

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

State of Arkansas
94th General Assembly
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As Engrossed: H3/15/23

A Bill

HOUSE BILL 1409

By: Representative M. Brown

By: Senator C. Tucker

For An Act To Be Entitled

AN ACT TO ADOPT THE UNIFORM COMMUNITY PROPERTY
DISPOSITION AT DEATH ACT; TO REPEAL THE CURRENT LAW
CONCERNING THE DISPOSITION OF COMMUNITY PROPERTY AT
DEATH; AND FOR OTHER PURPOSES.

Subtitle

TO ADOPT THE UNIFORM COMMUNITY PROPERTY
DISPOSITION AT DEATH ACT.

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

SECTION 1. Arkansas Code Title 28 is amended to add an additional
chapter to read as follows:

28-15-101. Title.

This chapter may be cited as the Uniform Community Property Disposition
at Death Act.

28-15-102. Definitions.

In this chapter:

(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 county, or a political subdivision of a foreign country.

(4) "Partition" means voluntarily divide property to which this chapter 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.

28-15-103. Included and excluded property.

(a) Subject to subsection (b), this chapter 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 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 chapter 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 chapter 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 chapter.

28-15-104. Form of partition, reclassification, or waiver.

(a) Community-property spouses domiciled in this state may partition or

reclassify property to which this chapter 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 chapter 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.

28-15-105. 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.

28-15-106. Disposition of property at death.

(a) One-half of the property to which this chapter applies belongs to the surviving community-property spouse of a decedent and is not subject to disposition by the decedent at death.

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

(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.

(d) Except for the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse, 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 allowances under § 28-39-101 et seq., § 28-39-201 et seq., § 28-39-301 et seq., and § 28-39-401 et seq.

(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 chapter.

28-15-107. 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.

28-15-108. 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 chapter 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 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 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 chapter.

28-15-109. 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 chapter 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 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 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.

28-15-110. Protection of third person.

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

(1) transacts in good faith and for value:

(A) with 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

(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.

28-15-111. Principles of law and equity.

The principles of law and equity supplement this chapter except to the extent inconsistent with this chapter.

28-15-112. Uniformity of application and construction.

In applying and construing this chapter, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

28-15-113. Saving provision.

If a right with respect to property to which this chapter 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 chapter, that statute continues to apply to the right even if the statute has been repealed or superseded by this chapter.

28-15-114. Transitional provision.

Except as provided in § 28-15-113, this chapter applies to a judicial proceeding with respect to property to which this chapter applies commenced on or after the effective date of this chapter, regardless of the date of death of the decedent.

SECTION 2. Arkansas Code Title 28, Chapter 12, is repealed.

~~28-12-101. Application.~~

~~This chapter applies to the disposition at death of the following property acquired by a married person:~~

~~(1) All personal property, wherever situated:~~

~~(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~~

~~(iii) Traceable to that community property;~~

~~(2) 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.~~

~~28-12-102. Rebuttable presumptions.~~

~~In determining whether this chapter applies to specific property, the following rebuttable presumptions apply:~~

~~(1) 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 chapter applies; and~~

~~(2) 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 chapter applies.~~

~~28-12-103. Disposition upon death.~~

~~Upon the death of a married person, 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. One half ($\frac{1}{2}$) 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. With respect to property to which this chapter applies, the one half ($\frac{1}{2}$) of the property which 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.~~

~~28-12-104. Perfection of title of surviving spouse.~~

~~If the title to any property to which this chapter applies was held by the decedent at the time of death, 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. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this chapter applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.~~

~~28-12-105.—Perfection of title of personal representative, heir, or devisee.~~

~~If the title to any property to which this chapter applies is held 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 chapter applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.~~

~~28-12-106.—Purchaser for value or lender.~~

~~(a) If a surviving spouse has apparent title to property to which this chapter 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.~~

~~(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this chapter 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.~~

~~(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.~~

~~(d) 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.~~

~~28-12-107.—Creditor's rights.~~

~~This chapter does not affect rights of creditors with respect to property to which this chapter applies.~~

~~28-12-108.—Acts of married persons.~~

~~This chapter does not prevent married persons from severing or altering their interests in property to which this chapter applies.~~

~~28-12-109.—Limitations on testamentary disposition.~~

~~This chapter does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.~~

~~28-12-110.—Uniformity of application and construction.~~

~~This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.~~

~~28-12-111.—Short title.~~

~~This chapter may be cited as the “Uniform Disposition of Community Property Rights at Death Act.”~~

~~28-12-112.—Effective date.~~

~~This chapter shall become effective on October 1, 1981.~~

~~28-12-113.—Repealer.~~

~~All laws and parts of laws in conflict with this chapter are repealed.~~

/s/M. Brown