not be entitled to ~~dower or curtesy~~ the surviving spouse marital share out of the lands as against the mortgagee or those claiming under ~~him or her~~ the mortgagee, although ~~he or she~~ the surviving spouse shall not have united in the mortgage. However, ~~he or she~~ the surviving spouse shall be entitled to ~~dower or curtesy~~ the surviving spouse marital share as against all other persons.

(2) ~~When, in such a case,~~ the mortgagee or those claiming under ~~him or her~~ the mortgagee, shall, after the death of the mortgagor, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of the decree of a circuit court and any surplus shall remain after the payment of the moneys due on the mortgage and the costs and charges of sale, then the surviving spouse shall be entitled to the interest or income of one-third (1/3) part of the surplus for life, as ~~his or her curtesy or dower~~ the surviving spouse marital share.

(c) A surviving spouse shall not be endowed of lands conveyed to the deceased spouse by way of mortgage unless the deceased spouse has acquired an absolute estate therein during the marriage.

28-11-304. Sale of timber, oil, gas, or mineral leases.

(a) If a person dies leaving a surviving spouse and a child or children, the surviving spouse shall be entitled, absolutely and in his or her own right, to one-third (1/3) of all money received from the sale of timber, oil and gas or other mineral leases, oil and gas or other mineral royalty or mineral sales, and to one-third (1/3) of the money derived from any and all royalty run to the credit of the royalty owners from any oil or gas well or to royalty accruing from the production of other mines or minerals in lands in which he or she has a ~~dower, curtesy,~~ surviving spouse

marital share or homestead interest, unless the surviving spouse ~~shall have~~ has relinquished same the surviving spouse marital share or homestead interest in legal form.

(b)(1) All persons, firms, partnerships, or corporations now engaged in the production of oil and gas or other minerals shall immediately withhold payments to the royalty interests until the rights of the surviving spouse are determined, as defined by this section, and shall thereafter pay the surviving spouse separately his or her one-third (1/3) part of all royalty accruing to the royalty interest unless he or she ~~shall have~~ has relinquished the royalty interest in legal form.

(2) In the sale of timber, the purchaser shall pay one-third (1/3) of the purchase price directly to the surviving spouse or his or her agent or attorney at the time of the execution or delivery of the deed.

SECTION 26. Arkansas Code § 28-11-305 is repealed.

~~28-11-305. Personalty.~~

~~If a person dies leaving a surviving spouse and a child or children, the surviving spouse shall be entitled, as part of dower or curtesy in his or her own right, to one-third (1/3) part of the personal estate whereof the deceased spouse died seized or possessed.~~

SECTION 27. Arkansas Code § 28-11-306 is amended to read as follows:

28-11-306. Bonds, notes, accounts, and evidences of debt.

If ~~any~~ a person ~~shall die~~ dies leaving a surviving spouse, the surviving spouse shall be allowed to take the ~~same dower or curtesy~~ surviving spouse marital share in the bonds, bills, notes, books, accounts, and evidences of debt as the surviving spouse would be entitled to take out of the personal property or cash on hand of the deceased spouse.

SECTION 28. Arkansas Code § 28-11-307 is repealed.

~~28-11-307. Dower or curtesy when no children.~~

~~(a)(1) If a person dies leaving a surviving spouse and no children, the surviving spouse shall be endowed in fee simple of one-half (1/2) of the real estate of which the deceased person died seized when the estate is a new acquisition and not an ancestral estate and of one-half (1/2) of the personal estate, absolutely, and in his or her own right, as against collateral heirs.~~

~~(2) However, as against creditors, the surviving spouse shall be invested with one third (1/3) of the real estate in fee simple if a new acquisition, and not ancestral, and of one third (1/3) of the personal property absolutely.~~

~~(b) If the real estate of the deceased person is an ancestral estate, the surviving spouse shall be endowed in a life estate of one half (1/2) of the estate as against collateral heirs and one third (1/3) as against creditors.~~

SECTION 29. Arkansas Code Title 28, Chapter 11, Subchapter 4, is repealed.

~~Subchapter 4—Provisions in Lieu of Dower or Curtesy~~

~~28-11-401.—Jointure or payment with spouse's assent.~~

~~(a) When an estate in land shall be conveyed to a person and his or her intended spouse, or to the intended spouse alone, or to any person in trust for the person and his or her intended spouse, or in trust for the spouse alone, for the purpose of erecting a jointure for the intended spouse, and with his or her assent, the jointure shall be a bar to any right or claim for dower or curtesy of the spouse in any land of the other spouse.~~

~~(b) The assent of the spouse to the jointure shall be evinced, if he or she is of full age, by his or her becoming a party to the conveyance by which it shall be settled or, if the spouse is an infant, by his or her joining with his or her father or guardian in the conveyance.~~

~~(c) Any pecuniary provision that shall be made for the benefit of an intended spouse, and in lieu of dower or curtesy, if assented to by the intended spouse, as provided in this section, shall be a bar to any right or claim of dower or curtesy of the spouse in all lands of his or her spouse.~~

~~28-11-402.—Jointure or payment—Election of spouse.~~

~~If, before the marriage, but without a spouse's assent, or if, after the marriage, land shall be given or assured for the jointure of a spouse or a pecuniary provision shall be made for the spouse in lieu of dower or curtesy, the spouse shall make an election whether the spouse will take the jointure or pecuniary provision, or whether the spouse will be endowed of the lands of the other spouse. However, the spouse shall not be entitled to both.~~

~~28-11-403.—Devise or bequest—Election of spouse.~~

~~If land is devised to a spouse, or a pecuniary or other provision is made for a spouse by will in lieu of dower or curtesy, the spouse shall make an election whether he or she will take the land so devised, or the provision so made, or whether he or she will be endowed of the lands of the other spouse.~~

~~28-11-404. Devise deemed in lieu of dower or curtesy.~~

~~If any spouse shall devise and bequeath to the other spouse any portion of his or her real estate of which he or she died seized, it shall be deemed and taken in lieu of dower or curtesy, as the case may be, out of the estate of the deceased spouse, unless the testator shall, in his or her will, declare otherwise.~~

~~28-11-405. Forfeiture.~~

~~Every jointure, devise, and pecuniary provision, in lieu of dower or curtesy, shall be forfeited by the spouse for whose benefit it shall be made, in the same cases in which the spouse would forfeit his or her dower or curtesy, as the case may be. Upon such a forfeiture, any estate so conveyed for jointure and every pecuniary provision so made shall immediately vest in the person, or his or her legal representatives, in whom they would have vested on the determination of the spouse's interest therein by the death of the spouse.~~

SECTION 30. Arkansas Code § 28-12-103 is amended to read as follows:

28-12-103. Disposition upon death.

(a) Upon the death of a married person:

(1) ~~one-half~~ One-half ($\frac{1}{2}$) of the property to which this chapter 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; and

(2) ~~One-half~~ ($\frac{1}{2}$) of ~~that~~ the property to which this chapter applies is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.

(b) With respect to property to which this chapter applies, the one-half ($\frac{1}{2}$) of the property ~~which~~ that is the property of the decedent is not subject to the surviving spouse's right to elect against the will ~~and no~~

~~estate of dower or curtesy exists in the property of the decedent.~~

SECTION 31. Arkansas Code § 28-39-101 is amended to read as follows:

28-39-101. Allowances to surviving spouse and minor children =

Definition.

(a)(1) In addition to their homestead rights and, dower, and curtesy rights surviving spouse marital share, the surviving spouse and minor children of a decedent, or either in the absence of the other, shall be entitled to have assigned to them out of the property owned by the decedent at the time of his or her death, personal property, tangible or intangible, to be selected prior to the sale thereof by the personal representative or after sale out of the proceeds thereof by the surviving spouse, if there is a surviving spouse or, otherwise, by the guardian of the minor children, when the personal property is of the value of four thousand dollars (\$4,000) as against distributees or the value of two thousand dollars (\$2,000) as against creditors.

(2)(A) The right to such an allowance shall:

(i) ~~vest~~ Vest in the surviving spouse upon the death of his or her spouse; and

(ii) ~~shall not terminate with his or her subsequent death or remarriage, and shall become~~ Become ~~his or her~~ the absolute property or the property of ~~his or her~~ the surviving spouse's estate upon death without restriction as to use, encumbrance, or disposition.

(B) The right to such an allowance shall not terminate with the subsequent death or remarriage of the surviving spouse.

(3) If any of the minor children are not children of the surviving spouse, the allowance shall vest in the surviving spouse to the extent of one-half ($\frac{1}{2}$) thereof, and the remainder shall vest in the decedent's minor children in equal shares.

(b) ~~Such furniture~~ Furniture, furnishings, appliances, implements, ~~and equipment, and other personal property that are~~ ~~as shall be~~ reasonably necessary for the family use and occupancy of ~~his or her~~ the decedent's dwelling shall be assigned to and vested in the surviving spouse, if any, provided ~~he or she~~ the surviving spouse was living with the decedent at the time of ~~his or her~~ the decedent's death.

(c) During a period of two (2) months after the death of the decedent,

the surviving spouse and minor children, or either in the absence of the other, shall be entitled to receive from the estate such reasonable amount, not exceeding in the aggregate one thousand dollars (\$1,000), as in the judgment of the court may be required for their sustenance, in accordance with the usual living standards of the family.

(d) The provisions of subsections (a)-(c) of this section shall be cumulative, and the provisions of subsections (b) and (c) of this section shall apply as against creditors and distributees.

(e) As used in this chapter, "surviving spouse marital share" means the interest in the decedent's estate of a surviving spouse.

SECTION 32. Arkansas Code § 28-39-102 is amended to read as follows:

28-39-102. Right of surviving spouse to live in house for two months – Sustenance.

A surviving spouse may reside in the chief residence of the deceased spouse for two (2) months after death, ~~whether or not dower or curtesy is assigned sooner,~~ without being liable for any rent. In the meantime, the surviving spouse shall have a reasonable sustenance out of the estate of the deceased spouse.

SECTION 33. Arkansas Code § 28-39-103 is amended to read as follows:

28-39-103. Extension of surviving spouse's quarantine.

~~If the dower or curtesy of any surviving spouse marital share interest of the surviving spouse is not assigned and laid off within two (2) months after the death of a deceased spouse, the surviving spouse shall remain in and possess the chief residence of the deceased spouse, together with the land thereto attached, free of all rent, until dower or curtesy shall be laid off and the surviving spouse marital share interest is assigned to the surviving spouse.~~

SECTION 34. Arkansas Code § 28-39-104 is amended to read as follows:

28-39-104. Allowance paid surviving spouse out of rent ~~until apportionment of curtesy or dower.~~

~~Until curtesy or dower~~ the surviving spouse marital share is apportioned, the court shall order such sums to be paid to the surviving spouse out of the rent of the real estate as shall be in proportion to his or

her interest in the real estate.

SECTION 35. Arkansas Code Title 28, Chapter 39, Subchapter 3, is amended to read as follows:

Subchapter 3 – Assignment of ~~Dower and Curtesy~~ Surviving Spouse Marital Share

28-39-301. Assignment by heir – Acceptance.

(a) It shall be the duty of the heir at law of ~~any~~ an estate of which the surviving spouse is entitled to ~~dower or curtesy to lay off and a surviving spouse marital share to assign the dower or curtesy surviving spouse marital share~~ as soon as practicable after the death of the deceased spouse. If the heirs to any estate are minors, they shall act, in the assignment of ~~dower or curtesy~~ the surviving spouse marital share, by their guardians.

(b) If the ~~dower or curtesy~~ surviving spouse marital share assigned by the heir at law is accepted by the surviving spouse, the heir at law shall make a statement of the assignment, specifying what lands have been assigned, and the acceptance of the surviving spouse shall be endorsed thereon.

(c) The statements and specification of ~~dower or curtesy~~ the surviving spouse marital share, and acceptance thereof, shall be proved or acknowledged by both parties and filed with and recorded by the probate clerk of the circuit court, which will then be a sufficient assignment of ~~dower or curtesy~~ the surviving spouse marital share and shall bar any further demand for ~~dower or curtesy~~ the surviving spouse marital share in the property specified in the statement.

28-39-302. Assignment by heir – Grant of severance rights required.

(a) The heirs in any estate cannot assign or secure an assignment of ~~dower or curtesy in~~ lands in this state unless and until the heirs of the estate comply with the surviving spouse marital share ~~the~~ provisions set out in subsections (b) and (c) of this section.

(b) Before assignment of ~~dower or curtesy~~ the surviving spouse marital share can be made by the heirs as against a surviving spouse, the heirs shall first execute an agreement, or the agreement of a guardian shall be approved by the court, by which agreement the surviving spouse is given permission to sell timber on lands set aside to the surviving spouse under selective

cutting practices as used or adopted by general practice in the area where the land is situated.

(c) In addition to rights granted in subsection (b) of this section, the heirs shall grant, by proper agreement, to the surviving spouse, the right to execute good, valid, and binding oil and gas leases covering lands set aside to the surviving spouse by which the surviving spouse shall receive the bonus money for any lease and receive the delay rentals so long as they are payable, or so long as the surviving spouse lives.

(d) Should there be production of oil or gas under any lease executed by the surviving spouse, he or she shall be entitled to receive the royalty payments so long as the surviving spouse lives.

28-39-303. Proceedings for allotment.

(a) If ~~dower or curtesy~~ the surviving spouse marital share is not assigned to the surviving spouse within one (1) year after the death of his or her spouse, or within three (3) months after demand is made ~~therefor~~, the surviving spouse may file a written petition in the circuit court. This petition shall include a description of the lands in which he or she claims ~~dower or curtesy~~ the surviving spouse marital share, the names of those having interest in the lands, and the amount of the interest briefly stated in ordinary language with a prayer for the allotment of ~~dower or curtesy~~ the surviving spouse marital share. All persons interested in the property shall be summoned to appear and answer the petition.

(b) ~~Upon the petition's by all interested in the property being filed~~ Upon the filing of the petition by all interested in the property, or upon a summons being served upon all who have an interest in the property, the circuit court may make an order for the allotment of ~~dower or curtesy~~ the surviving spouse marital share according to the rights of the parties by ~~commissioners~~ a commissioner appointed according to law.

(c) Parties interested may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure.

(d)(1) No verification shall be required to the petition or answer.

(2) Petitions for ~~dower or curtesy~~ the surviving spouse marital share shall be heard and determined by the court without the necessity of formal pleading upon the petition, answer, exhibits, and other testimony.

(e) If the petition is filed against ~~infants or persons of unsound~~

~~mind~~ a minor or an individual with a mental impairment, the guardian or ~~committee~~ commissioner may appear and defend for them and protect their interests, and, if the guardian or ~~committee~~ commissioner does not appear and defend, the court shall appoint some discreet person for that purpose.

(f) If any person summoned, as provided in this section, desires to contest the rights of the petitioner or the statements in the petition, he or she shall do so by a written answer, and the questions of the law and fact thereupon arising shall be tried and determined by the circuit court.

(g) The costs of the division and allotment shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong.

28-39-304. Assignment by commissioners.

(a) In all cases when ~~it~~ a court orders and decrees ~~dower or curtesy~~ the surviving spouse marital share to ~~any~~ a surviving spouse, the court shall appoint three (3) commissioners of the vicinity who shall proceed to the premises in question and, by survey and measurement, lay off and designate by proper metes and bounds the ~~dower or curtesy~~ surviving spouse marital share of the surviving spouse, in accordance with the decree of the court.

(b) In all assignments of ~~dower or curtesy~~ the surviving spouse marital share to ~~any~~ a surviving spouse, it shall be the duty of the commissioners, who may be appointed to lay off the ~~dower or curtesy~~ surviving spouse marital share, if the estate will permit such a division without essential injury, to lay off the ~~dower or curtesy~~ surviving spouse marital share in the lands of the deceased spouse so that the usual dwelling of the deceased spouse and family shall be included in the assignment of ~~dower or curtesy~~ the surviving spouse marital share to the surviving spouse.

(c) The commissioners appointed to lay off ~~dower or curtesy~~ the surviving spouse marital share in the lands of the deceased spouse, under existing laws, shall lay off the ~~dower or curtesy~~ the surviving spouse marital share on any part of the lands of the deceased at the request of the surviving spouse who is to be endowed, whether the lands shall include the usual dwelling of the deceased spouse and family or not, if it can be done without essential injury to the estate.

(d) The commissioners shall make a detailed report of their

proceedings to the next term of the court.

(e) Upon the report's being returned, the court may confirm or set the report aside or remand it to the commissioners for correction. If approved by the court, the report shall be entered of record and be conclusive on the parties.

28-39-305. Rental of indivisible property.

In cases in which lands or tenements will not permit division, the court, being satisfied of that fact or on the report of the commissioners to that effect, shall order that the tenements or lands be rented out and that one-third (1/3) part of the proceeds be paid to the surviving spouse in lieu of ~~dower or curtesy~~ the surviving spouse marital share in the lands or tenements.

28-39-306. Sale of property indivisible without prejudice.

In proceedings in the circuit court for the allotment of ~~dower or curtesy~~ the surviving spouse marital share, when it appears to the court that ~~dower or curtesy~~ the surviving spouse marital share cannot be allotted out of the real estate without great prejudice to the surviving spouse or heirs and that it will be most to the interest of the parties that the real estate may be sold, the court may decree a sale of the real estate free from the ~~dower or curtesy~~ surviving spouse marital share and decree that a portion of the proceeds may be paid to the surviving spouse in lieu of the ~~dower or curtesy~~ surviving spouse marital share or interest otherwise secured to the surviving spouse as to the court may seem equitable and just.

28-39-307. Rights of surviving spouse when ~~dower or curtesy~~ the surviving spouse marital share land alienated by heir.

If the heir alienates lands ~~of~~ in which a surviving spouse is entitled to ~~dower or curtesy~~ the surviving spouse marital share, he or she shall still be decreed ~~his curtesy or her dower~~ the surviving spouse marital share in the lands so alienated, in whosoever hands the land may be.

28-39-308. Surviving spouse's bequest of growing crop.

A surviving spouse may bequeath the crop in the ground of the land held by him or her in ~~curtesy or dower~~ the surviving spouse marital share at the

time of his or her death. If he or she dies intestate, the crop shall go to his or her administrator.

28-39-309. Recovery of ~~dower or curtesy~~ the surviving spouse marital share lands taken from surviving spouse – Damages.

If the land assigned and laid off to any surviving spouse is deforced from his or her possession, the surviving spouse shall have an action for the recovery of possession of the land, with double damages for the deforcement, or a surviving spouse may sue for the damages alone and recover double the actual damage sustained from time to time, until the surviving spouse is put in possession of the ~~dower or curtesy~~ surviving spouse marital share held by the deforcer or detainer.

SECTION 36. Arkansas Code § 28-39-401 is amended to read as follows:

28-39-401. Rights of surviving spouse – Limitations.

(a) When a married person dies testate as to all or any part of his or her estate, the surviving spouse shall have the right to take against the will if the surviving spouse has been married to the decedent continuously for a period in excess of one (1) year.

(b) In the event of such an election, the rights of the surviving spouse in the estate of the deceased spouse shall be limited to the following:

~~(1) The surviving spouse, if a woman, shall receive dower in the deceased husband's real estate and personal property as if he had died intestate. The dower shall be additional to her homestead rights and statutory allowances; and~~

~~(2) The surviving spouse, if a man, shall receive a curtesy interest in the real and personal property of the deceased spouse to the same extent as if she had died intestate. The curtesy interest shall be additional to his homestead rights and statutory allowances; and The surviving spouse marital share;~~

(2) The homestead interest;

(3) Other statutory allowances; and

~~(3)(4) If, after the assignment of ~~dower or curtesy~~, as the case may be, the surviving spouse marital share and the payment of all statutory allowances, taxes, and debts, and the satisfaction of all testamentary gifts~~

and devises, there ~~shall remain~~ remains some residue of the deceased spouse's estate which is not disposed of by will, then, if the deceased spouse ~~shall have~~ has been survived by no natural or adopted child, or the descendants of any natural or adopted child, and by no parent, brother, sister, grandparent, uncle, aunt, great-grandparent, great-uncle, great-aunt, or the lineal descendants of any of them, then the surviving spouse will take by inheritance the undisposed residue.

SECTION 37. Arkansas Code § 28-41-103(a), concerning when a court may enter an order vesting an entire estate in a surviving spouse and minor children, is amended to read as follows:

(a) Either with or without administration, if the court ~~shall determine~~ determines upon petition of an interested person that the personal property owned by a decedent at the time of his or her death does not exceed that to which the surviving spouse, if any, or minor children, if any, are by law entitled free of debt, as ~~dower or curtesy~~ the surviving spouse marital share and statutory allowances, then the court may enter an order vesting the entire estate in the surviving spouse and minor children, or the surviving spouse or minor children.

SECTION 38. Arkansas Code § 28-49-101(a), concerning the right of a personal representative to take possession of the personal property of the estate of a decedent, is amended to read as follows:

(a) A personal representative shall have the right to, and shall, take possession of all of the personal property of the estate of the decedent, subject to the ~~rights of dower and curtesy~~ surviving spouse marital share and statutory allowances of the surviving spouse or minor children, if any.

SECTION 39. Arkansas Code § 28-50-109(e)(5)(C), concerning the abandonment of property by a personal representative when ordered by the court, is amended to read as follows:

(C)(i) Order the personal representative to abandon the property as of no value to the estate, without prejudice to ~~dower~~ the surviving spouse marital share or homestead rights or to the rights of the distributees.

(ii) If the property is ordered sold free of the

lien, the proceeds shall be applied first to the payment of costs incident to the sale, and next to the payment of the secured claim, and the balance, if any, shall be paid to the personal representative.

SECTION 40. Arkansas Code § 28-65-306(a), concerning the enforcement of contracts entered into by an incapacitated person, is amended to read as follows:

(a) When, prior to his or her incapacity, an incapacitated person has entered into a valid contract for the purchase or sale of any interest in real or personal property, including the sale or relinquishment of a ~~dower~~ surviving spouse marital share or homestead interest, and the contract has not been performed prior to the inception of incapacitation, the court, upon petition of the guardian, the seller or purchaser, or other interested person, if it finds that performance of the contract would have been required on the part of the incapacitated person if the incapacitation had not intervened, may authorize the guardian to complete the performance of the contract and to execute or join in the execution of the deed of conveyance, bill of sale, or other appropriate instrument in the name and in behalf of the incapacitated person pursuant to the terms of the original contract.

/s/Ballinger