



GENERAL STATUTES COMMISSION

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: SB 110 (GSC Unif. Community Prop. Disp. at Death Act)
Date: February 22, 2023

General Comments

This bill enacts the Uniform Community Property Disposition at Death Act, which was recently promulgated by the Uniform Law Commission and is recommended by the General Statutes Commission. The Act revises and updates the Uniform Disposition of Community Property Rights at Death Act, which North Carolina enacted in 1981. Like current law, this Act preserves the community property character of property acquired by spouses while domiciled in a community property jurisdiction, such as Texas, California, or Wisconsin after they move to North Carolina; upon the death of one of the spouses, one half of the community property belongs to the surviving spouse and the other half is subject to disposition by the deceased spouse. This Act, however, is broader than current law and preserves other rights that the spouses would have had in the community property jurisdiction, such as a right to reimbursement or a right associated with a monetary claim. This Act also accounts for nonprobate transfers, a practice that has increased in use over the past few decades. Colorado, Nebraska, and Arkansas have introduced bills on the Act this year.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the North Carolina Bar Association, Administrative Office of the Courts, Conference of Clerks of Superior Court, UNC School of Government, Department of Justice, North Carolina Advocates for Justice, North Carolina Justice Center, and other groups and individuals. The Estate Planning & Fiduciary Law Section of the North Carolina Bar Association participated in the drafting of this bill. There is no known opposition to this bill.

Specific Comments

Section 1 repeals the predecessor Act, the Uniform Disposition of Community Property Rights at Death Act.

Section 2 enacts the Uniform Community Property Disposition at Death Act as a new Article:

G.S. 30-41 ("Title") provides that the new Article may be cited as the Uniform Community Property Disposition at Death Act.

G.S. 30-42 ("Definitions") provides definitions for the Article and defines "community-property spouse" as an individual in a relationship in which community property could be acquired and that lasted until one of the individuals in the relationship died. Current law does not include a definitions section.

G.S. 30-43 ("Included and excluded property"), similar to current law, provides that the Article applies to personal property that was community property under the law of another jurisdiction and to real property in this State that is traceable to community property under the law of another jurisdiction. Under a new provision, the Article also applies to community property created by transfer of property to a trust under the law of another jurisdiction. Like current law, the Article does not apply to property that is not community property due to an agreement or joint action by the spouses.

G.S. 30-44 ("Form of partition, reclassification, or waiver") provides that spouses may partition or reclassify community property. Under a new provision, the Article also requires that the partition or reclassification of community property be in a record signed by both spouses. The General Statutes Commission added that, unless the spouses agree otherwise, partition of community property is presumed to result in each spouse owning a one-half separate interest in the property. This section also allows a spouse to waive a right granted by the Article.

G.S. 30-45 ("Community property presumption"), like current law, presumes that this Article applies to all property acquired by a spouse when domiciled in a jurisdiction where property acquired by a spouse was presumed to be community property under the law of that jurisdiction. This section does not carry forward the presumption in current law that real property in this State and personal property acquired by a spouse while domiciled in a non-community property jurisdiction is not community property.

G.S. 30-46 ("Disposition of property at death"), like current law, provides that, upon the death of one of the spouses, one half of the community property belongs to the surviving spouse and the other half is subject to disposition by the deceased spouse. Like in current law, the one half belonging to the decedent is not subject to the surviving spouse's elective share right or elective life estate right. A new provision adds that this section (i) does not apply to property transferred by nonprobate transfer, (ii) does not limit certain statutory and constitutional rights of the surviving spouse, and (iii) does not prevent a court from requiring that a surviving spouse elect between asserting rights under the Article and receiving property through a different avenue, such as a will.

G.S. 30-47 ("Other remedies available at death") is a new provision that adds that a surviving spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a right based on an act by either spouse during the marriage or an act of the decedent that takes effect at the decedent's death, such as a right to reimbursement or a right associated with a monetary claim.

G.S. 30-48 ("Right of surviving community-property spouse") is a new provision that adds that a surviving spouse may assert a right in or to property by either:

- Commencing a civil action in superior court within one year after the decedent's death.
- Filing a petition with the clerk of superior court or commencing a civil action in superior court within six months after the issuance of letters testamentary or letters of administration in connection with the decedent's testate or intestate proceeding.

To assert a different right under the Article, such as a right of reimbursement, the surviving spouse may either:

- If a personal representative of the decedent's estate is not appointed, commence a civil action in superior court within one year of the decedent's death.
- Satisfy the procedural requirements of the second bullet point above.

Absent a timely demand from the surviving spouse, the personal representative may distribute assets without personal liability.

G.S. 30-49 ("Right of heir, devisee, or nonprobate transferee") is a new provision that applies the same procedural requirements contained in the previous section to an heir, devisee, or nonprobate transferee asserting a right under this Article.

G.S. 30-50 ("Protection of third person"), similar to current law, provides that a third party transacting with a spouse or personal representative, heir, devisee, or nonprobate transferee of the decedent is not liable under the Article if the third party does so in good faith and for value and does not know or have reason to know that the other party lacks authority. The General Statutes Commission added that a lien creditor of or purchaser for value of real property is not liable under the Article unless, before the lien was acquired or the purchase was made, the spouses gave notice in a registered instrument of their intention for this Article to apply to the property.

G.S. 30-51 ("Principles of law and equity") provides that the principles of law and equity supplement the Article except to the extent inconsistent with the Article.

G.S. 30-52 ("Uniformity of application and construction") provides that in applying and construing the Article, a court shall consider the promotion of uniformity of the law among states that enact the Uniform Act.

Section 3 makes a conforming change to provide that a proceeding under the Uniform Act is an estate proceeding. It also replaces legalese with plain English and makes a word plural for greater consistency.

Section 4 provides that, if a court holds a provision of this act to be invalid, the provisions of this act are severable.

Section 5 authorizes the Revisor of Statutes to print drafters comments.

Section 6 provides that if a property right is acquired, extinguished, or barred on the expiration of a limitation period that began to run under the current statute, the current statute continues to apply to that right.

Section 7 provides that this act becomes effective January 1, 2024, and except as otherwise provided in Section 6, applies to a judicial proceeding commenced on or after that date, regardless of the date of the decedent's death.