

1 **UNIFORM DISPOSITION OF COMMUNITY PROPERTY**

2 **RIGHTS AT DEATH ACT**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 **House Sponsor: V. Lowry Snow**

7

LONG TITLE

8 **General Description:**

9 This bill enacts the Uniform Disposition of Community Property Rights at Death Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ enacts the Uniform Disposition of Community Property Rights at Death Act;
- 13 ▶ defines property subject to the act;
- 14 ▶ provides rebuttable presumptions for the court in determining applicability; and
- 15 ▶ protects purchasers and lenders who might have a security interest in property

16 subject to the act.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 ENACTS:

23 **75-2b-101**, Utah Code Annotated 1953

24 **75-2b-102**, Utah Code Annotated 1953

25 **75-2b-103**, Utah Code Annotated 1953

26 **75-2b-104**, Utah Code Annotated 1953



- 28 **75-2b-105**, Utah Code Annotated 1953
- 29 **75-2b-106**, Utah Code Annotated 1953
- 30 **75-2b-107**, Utah Code Annotated 1953
- 31 **75-2b-108**, Utah Code Annotated 1953
- 32 **75-2b-109**, Utah Code Annotated 1953
- 33 **75-2b-110**, Utah Code Annotated 1953
- 34 **75-2b-111**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **75-2b-101** is enacted to read:

38 **CHAPTER 2b. UNIFORM DISPOSITION OF COMMUNITY**
 39 **PROPERTY RIGHTS AT DEATH ACT**

40 **75-2b-101. Title.**

41 This chapter is known as the "Uniform Disposition of Community Property Rights at
42 Death Act."

43 Section 2. Section **75-2b-102** is enacted to read:

44 **75-2b-102. Application.**

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

47 (1) all personal property, wherever situated:

48 (a) which was acquired as or became, and remained, community property under the
49 laws of another jurisdiction;

50 (b) all or the proportionate part of that property acquired with the rents, issues, or
51 income of, or the proceeds from, or in exchange for, that community property; or

52 (c) traceable to that community property; and

53 (2) all or the proportionate part of any real property situated in this state which was
54 acquired with the rents, issues or income of, the proceeds from, or in exchange for, property
55 acquired as or which became, and remained, community property under the laws of another
56 jurisdiction, or property traceable to that community property.

57 Section 3. Section **75-2b-103** is enacted to read:

58 **75-2b-103. Rebuttable presumptions.**

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

61 (1) property acquired during marriage by a spouse of that marriage while domiciled in
 62 a jurisdiction under whose laws property could then be acquired as community property, is
 63 presumed to have been acquired as or to have become, and remained, property to which this
 64 chapter applies; and

65 (2) real property situated in this state and personal property wherever situated acquired
 66 by a married person while domiciled in a jurisdiction under whose laws property could not then
 67 be acquired as community property, title to which was taken in a form which created rights of
 68 survivorship, is presumed not to be property to which this chapter applies.

69 Section 4. Section **75-2b-104** is enacted to read:

70 **75-2b-104. Disposition upon death.**

71 Upon the death of a married person, 1/2 of the property to which this chapter applies is
 72 the property of the surviving spouse and is not subject to testamentary disposition by the
 73 decedent or distribution under the laws of succession of this state. One-half of that property is
 74 the property of the decedent and is subject to testamentary disposition or distribution under the
 75 laws of succession of this state. ~~It~~ → **[With respect to property to which this chapter applies, the 1/2**
 76 **of the property which is the property of the decedent is not subject to the surviving spouse's**
 77 **right to elect against the will and no estate of dower or curtesy exists in the property of the**
 78 **decedent.] Property to which this chapter applies may not reduce, be subject to, or be used in**
 78a **calculating, the surviving spouse's elective share under this title. ←It**

79 Section 5. Section **75-2b-105** is enacted to read:

80 **75-2b-105. Perfection of title of surviving spouse.**

81 If the title to any property to which this chapter applies was held by the decedent at the
 82 time of death, title of the surviving spouse may be perfected by an order of the court or by
 83 execution of an instrument by the personal representative or the heirs or devisees of the
 84 decedent with the approval of the court. Any action to perfect title shall be brought by the
 85 surviving spouse or the surviving spouse's successors in interest within four months after
 86 written notification is received from the decedent's personal representative, or the successor
 87 trustee of the decedent's revocable trust, informing the surviving spouse of the limitations
 88 period. Neither the personal representative nor the court in which the decedent's estate is being
 89 administered has a duty to discover or attempt to discover whether property held by the

90 decendent is property to which this chapter applies, unless a written demand is made by the
91 surviving spouse or the spouse's successor in interest.

92 Section 6. Section **75-2b-106** is enacted to read:

93 **75-2b-106. Perfection of title of personal representative, heir or devisee.**

94 If the title to any property to which this chapter applies is held by the surviving spouse
95 at the time of the decedent's death, the personal representative or an heir or devisee of the
96 decedent may institute an action to perfect title to the property. The personal representative has
97 no fiduciary duty to discover or attempt to discover whether any property held by the surviving
98 spouse is property to which this chapter applies, unless a written demand is made by an heir,
99 devisee, or creditor of the decedent.

100 Section 7. Section **75-2b-107** is enacted to read:

101 **75-2b-107. Purchaser for value or lender.**

102 (1) If a surviving spouse has apparent title to property to which this chapter applies, a
103 purchaser for value or a lender taking a security interest in the property, takes the purchaser or
104 lender's interest in the property free of any rights of the personal representative or an heir or
105 devisee of the decedent.

106 (2) If a personal representative or an heir or devisee of the decedent has apparent title
107 to property to which this chapter applies, a purchaser for value or a lender taking a security
108 interest in the property takes the purchaser or lender's interest in the property free of any rights
109 of the surviving spouse.

110 (3) A purchaser for value or a lender need not inquire whether a vendor or borrower
111 acted properly.

112 (4) The proceeds of a sale or creation of a security interest shall be treated in the same
113 manner as the property transferred to the purchaser for value or a lender.

114 Section 8. Section **75-2b-108** is enacted to read:

115 **75-2b-108. Creditor's rights.**

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

118 Section 9. Section **75-2b-109** is enacted to read:

119 **75-2b-109. Acts of married persons.**

120 This chapter does not prevent married persons from severing or altering their interests

121 in property to which this chapter applies.

122 Section 10. Section **75-2b-110** is enacted to read:

123 **75-2b-110. Limitations on testamentary disposition.**

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

126 Section 11. Section **75-2b-111** is enacted to read:

127 **75-2b-111. Uniformity of application and construction.**

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

Legislative Review Note
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Office of Legislative Research and General Counsel