COMMUNITY/MARITAL PROPERTY RIGHTS OF SPOUSES AT DEATH

THE UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

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A. Community Property States

1. There are ten states that have implemented some form of community property regime. These states are Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

2. Alaska's community property system is elective, meaning that married Alaska residents, or non-residents who transfer assets to an Alaska trust, must elect to classify property as community property if they want the community property system to govern. In each of the other community property states, the community property system is mandatory unless a married couple affirmatively opts out.

➡ *Practice Note:* Although these states generally follow similar community property rules, there remain substantial variations. Consequently, it is important to understand the laws of the state in question—which may require retaining an attorney licensed to practice in the state for advice when needed.

B. Basic Principles

1. *Definition*

   Generally, community property is defined as a type of ownership between a husband and wife in which each spouse owns an undivided one-half interest in each item of property acquired during marriage, except property that is acquired by gift, devise, or descent.[1] Title is not determinative; placing the property in the name of one spouse does not overcome the presumption that property acquired during the marriage is community property. Property acquired out of earnings during the marriage is presumed to be community property as well.

2. *Special Rules for Classification*

   a) **Tracing:** Assets acquired during marriage with separate funds, and assets acquired with the proceeds from a sale of separate assets, are separate property. However, to maintain their separate character in a community property state, the assets must be clearly traceable as separate property.

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[1] JOHN HUSTON, JOHN RICHARD PRICE & GERALD B. TREACY, COMMUNITY PROPERTY: GENERAL CONSIDERATIONS 802 (Tax Management 2003).

➡ *Practice Note:* As a practical matter, tracing is very difficult to do.

b) **Commingling:** Separate property may lose its identity by commingling with community property if adequate records are not kept. This result is a consequence of the presumption that all property is community property.

c) **Marital Property Agreements:**Property acquired in most community property states can be classified or reclassified as separate property by means of a valid marital property agreement, which may be either prenuptial or postnuptial.

3. *Creditor Rights and Management Rights in Spouse's Property*

a) In most community property states, creditors can reach community assets to satisfy a spouse's separate debt.[2] Certain states, however, look to the nature of the debt and will only allow creditors to reach community property if the debt was incurred for the benefit of the community.[3] Wisconsin law provides that, with proper creditor notice, obligations incurred by spouses during marriage are presumed to be incurred in the interest of the marriage of the family.[4] Generally, such family purpose obligations may be satisfied from all marital property and from all other property of the incurring spouse.[5]

b) Most community property states permit either spouse to act with respect to managing, borrowing, and disposing of the community property. However, the spouses must typically act jointly to convey real property, grant encumbrances of real property, or make gifts of community property to third parties.[6]Spouses also owe one another certain fiduciary duties with respect to the management of community property, including the duties of good faith and fair dealing.[7]

4. *Tax Considerations*

a) **Estate Taxes:** In a community property state, upon the death of a spouse, the surviving spouse is the owner of one-half of community property regardless of how the property is titled. The

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[2]*See, e.g.*, CAL. FAM. CODE § 910 (2013).

[3]*See, e.g.*, WIS. STAT. § 766.55 (2013); Johnson v. Johnson, 638 P.2d 705 (Ariz. 1981).

[4]WIS. STAT. § 766.55(1) (2013).

[5]*Id.* at § 766.55(2).

[6]*See, e.g.*, NEV. REV. STAT. § 123.230 (2013).

[7]*See, e.g.*, CAL. FAM. CODE § 721(b) (2013).

deceased spouse's estate for federal and state estate tax purposes only includes the deceased spouse's one-half interest, even if the property is titled solely in the deceased spouse's name. This community law provision, if properly preserved upon the couple's migration to Minnesota, may act to prevent the necessity of filing a Minnesota estate tax return.

b) **Income Taxes:**

(1) During a couple's lifetime, there is no impact from reporting community property income in situations where the couple files a joint return. All income of both spouses is reported on the return. However, in situations where the spouses file separately, each spouse must report half of each income item that is community property.

(2) Perhaps the most significant benefit to having property classified as community property relates to its treatment at death. If, at the death of the first spouse, one-half of the value of community property owned by the couple is includable in the deceased spouse's gross estate for federal estate tax purposes, then both the decedent's one-half interest and the surviving spouse's one-half interest in the community property receive a new basis for income tax purposes equal to the fair market value of the property at the date of the decedent's death, as finally determined for federal estate tax purposes.[8]

On the other hand, this double step-up in basis is unavailable for property that is not owned as community property. If the couple instead owned property as joint tenants with right of survivorship or as tenants by the entirety under common law regimes, there is a step-up in basis of only one-half of the property passing by survivorship.[9]

c) **Gift Taxes:** If a couple gifts community property, they may gift up to $28,000 (twice the annual exclusion in 2013) to a donee without having to file a gift tax return election to gift split. The community property system automatically gift splits.

[8] I.R.C. § 1014(b)(6) (2013).

[9] *Id*. at § 1014(b)(9).

C. Change of Domicile Can Affect a Couple's Property Interests

1. In our mobile society, it is increasingly common for couples to change domicile among the states and, consequently, to have lived in (at least for a time) one of the ten community property states.

2. Despite the increase in mobility, there has generally been no consistent roadmap regarding how to treat a couple's property when moving from a community property state to a common law state, such as Minnesota. Prior to the Uniform Disposition of Community Property Rights at Death Act, common law states sought to apply their respective property laws and gift and estate tax laws to the property in question. In this endeavor, courts typically applied equitable doctrines rather than continuing to treat the property as community property.[10]

➡ *Practice Note:* Attorneys and snowbirds beware! Property classifications may become complicated for clients who have accumulated assets in multiple states, particularly if community property law applies to some of the assets and common law governs others.

D. Rights of the Surviving Spouse at Death

1. *Community Property States*

a) In a community property state, upon the death of a spouse, the surviving spouse is the owner of one-half of community property, regardless of how the property is titled. The surviving spouse's one-half interest is not subject to testamentary disposition by the deceased spouse or distribution under the laws of intestacy.

b) Unlike many common law states, community property states do not have statutory elective share rights for the surviving spouse.

c) However, some community property states do recognize a special class of property labeled "Quasi-Community Property" and provide extra rights for property in this class. Quasi-Community Property is typically defined as property that a spouse acquired during marriage while domiciled outside of the community property state and later brought into the community property state, if the property would have been community property had the spouses acquired it while domiciled in the community property jurisdiction.

EXAMPLE: Joe and Jane were married in Minnesota in 2011. After a year of hard work, Jane saved $20,000 from her salary and

[10] *See*, Norvie L. Lay, *Community Property in Common Law States: A Comparative Analysis of Its Treatment in Foreign Jurisdictions*, 41 TEMP. L. Q. 1, (1967).

placed it in a savings account in her name. Conversely, Joe spent all of his income on fishing lures and saved nothing. In 2012, Jane and Joe moved to Wisconsin. The $20,000 saved by Jane would be considered quasi-community property because, had Joe and Jane been living in Wisconsin when it was accumulated, it would be considered community property even though it is an asset that was accumulated during the marriage in Minnesota, a common law state. Under Wisconsin's marital property laws, this form of quasi-community property is referred to as "deferred marital property." If the holding spouse, Jane, were to pass away leaving this account by a P.O.D. provision payable to her sister, Joe would be able to claim a one-half interest in the savings account even if it were still titled in her name, was still in a Minnesota bank, and would otherwise have passed via a non-probate transfer.[11]

2. *Common Law States*

a) Common law states rely upon the doctrine of equitable distribution. This generally means that a decedent's assets will pass to whomever he or she has designated in a will or trust, or if neither exists, according to the state's laws of intestacy. However, in common law states, the surviving spouse is usually protected from disinheritance by an elective share statute. Typically, elective share statutes provide the surviving spouse with a share of the decedent's estate, regardless of any contrary provisions in the decedent's will.

b) Minnesota law gives a surviving spouse elective share rights, homestead rights, and exempt property rights. The surviving spouse has the right to elect a percentage of the deceased spouse's estate, with the percentage based upon the length of marriage.[12] In addition, if the decedent left no children, the surviving spouse is entitled to the homestead.[13] If the decedent left surviving children, the surviving spouse is entitled to a life estate in the homestead.[14] Finally, the surviving spouse is entitled to exempt property, including one car and personal property not exceeding $10,000.[15]

c) Depending on a couple's domicile history and the situs of property, a surviving spouse may have different rights as to different assets. For example, a surviving spouse domiciled in a common law state

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[11] WIS. STAT. §§ 861.02–861.05 (2013).

[12] MINN. STAT. § 524.2-202 (2012).

[13] *Id.* at § 524.2-402(a)(1).

[14] *Id*. at § 524.2-402(a)(2).

[15] *Id*. at §§ 524.2-403(a).

would have a direct ownership interest rather than an elective share right in a community property asset. The Uniform Disposition of Community Property Rights at Death Act helps to clarify what these rights are.

II. The Uniform Disposition of Community Property Rights At Death Act

A. Overview

1. **Why We Need It:** The Uniform Disposition of Community Property Rights At Death Act (the "Act") provides a roadmap for practitioners who may work with clients who move in and out of Minnesota from community property states. Incorporating the community property rules in a statute provides a clear and quick reference for practitioners. Prior to the Act's enactment, the only source of guidance in this area was Minnesota case law.

2. **Purpose:** The Act's purpose is to preserve the rights of each spouse in property which was community property prior to the change of domicile, as well as in replacement property traceable to community property when the spouses have not indicated an intention to sever or alter their community rights.

3. **Scope:** The Act's scope is limited; it only defines dispositive rights upon the death of a married person in property subject to the Act. It does not affect managerial rights or rights upon divorce. The Act covers real property located in the enacting state and personal property of a person domiciled in the enacting state.

4. **State Enactment:** The Act was adopted in Minnesota on April 25, 2013,at Chapter 24, Session Laws of Minnesota for 2013. It is set to become effective as of August 1, 2013 and will be codified at Chapter 519A. Fifteen other states have also adopted the Act: Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Kentucky, Michigan, Montana, New York, North Carolina, Oregon, Utah, Virginia, and Wyoming.

B. Operative Provisions of the Act

1. The first three sections of the Act represent the heart of the Act. The remaining sections serve to clarify how the first three sections of the Act operate. Briefly:

   a) Section 1: Defines covered property.

   b) Section 2: Provides guidance in determining whether property is covered by the Act through a limited number of rebuttable presumptions.

c) Section 3: Sets forth the dispositive rights in property subject to the Act.

2. *Section 1. Application.* (519A.01)

a) This section defines what property is covered by the Act and specifically limits the application to disposition of property at death. It includes:

(1) personal property acquired while domiciled as a married couple in the community property state,

(2) the proportionate part of any personal property which was acquired in exchange for community property or with proceeds, income, or rents traceable to community property, and

(3) the proportionate part of any Minnesota real property which was acquired in exchange for community property or with proceeds, income, or rents traceable to community property.

The Act only applies to property that would have been treated as community property by the community property state at the time of acquisition, or property which became community property by agreement; it does not apply if the community interest was severed.

b) **EXAMPLE:**H and W, while domiciled in California, purchased 100 shares each of A, B, and C stock with community property from H's earnings. H and W moved to a common law state which had not enacted the Act. While domiciled there, H sold the 100 shares of A stock and with the proceeds purchased 100 shares of D stock. Subsequently, H and W become domiciled in Minnesota, which has enacted the Act. H sold the B stock and 50 shares of the D stock and purchased 150 shares of E stock. H died domiciled in Minnesota with 100 shares of C stock, 50 shares of D stock, and 150 shares of E stock. All of the stock has at all times been registered in H's name. All of the stockconstitutes property subject to the Act because it is all traceable to community property or the proceeds of community property.

3. *Section 2. Rebuttable Presumptions*. (519A.02)

a) This section contains rebuttable presumptions that are intended to provide guidance in determining whether the Act is applicable to specific property.

b) **Subdivision 1:** if a spouse acquired property while domiciled in a community property state, such property is presumed to have been and remained community property subject to the Act. The expression "subject to the Act" means that the property being referenced would retain its community property character.

EXAMPLE: H, married to W and domiciled in California, acquires stock; later H and W become domiciled in Minnesota. Such property, if retained, is presumed to be property subject to the Act. Any proceeds of a sale of the stock and any property acquired with the proceeds of a sale of the stock would also be deemed subject to the Act.

c) **Subdivision 2:** if a spouse acquired property while domiciled in a common law state, title to which was taken in a form which created rights of survivorship, it will be presumed that such property is not subject to the Act.

EXAMPLE: John and Mary, formerly domiciled in California, became domiciled in Minnesota and purchased a residence, taking title in the names of John and Mary Jones, as joint tenants with right of survivorship ("JTWRS"). Regardless of the source of the funds used to purchase the residence, the Minnesota residence would be presumed to be held as JTWRS and not subject to the Act.

4. *Section 3. Disposition Upon Death.* (519A.03)

a) This section provides that, upon the death of a married person, one-half of the property to which the Act applies (*i.e.*, community property or property derived from community property) is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution pursuant to the laws of intestacy of Minnesota. The other one-half of that property is the property of the decedent and may be distributed by testamentary disposition or pursuant to the laws of intestacy of Minnesota.

EXAMPLE: H and W were formerly domiciled in California and are now domiciled in Minnesota. All of their property was community property prior to the move from California to Minnesota. At H's death, he held title to a home in his sole name (not as JTWRS) in Minnesota which had been purchased with the proceeds of a sale of a community property home in California. The Minnesota home would be deemed property subject to the Act. H's will leaves the entire Minnesota home to his son from a previous marriage. Despite the terms of H's will, upon H's death, W would own an undivided one-half interest in the Minnesota home and the other one-half interest would pass under the will to H's son.

b) With respect to property to which the 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 and is not included in the decedent's net estate which is subject to the elective share of the surviving spouse.

5. *Section 4. Perfection of Title of Surviving Spouse*. (519A.04)

a) If the title to any property to which the Act applies was held by the decedent at the time of death (or by an inter vivos trust created by the decedent or the decedent and his or her spouse), title of the surviving spouse may be perfected by either 1) court order, or 2) execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court.

b) **NOTE:** Neitherthe decedent's personal representative or trustee, nor the court has a duty to discover or attempt to discover whether property held by the decedent is subject to the Act, unless a written demand is made by the surviving spouse or the spouse's successor in interest as follows:

(1) within four months after the date of the first publication of notice to creditors, if the property was held by the decedent's estate at the time of death;

(2) within 60 days after the decedent's death, if the property was held by the trustee of an inter vivos trust at the time of death and no written notice is provided to the surviving spouse or the surviving spouse's successor in interest by the trustee; or

(3) within 20 days after written notice is given to the surviving spouse or the surviving spouse's successor in interest, if the property was held by the trustee of an inter vivos trust at the time of death and written notice is provided to the surviving spouse by the trustee.

6. *Section 5. Perfection of Title of Personal Representative, Trustee, Heir or Devisee, or Testamentary Beneficiary.* (519A.05)

a) If the title to any property to which the Act applies is held by the surviving spouse at the time of the decedent's death (or by an inter vivos trust created by the decedent or the decedent and his or her spouse), the personal representative, the trustee, an heir or devisee of the decedent, or a testamentary beneficiary may institute an action to perfect title to the property.

b) **NOTE:** Again, the Act does not place a fiduciary duty on the personal representative or trustee to discover or attempt to discover whether property held by the surviving spouse (or inter vivos trust) is subject to the Act, unless a written demand by an heir, devisee, testamentary beneficiary, or creditor of the decedent is made as follows:

(1) within four months after the date of the first publication of notice to creditors, if the property was held by the surviving spouse at the time of the decedent's death; or

(2) within 60 days after the decedent's death, if the property was held by the trustee of an inter vivos trust at the time of death.

7. *Section 6. Purchaser for Value or Lender*. (519A.06)

a) If a surviving spouse has apparent title to property to which the Act applies, a purchaser for value or a lender taking a security interest in the property takes an interest in the property free of any rights of the personal representative, trustee, heir, devisee, beneficiary, or distributee of the decedent.

b) Similarly, if a personal representative, trustee, heir, devisee, beneficiary, or distributee of the decedent has apparent title to property to which the Act applies, a purchaser for value or a lender taking a security interest in the property takes an interest in the property free of any rights of the surviving spouse.

8. *Section 7. Creditor's Rights*. (519A.07)

This section states that the Act does not affect creditors' rights with respect to property subject to the Act.

9. *Section 8. Acts of Married Persons*. (519A.08)

This section clarifies that the Act does not limit the ways that spouses may sever community property or create an ownership form not subject to the Act.

10. *Section 9. Limitations on Testamentary Disposition*. (519A.09)

This section states that the Act does not authorize a person to dispose of property by will or by trust if the property is otherwise held under limitations imposed by law preventing testamentary disposition by that person.

11. *Sections 10 and 11.* (519A.10 and 519A.11)

These sections simply reiterate the purpose of the Act, which is to make this area of law uniform from state to state, and detail that the Act may be cited as the Uniform Disposition of Community Property Rights at Death Act.

III. Important Community Property Considerations for Minnesota Attorneys

A. Retaining Community Property Character of Assets

After the Act, it is more critical than ever for practioners to know how and when to maintain the community property character of assets owned by couples moving to Minnesota. The failure to properly plan can result in the loss of the benefits associated with community property (such as the double step-up in basis).

1. *Recognizing Imported Community Property*

The first step in retaining community property is recognizing that it is a potential issue.

➡ *Practice Note:* Include in new client checklists a question regarding the clients' date of marriage and their states of domicile both before and since the marriage. If the answer to this question involves one (or more) of the ten community property states, the potential issue should be recognized immediately.

2. *Inception of Title Doctrine*

a) Community property states follow the presumption that all property on hand at death or dissolution is community property. The character of property acquired during marriage is determined by reference to the separate or community character of the funds used to make that purchase. If an asset was purchased in part with community funds and in part with separate funds, the asset is part community and part separate, as determined in proportion to the funds used for the acquisition.

b) **EXAMPLE – Separate Property**: Marge and Homer are married and living in Wisconsin. Homer inherits $50,000 from his father, Abe. Homer decides to purchase a donut shop in Madison with the inheritance. The donut shop is Homer's separate property.

EXAMPLE – Separate and Community Property: Assume the same facts, except now Homer uses $25,000 of his inheritance and

$25,000 of a savings account with assets acquired during his marriage to purchase the donut shop. Homer has a 75% interest in the donut shop and Marge has a 25% interest in the donut shop (50% is separate property of Homer, 50% is community property of which Homer owns half and Marge owns half).

c) This doctrine is important to bear in mind as couples, moving from a community property state to Minnesota, decide how to best fund purchases of new property. The proportionate part of an asset acquired with community property or with proceeds traceable to community property will be subject to the Act, whereas the proportionate part of an asset acquired with separate property will not.

3. *Tracing and Commingling*

In states that have adopted the Act, all property acquired by a couple during their marriage while domiciled in a community property state is presumed to be community property absent evidence to the contrary. Careful record keeping is essential to trace community property before it is commingled with separate property in the new state. Note that this mirrors record keeping requirements in community property states to segregate separate property.

➡ *Practice Note:*Minnesota advisors may consider segregating community property assets such as cash into designated community property accounts or holding community property assets in joint revocable trusts.

4. *Retitling Assets*

Care should be taken not to title assets in any form of joint ownership with right of survivorship after the move to the common law state. In states that have adopted the Act, such a form of ownership creates a rebuttable presumption that the property is separate property, regardless of its source. Consequently, changing the form of ownership may convert community property into separate property.

5. *Marital Property Agreements (a.k.a. Community Property Agreements)*

If, prior to moving to Minnesota, a couple executed a marital property agreement or other instrument that would facilitate the preservation of the couple's assets as community property, these documents should be studied and utilized strategically.For example, if the couple created a joint revocable trust while residing in Wisconsin (a joint revocable trust being one form of marital property agreement), that trust may continue in existence and may serve as a valuable planning tool to preserve and grow the couple's community property assets.

Once a couple has moved to Minnesota, the spouses will not be able to enter into a community property agreement unless it complies with Minn. Stat. § 519.11, governing the creation of a valid postnuptial agreement. Nothwithstanding the provisions of section 519.11, Minnesota law does not prevent couples from, at the very least, agreeing in an otherwise valid postnuptial agreement to keep accounting schedules for the purpose of tracking 1) which assets were subject to the Act at the time of the move to Minnesota, 2) how income realized from those assets is to be accounted for, 3) how the sale of those assets and reinvestment of the sales proceeds are to be accounted for, and 4) how assets are to be accounted for in the event that community property has or becomes mixed with separate property (*i.e.*, a certain percentage subject to the Act and a certain percentage not subject to the Act).

B. Special Considerations

1. *Irrevocable Life Insurance Trusts*

Regardless of whether a client resides in a community property state or a common law state, many clients implement irrevocable life insurance trusts to provide a source of liquidity for the surviving spouse or children at death. If the client is moving from or to a community property state, there will be community property law implications for any life insurance policy. If insurance in the trust is not properly addressed, the result could be inadvertant inclusion of the life insurance in a deceased spouse's estate. For example, if, after moving to Minnesota, the insured makes a contribution to the trust from an account that is subject to the Act, then one-half of the contribution is deemed to have been made with the spouse's funds. If the spouse has a lifetime income interest in the irrevocable trust and is now deemed to have made a contribution with a retained interest, it can cause the trust, or at least a portion of the trust, to be included in the non-insured spouse's estate, whether the non-insured spouse dies first or second.

2. *Other Life Insurance Issues*

Below are the typical alternatives used in community property states with respect to determining whether a life insurance policy has a community property community, and if it does, the extent of that component:

a) **Apportionment Rule:** Under this rule, life insurance proceeds are divided proportionately based upon the type of property used to pay the premium. For example, if community property was used 30% of the time to pay for a $1,000,000 life insurance policy, $300,000 of the proceeds would be treated as community property.

b) **Inception of Title Rule:** Under this rule, the determination of whether the policy is community property or separate property is determined based upon the type of property used to pay the initial premium. The type of property used to pay later premiums is irrelevant.

c) **Wisconsin Rule:** In Wisconsin, the policy acquires a community property component at the point in time that community property is used to pay the premium. The main exception is when the insured's spouse owns the policy; in that case, the ownership interest and proceeds will be the individual property of the owner.[16] The non-insured spouse can waive the community property component by consenting in writing to the beneficiary designation and/or the use of community property to pay premiums.[17]

3. *Real Property*

a) As a general rule, real property in a community property jurisdiction acquired by a couple that is domiciled in a common law state is classified as community property for both state and federal law purposes.[18] For example, real property located in Washington and Idaho constitutes community property even if it is owned by a couple domiciled in a common law jurisdiction.[19]

b) Nevertheless, it is important to verify each community property state's law. For example, Wisconsin law requires that a couple be domiciled in Wisconsin to take initial advantage of the marital property classification.[20]

4. *Federal Preemption*

There are several federal statutes that are intended to confer a benefit upon one spouse. These statutes have been the subject of much litigation with respect to whether they preempt state community property law. For instance, courts have held that ERISA[21] and the Social Security Act[22]

[16] WIS. STAT. § 766.61(3)(c)(1) (2013).

[17] *Id*. at § 766.61(3)(e).

[18] M. READ MOORE, COMING SOON TO YOUR STATE: COMMUNITY PROPERTY (2000 Inst. Est. Plan.).

[19] Black v. Comm'r, 114 F.3d 355 (9th Cir. 1940).

[20] WIS. STAT. § 766.01(5)(6) (2013).

[21] Boggs v. Boggs, 520 U.S. 833 (1997).

[22] Bowlden v. Bowlden, 794 P.2d 1145 (Idaho 1989).

preempt state community property law, but federal copyright laws[23] and legislation governing IRAs do not.[24]

IV. Conclusion

Community property is a complex and evolving area of law. With the increasing number of couples moving to and from community property states, it has become clear that community property considerations impact many couples who now reside in Minnesota and other common law states. Minnesota's recent enactment of the Uniform Disposition of Community Property Rights at Death Act provides clarity to practitioners with respect to the disposition of community property at the death of a spouse. Bearing the Act's provisions in mind, practitioners should discuss with their clients the nature of any property owned and counsel them regarding the advantages and disadvantages of maintaining the character of any community property. When representing a client whose spouse has died, the practitioner should look for community property that may give the surviving spouse greater rights in the property than would otherwise be provided by Minnesota law.

[23] In re Marriage of Worth, 195 Cal. App. 3d 768 (1987).

[24] In re Mundell Estate, 857 P.2d 631 (Idaho 1993).