

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB907

Hearing Date: Wednesday February 23, 2022
Committee On: Judiciary
Introducer: DeBoer
One Liner: Adopt the Uniform Community Property Disposition at Death Act and change provisions relating to court jurisdiction

Roll Call Vote - Final Committee Action:

Advanced to General File

Vote Results:

Aye: 8 Senators Brandt, DeBoer, Geist, Lathrop, McKinney, Morfeld, Pansing
Brooks, Slama

Nay:

Absent:

Present Not Voting:

Oral Testimony:

Proponents:

Senator Wendy DeBoer
Steve Willborn
William Lindsay Jr.

Representing:

Introducer
Uniform Law Commission
Nebraska State Bar Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 907 seeks to adopt the Uniform Community Property at Death Act which provides guidelines and processes to address situations where a spouse acquired community property while domiciled in a community property state but either died in the state or had property in the state at the time of death while domiciled in another location. The bill provides for a variety of situations involving the spouse, heirs, and devisees. The bill provides timeframes, venue, and jurisdiction details on resolving claims on community property held by the decedent.

Section by section

Section 1 Title Uniform Community Property at Death Act.

Section 2 Definitions

Community property spouse: In a marriage or relationship where community property can be acquired and is present at death

Electronic: technology having electrical, digital, magnetic, wireless, optical capabilities

Jurisdiction: United States, states, foreign countries

Partition: voluntarily divide property
Person: individual, estate, business , corporations, government entities and others
Personal representative: executor, administrator and others
Property: anything subject to ownership, tangible or intangible
Reclassify: changing the treatment of community property to separate ownership
Record: tangible medium that is retrievable
Sign: execute or attach with a record with intent to authenticate
State: state of the US and its territories and includes recognized tribes

Section 3 Act applies when decedent domiciled in the state and property was became community property when decedents and spouse were domiciled in a community property state. Also includes property transferred to a trust if characterized as community property by terms of the trust. Does not include property partitioned or reclassified.

Section 4 Permits spouses to partition or reclassify community property but must be in a record signed by both. Allows a spouse to waive a right granted by the Act.

Section 5 Property acquired by spouse domiciled in a community property state is presumed to be community property but can be rebutted.

Section 6 When Act applies one half of community property belongs to surviving spouse and remainder subject disposition by decedent. Generally does not apply to property transferred under right of survivorship, revocable trust or other nonprobate transfer. If decedent transfers community property to third party but transfers other property to surviving spouse, allows court to require surviving spouse to either retain property or exercise rights uner the Act.

Section 7 Court may apply equitable principles and consideration of community property law of state where decedent or surviving spouse were domiciled at property acquisition when crafting a remedy.

Section 8 Establishes timeframes for a surviving spouse asserting claim under the Act. For property claims, within one year after death for claim against heir, devisee or nonprobate transferee in possession or property and within six months after appointment of personal representative to send demand record. For other claims, if a personal representative appointed, a demand record within six months. If not, must file an action within one year after death.

Section 9 Establishes timeframes for an heir devisee, or transferee asserting claim under the Act. For property claims, within one year after death for claim against surviving spouse in possession or property and within six months after appointment of personal representative to send demand record. For other claims, if a personal representative appointed, a demand record within six months. If not, must file an action within one year after death.

Section 10 A person is not liable under the Act with respect to property covered by the Act, if a transaction is conducted in good faith and for value with a spouse or if after death with a spouse, personal representative, heir or devisee and does not know or have reason to now that the other party is exceeding or improperly exercising the party's authority. Good faith does not require the person to inquire into the propriety of the transaction.

Section 11 Provides that law and equity principles supplement the Act.

Section 12 Provides that the court shall consider uniformity among jurisdictions when applying or construing the Act.

Section 13 Provides a transition where if a right to property is acquired, extinguished or barred prior to the effective date of the Act, the previous statute continues to apply even if repealed or superceded.

Section 14 The act applies to proceedings commenced after the effective date of the Act, regardless of the date of death.

Section 15 Venue is in the county where the decedent was domiciled or where the property located if not domiciled in the state.

Section 16 Amends section 24-517, regarding judicial jurisdiction, by adding a new subsection (19) providing concurrent original jurisdiction with the District court for matters under the Act.

Section 17 Severability clause

Section 18 Repeals original section.

Steve Lathrop, Chairperson