

A Bill for an Act Relating to the Uniform Disposition of Community Property Rights at Death Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 510, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

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

**Sec. 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 incomes 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.

**Sec. 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.

**Sec. 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 the 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 and no estate of dower or curtesy exists in the property of the decedent.

**Sec. 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.

**Sec. 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.

**Sec. 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 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 part 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.

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.

(d) 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.

**Sec. 510-27 Creditor's rights.** This part does not affect rights of creditors with respect to property to which this part applies.

**Sec. 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.

**Sec. 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.

**Sec. 510-30 Short title.** This part may be cited as the Hawaii Uniform Disposition of Community Property at Death Act."

SECTION 2. Section 510-11, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 510-11 Location of property affected.** This part applies to personal

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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.”

SECTION 3. Chapter 510, Hawaii Revised Statutes, is amended by designating sections 510-1 to 510-11 as part I of Chapter 510 to be titled “COMMUNITY PROPERTY ACQUIRED OR SITUATED IN THE STATE.”

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 22, 1973.)

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\*Edited accordingly.