

**"CHAPTER 510  
COMMUNITY PROPERTY**

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State

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### **Note**

By virtue of L 1945, c 273, the community property system was in effect in the State from 1945 to 1949. The system was abolished by L 1949, c 242. Community property established during 1945 to 1949 is governed by this chapter.

L 1949, c 242, §1, repealed §§1-4 of L 1945, c 273, but provided that established interests in property should not be divested. The repealed sections defined separate property and community property. Upheld as constitutional in classifying as community property the income from separate property held before marriage. 41 H. 578.

See L 1949, c 242, §2, providing that income of community property held when community dissolved by that act shall be held as community property.

Effect of repeal, see 198 F. Supp. 78, 87, aff'd 304 F.2d 149.

Payment of federal tax constituting a lien when community property law went into effect, held authorized use of community income while community estate continued. 41 H. 578, 588.

Prior to 1949, §510-1 provided that property acquired after the commencement of the community presumed to be community property. Applied in 41 H. 578, 590; 246 F.2d 204, 206; see 277 F.2d 806.

### **"PART I. COMMUNITY PROPERTY ACQUIRED OR SITUATED IN THE STATE**

### **Note**

Part heading added by L 1973, c 132, §3.

**§510-1 Renumbered as §572-21.** L 1984, c 79, §1.

" **§510-2 Transfers--husband to wife and wife to husband.**  
The husband may give, grant, bargain, sell, or convey directly to his wife, and the wife may give, grant, bargain, sell, or convey directly to her husband, his or her community right, title, interest, or estate in all or any community property, real or personal. Every such transfer made from the husband to the wife or from the wife to the husband operates to divest the property therein described of every claim or demand as community property, and vests the same in the transferee as the separate property of the transferee; provided that no such transfer affects any equity in favor of creditors at the time of the transfer. [L 1945, c 273, pt of §1; RL 1955, §326-2; HRS §510-2]

" **§510-3 Control of husband's separate property.** The husband has the same right to manage, control, dispose of, and otherwise deal with his separate property as would be applicable with respect to his property generally were it not for the enactment of this chapter. [L 1945, c 273, pt of §1; RL 1955, §326-3; HRS §510-3]

#### **Cross References**

Spouse's separate property, see §572-25.

" **§510-4 Control of wife's separate property.** The wife has the same right to manage, control, dispose of, and otherwise deal with her separate property as would be applicable with respect to her property generally were it not for the enactment of this chapter. [L 1945, c 273, pt of §1; RL 1955, §326-4; HRS §510-4]

#### **Cross References**

Spouse's separate property, see §572-25.

" **§510-5 Control of community property.** (a) Either spouse, as agent for the owners of the community property, has the same right as though it were that spouse's separate property to receive, manage, control, dispose of, and otherwise deal with all community property. The rights given to either spouse to manage, control, dispose of, and otherwise deal with community property, as provided in this section, shall be exercised in good faith for the benefit of the owners of the community property and their legal representatives, but no person shall be held liable or accountable with respect to any conveyance, transfer, or other disposition of, or with respect to the management of, control of, or dealing with such community property, except the spouse by whom the same has been so conveyed, transferred, or otherwise disposed of, managed, controlled, or otherwise dealt with. In case of any violation by either spouse of any duty owed to the other or their legal representatives, the person aggrieved and the legal representatives of such person are entitled to appropriate relief.

(b) Nothing in subsection (a) shall be construed to alter or modify or to otherwise affect the legal effect of any act or transaction which occurred prior to May 9, 1984. [L 1945, c 273, pt of §1; am L 1949, c 242, §3(b); RL 1955, §326-5; HRS §510-5; am L 1984, c 100, §1]

## Revision Note

"May 9, 1984" substituted for "the effective date of this subsection".

## Case Notes

Defense applicable against husband in an action for protection of community property is similarly applicable against the wife. 44 H. 297, 353 P.2d 820.

" **§510-6 Incapacity of spouse.** (a) Whenever the husband or the wife is non compos mentis, or has been convicted of a felony and imprisoned for a period of more than one year, or whenever the husband or the wife is an habitual drunkard, or for any other reason is incapacitated to receive, manage, control, dispose of, or otherwise deal with community property, the other spouse may commence an action in the circuit court of the circuit in which the plaintiff resides or of the circuit wherein any of the community property is located or situated, stating the name of the incapacitated spouse, a description or summary of all community property, both real and personal, as far as known, and the facts which render the other spouse incapacitated to receive, manage, control, dispose of, or otherwise deal with community property, and praying that the spouse filing the complaint be substituted for the incapacitated spouse, as to the right to receive, manage, control, dispose of, and otherwise deal with all or any designated portion or portions of the community property, then owned and thereafter to be acquired, which would otherwise be under the management and control of the incapacitated spouse.

(b) In all such cases service of process shall be had as in other civil actions; provided that where it is alleged that the other spouse is non compos mentis a guardian ad litem shall be appointed having such powers as in other civil actions.

(c) Upon the hearing, the court shall enter judgment either dismissing the complaint or adjudging the spouse filing the same to have such power of receiving, managing, controlling, and disposing of and dealing with all or any designated portion or portions of community property, then owned and thereafter to be acquired, which would otherwise be under the management and control of the incapacitated spouse, and containing such other provisions, all as to the court may appear to be just, proper, equitable, and to the best interests of the community.

(d) In case of any change in conditions after the entry of judgment pursuant to this section, either spouse may by motion showing the change in conditions, apply to the same court for

the modification or rescission of the judgment. In such case notice to the other spouse shall be given in such manner as the court may direct. Upon the hearing of the motion the court shall either deny the motion or modify or rescind the prior judgment, as to the court may appear to be just, proper, equitable, and to the best interests of the community. [L 1945, c 273, pt of §1; RL 1955, §326-6; HRS §510-6; am L 1972, c 107, §1(a)]

" **§510-7 Representation in legal proceedings.** The person in whose name any community property stands is a necessary party in all actions and other legal proceedings brought affecting the community property, or arising out of the management of, control of, or dealing with such property. Any other person having or claiming an interest in the property may be but need not be joined as a party; provided that no judgment, decree, or other order shall be enforced against any person except to the extent of the person's interest in the community property, or against the separate property of the person, unless the person is a party. This section is subject to any judgment which may be entered pursuant to section 510-6. [L 1945, c 273, pt of §1; am L 1949, c 242, §3(c); RL 1955, §326-7; HRS §510-7; am L 1972, c 107, §1(b); gen ch 1985]

### Rules of Court

Joinder of parties, see HRCF rules 19, 20.

" **§510-8 Property subject to obligations.** (a) The separate property of the wife is liable for debts contracted at any time by the wife and liabilities of the wife arising at any time out of tort or otherwise, including any such debts or liabilities by reason of any transaction entered into or action taken by the wife relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property, but is not liable for debts or liabilities of the husband.

(b) The separate property of the husband is liable for debts contracted at any time by the husband and liabilities of the husband arising at any time out of tort or otherwise, including any such debts or liabilities by reason of any transaction entered into or action taken by the husband relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property, but is not liable for debts or liabilities of the wife.

(c) The community property is liable for debts contracted by the husband or by the wife or by both, and for liabilities of

the husband or the wife or both arising out of tort or otherwise, in any transaction entered into or action taken by the husband or the wife or both relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property. With respect to the liability of community property for such debts and liabilities, no distinction shall be made between community property subject to the management and control of the wife and community property subject to the management and control of the husband.

(d) As between the community property and the separate property of the wife or of the husband the community property is liable for the debts and liabilities referred to in subsection (c).

(e) The earnings of the wife and the rents, issues, incomes, and other profits of the separate property of the wife are liable for debts contracted by the wife prior to the inception of the community and the liabilities of the wife arising prior to the inception of the community out of tort or otherwise.

(f) The earnings of the husband and the rents, issues, incomes, and other profits of the separate property of the husband are liable for debts contracted by the husband prior to the inception of the community and the liabilities of the husband arising prior to the inception of the community out of tort or otherwise.

(g) As between the community property and the separate property of the wife or of the husband, the separate property is liable for the debts and liabilities referred to in subsections (e) and (f) of this section. For the purposes of subsections (e) and (f) the inception of the community is the marriage of the husband and wife or June 1, 1945, whichever is the later.

(h) Nothing in this section shall affect or modify the obligation of both spouses to support one another and their family and to discharge all debts contracted by the other for necessities for themselves and their family during marriage; provided that if and whenever there is community property available for such purpose both spouses are entitled to resort to the community property rather than to their respective separate property.

(i) Nothing in this section shall prevent the wife or the husband from mortgaging or pledging her or his separate property or prevent the wife and the husband from joining in a mortgage or pledge of community property as security for any indebtedness whether of the wife or of the husband or both. [L 1945, c 273, pt of §1; RL 1955, §326-8; HRS §510-8; am L 1984, c 100, §2]

## Case Notes

Subsection (h) permits husband to discharge obligation to support wife by resort to community property rather than separate property but there is no presumption as to what choice has been made. 246 F.2d 204, 206; see 277 F.2d 806.

Under subsection (c) community property may be applied by Internal Revenue Service to satisfaction of husband's income tax liability. 277 F.2d 806.

This section relates to funds that may be reached by creditors of the community and separate creditors; no bearing upon division of community property between the parties. 41 H. 578, 589.

" **§510-9 Divorce; division of property.** In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as the court, from the facts in the case, deems just and equitable, and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below. [L 1945, c 273, pt of §1; RL 1955, §326-9; HRS §510-9]

## Case Notes

See 41 H. 578.

" **§510-10 Death of husband or wife.** (a) Upon the death of the husband or wife one-half of the community property shall continue to belong to the survivor, subject to the payment of claims for which the community property is liable and subject to administration expenses, and the other half shall pass in accordance with testamentary disposition by the decedent or in the absence of testamentary disposition then to the heirs of the decedent, subject to the payment of claims for which the community property is liable and subject to administration expenses. The survivor and the successor or successors of the decedent shall hold their interests as tenants in common, except as may otherwise be provided in the will of the decedent with respect to the interests of the beneficiaries thereof as among themselves.

(b) Upon the death of the husband or wife, the personal representative of the decedent, shall administer upon the whole of the community property, including the interests therein of the survivor and of the decedent, as well as upon the separate property of the decedent. The personal representative shall have the same rights and powers and duties with respect to the

administration and disposition of community property, real and personal, as the personal representative has with respect to the separate property of the decedent. Chapter 560, with respect to the administration and disposition of property, real and personal, included in estates is applicable with respect to community property as well as with respect to the separate property of the decedent. The court having jurisdiction of the estate shall determine whether and to what extent property constitutes community property or separate property of the decedent or separate property of the survivor and shall also determine whether and to what extent claims are payable out of community property or out of the separate property of the decedent. Claims and administration expenses paid out of community property shall be charged equally against the half of the community property which belongs to the survivor and the half of the community property which passes in accordance with the testamentary disposition of the decedent or to the heirs of the decedent; provided that no estate, inheritance, succession, or similar taxes payable by reason of the transfer upon the death of the decedent of the decedent's interest in the community property shall be charged against the half of the community property which belongs to the survivor.

(c) The whole of the community property which at the time of the death of the husband or the wife is held by or is standing in the name of the survivor, and all substitutions therefor, shall continue to be subject to the same powers of the survivor to receive, manage, control, dispose of, and otherwise deal with the same as such powers subsisted immediately prior to such death, so long as the same continues to be held by or stand in the name of the survivor, and no person shall be held liable or accountable with respect to any conveyance, transfer, or other disposition thereof who would not have been so liable or accountable had the deceased husband or wife continued to survive. The survivor shall hold such property until it has been reduced to possession and control by the personal representative of the decedent as provided in this section, and shall act in respect thereto in a fiduciary capacity for the estate of the decedent and the successor or successors of the decedent. The personal representative shall not be held liable or accountable for any loss or damage to such property while the same is held by the survivor. [L 1945, c 273, pt of §1; am L 1949, c 242, §3(d); RL 1955, §326-10; HRS §510-10; am L 1972, c 107, §1(c); am L 1976, c 200, pt of §1; am L 1979, c 105, §48; gen ch 1985]

" **§510-11 Location of property affected.** This part applies to personal property wherever situated acquired by a husband or



wife while domiciled in the State and applies to the real property situated in the State of a husband or wife while domiciled therein. This part does not apply to any property wherever situated acquired by a husband or wife while not domiciled in the State. [L 1945, c 273, pt of §1; RL 1955, §326-11; HRS §510-11; am L 1973, c 132, §2]

**"PART II. UNIFORM DISPOSITION OF COMMUNITY  
PROPERTY RIGHTS AT DEATH ACT**

**§510-21 Application.** This part applies to the disposition at death of the following property acquired by a married person:

- (1) All personal property, wherever situated:
  - (A) Which was acquired as or became, and remained, community property under the laws of another jurisdiction;
  - (B) 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
  - (C) 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. [L 1973, c 132, pt of §1]

" **§510-22 Rebuttable presumptions.** In determining whether this part 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 part 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 part applies. [L 1973, c 132, pt of §1]

" **§510-23 Disposition upon death.** Upon death of a married person, one-half of the property to which this part 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. With respect to property to which this part applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will, is not included in the decedent's net estate which is subject to the elective share of the surviving spouse, and no estate of dower or curtesy exists in the property of the decedent. [L 1973, c 132, pt of §1; am L 1976, c 200, pt of §1]

" **§510-24 Perfection of title of surviving spouse.** If the title to any property to which this part applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the circuit court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the circuit 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 part applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest. [L 1973, c 132, pt of §1]

" **§510-25 Perfection of title of personal representative, heirs, or devisee.** If title to any property to which this part 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 part applies, unless a written demand is made by an heir, devisee, or creditor of the decedent. [L 1973, c 132, pt of §1]

" **§510-26 Purchaser for value or lender.** (a) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser's or lender's 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 part

applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser's or lender's interest in the property free of any rights of the surviving spouse.

A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly with respect to property to which this part applies.

(c) The proceeds of a sale of or creation of a security interest in property to which this part applies shall be treated in the same manner as the property transferred to the purchaser for value or a lender. [L 1973, c 132, pt of §1; gen ch 1985; am L 1987, c 283, §47]

" **§510-27 Creditor's rights.** This part does not affect rights of creditors with respect to property to which this part applies. [L 1973, c 132, pt of §1]

" **§510-28 Acts of married persons.** This part does not prevent married persons from severing or altering their interests in property to which this part applies. [L 1973, c 132, pt of §1]

" **§510-29 Limitations on testamentary disposition.** This part 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. [L 1973, c 132, pt of §1]

" **§510-30 Short title.** This part may be cited as the Hawaii Uniform Disposition of Community Property at Death Act. [L 1973, c 132, pt of §1]