

HOUSE BILL NO. 492
INTRODUCED BY SPAETH

IN THE HOUSE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 30, 1989	FIRST READING.
FEBRUARY 10, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 11, 1989	PRINTING REPORT.
FEBRUARY 13, 1989	SECOND READING, DO PASS.
FEBRUARY 14, 1989	ENGROSSING REPORT.
FEBRUARY 15, 1989	THIRD READING, PASSED. AYES, 96; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 17, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

MARCH 18, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 492
2 INTRODUCED BY Spaith
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE "UNIFORM
5 DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT".
6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
8 NEW SECTION. Section 1. Short title. [Sections 1
9 through 11] shall be known and may be cited as the "Uniform
10 Disposition of Community Property Rights at Death Act".
11 NEW SECTION. Section 2. Application. [This act]
12 applies to the disposition at death of the following
13 property acquired by a married person:
14 (1) (a) all personal property, wherever situated that
15 was acquired as or became, and remained, community property
16 under the laws of another jurisdiction; and
17 (b) all or the proportionate part of that property
18 acquired with the rents, issues, or income of, the proceeds
19 from, or in exchange for, that community property; or
20 (c) property traceable to that community property; or
21 (2) all or the proportionate part of any real property
22 situated in this state that was acquired with the rents,
23 issues, or income of, the proceeds from, or in exchange for
24 property acquired as or which became and remained community
25 property under the laws of another jurisdiction, or property

1 traceable to that community property.

2 NEW SECTION. Section 3. Rebuttable presumptions. In
3 determining whether [this act] applies to specific property,
4 the following rebuttable presumptions apply:

5 (1) property acquired during marriage by a spouse of
6 that marriage while domiciled in a jurisdiction under whose
7 laws property could then be acquired as community property
8 is presumed to have been acquired as or to have become and
9 remained property to which [this act] applies; and

10 (2) real property situated in this state and personal
11 property wherever situated acquired by a married person
12 while domiciled in a jurisdiction under whose laws property
13 could not then be acquired as community property, title to
14 which was taken in a form which created rights of
15 survivorship, is presumed not to be property to which [this
16 act] applies.

17 NEW SECTION. Section 4. Disposition upon death. Upon
18 death of a married person, one-half of the property to which
19 [this act] applies is the property of the surviving spouse
20 and is not subject to testamentary disposition by the
21 decedent or distribution under the Uniform Probate Code.
22 One-half of that property is the property of the decedent
23 and is subject to testamentary disposition or distribution
24 under the Uniform Probate Code. With respect to property to
25 which [this act] 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.

NEW SECTION. Section 5. Perfection of title of surviving spouse. If the title to any property to which [this act] applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the district court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the district court. Neither the personal representative nor the district 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 act] applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

NEW SECTION. Section 6. Perfection of title of personal representative, heir, or devisee. If the title to any property to which [this act] applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee, as those terms are defined in 72-1-103, 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 act] applies, unless a

written demand is made by an heir, devisee, or creditor of the decedent.

NEW SECTION. Section 7. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which [this act] 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, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which [this act] 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.

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

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

NEW SECTION. Section 8. Creditor's rights. [This act] does not affect rights of creditors with respect to property to which [this act] applies.

NEW SECTION. Section 9. Acts of married persons. [This act] does not prevent married persons from severing or altering their interests in property to which [this act]

1 applies.

2 NEW SECTION. **Section 10.** Limitations on testamentary
3 disposition. [This act] does not authorize a person to
4 dispose of property by will if it is held under limitations
5 imposed by law preventing testamentary disposition by that
6 person.

7 NEW SECTION. **Section 11.** Uniformity of application
8 and construction. Any person applying and interpreting [this
9 act] shall do so as to make uniform the law with respect to
10 the subject of [this act] among those states that enact it.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY*HOUSE* BILL NO. *492*INTRODUCED BY *Spaith*

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE "UNIFORM
DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1
through 11] shall be known and may be cited as the "Uniform
Disposition of Community Property Rights at Death Act".

NEW SECTION. Section 2. Application. [This act]
applies to the disposition at death of the following
property acquired by a married person:

(1) (a) all personal property, wherever situated that
was acquired as or became, and remained, community property
under the laws of another jurisdiction; and

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

(c) property traceable to that community property; or

(2) all or the proportionate part of any real property
situated in this state that 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.

NEW SECTION. Section 3. Rebuttable presumptions. In
determining whether [this act] 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 act] 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
act] applies.

NEW SECTION. Section 4. Disposition upon death. Upon
death of a married person, one-half of the property to which
[this act] applies is the property of the surviving spouse
and is not subject to testamentary disposition by the
decedent or distribution under the Uniform Probate Code.
One-half of that property is the property of the decedent
and is subject to testamentary disposition or distribution
under the Uniform Probate Code. With respect to property to
which [this act] applies, the one-half of the property which

1 is the property of the decedent is not subject to the
2 surviving spouse's right to elect against the will.

3 NEW SECTION. Section 5. Perfection of title of
4 surviving spouse. If the title to any property to which
5 [this act] applies was held by the decedent at the time of
6 death, title of the surviving spouse may be perfected by an
7 order of the district court or by execution of an instrument
8 by the personal representative or the heirs or devisees of
9 the decedent with the approval of the district court.
10 Neither the personal representative nor the district court
11 in which the decedent's estate is being administered has a
12 duty to discover or attempt to discover whether property
13 held by the decedent is property to which [this act]
14 applies, unless a written demand is made by the surviving
15 spouse or the spouse's successor in interest.

16 NEW SECTION. Section 6. Perfection of title of
17 personal representative, heir, or devisee. If the title to
18 any property to which [this act] applies is held by the
19 surviving spouse at the time of the decedent's death, the
20 personal representative or an heir or devisee, as those
21 terms are defined in 72-1-103, of the decedent may institute
22 an action to perfect title to the property. The personal
23 representative has no fiduciary duty to discover or attempt
24 to discover whether any property held by the surviving
25 spouse is property to which [this act] applies, unless a

1 written demand is made by an heir, devisee, or creditor of
2 the decedent.

3 NEW SECTION. Section 7. Purchaser for value or
4 lender. (1) If a surviving spouse has apparent title to
5 property to which [this act] applies, a purchaser for value
6 or a lender taking a security interest in the property takes
7 his interest in the property free of any rights of the
8 personal representative or an heir or devisee, as those
9 terms are defined in 72-1-103, of the decedent.

10 (2) If a personal representative or an heir or devisee
11 of the decedent has apparent title to property to which
12 [this act] applies, a purchaser for value or a lender taking
13 a security interest in the property takes his interest in
14 the property free of any rights of the surviving spouse.

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

17 (4) The proceeds of a sale or creation of a security
18 interest must be treated in the same manner as the property
19 transferred to the purchaser for value or a lender.

20 NEW SECTION. Section 8. Creditor's rights. [This act]
21 does not affect rights of creditors with respect to property
22 to which [this act] applies.

23 NEW SECTION. Section 9. Acts of married persons.
24 [This act] does not prevent married persons from severing or
25 altering their interests in property to which [this act]

1 applies.

2 NEW SECTION. **Section 10.** Limitations on testamentary
3 disposition. [This act] does not authorize a person to
4 dispose of property by will if it is held under limitations
5 imposed by law preventing testamentary disposition by that
6 person.

7 NEW SECTION. **Section 11.** Uniformity of application
8 and construction. Any person applying and interpreting [this
9 act] shall do so as to make uniform the law with respect to
10 the subject of [this act] among those states that enact it.

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17 (b) all or the proportionate part of that property
18 acquired with the rents, issues, or income of, the proceeds
19 from, or in exchange for, that community property; or
20 (c) property traceable to that community property; or
21 (2) all or the proportionate part of any real property
22 situated in this state that was acquired with the rents,
23 issues, or income of, the proceeds from, or in exchange for
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18 death of a married person, one-half of the property to which
19 [this act] applies is the property of the surviving spouse
20 and is not subject to testamentary disposition by the
21 decedent or distribution under the Uniform Probate Code.
22 One-half of that property is the property of the decedent
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8 personal representative or an heir or devisee, as those
9 terms are defined in 72-1-103, of the decedent.

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11 of the decedent has apparent title to property to which
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