

REPORT

September 11, 1964

To: Members of the Advisory Committee
on Probate Law Revision

From: Stanton W. Allison and Robert W. Lundy

Subject: Rough draft on owner spouse's statement in conveyance or mortgage
that property conveyed or mortgaged not residence of either spouse.

At the last meeting of the Advisory Committee a number of alternatives to the rough draft of proposed legislation entitled "Protecting Property Right During Marriage," dated August 4, 1964, were suggested. See Minutes, Probate Advisory Committee Meeting, 8/22/64, pages 10 and 11. One of these alternatives was a suggestion that the joinder of a nonowner spouse be required in a conveyance of real property which is the place of residence of both spouses or either of them, and that to secure compliance with such requirement the owner spouse state in a conveyance without the joinder of the nonowner spouse that the real property conveyed is not such place of residence. At that meeting Mr. Allison indicated that we would endeavor to prepare and submit a rough draft of proposed legislation embodying the concept of such a statement in a conveyance executed by an owner spouse. See Minutes, Probate Advisory Committee Meeting, 8/22/64, page 11. Following is such a rough draft.

Section 1. A married person who owns in his sole right real property which is the place of residence of such married person, of his spouse or of both, may not convey or mortgage the real property unless the spouse of such married person joins in the conveyance or mortgage. This requirement does not create a proprietary right, title or interest in the spouse of such married person in the real property, and failure of the spouse to join in the conveyance or mortgage does not affect the validity of the conveyance or mortgage. If a married person executes a conveyance or mortgage of any real property owned by him in his sole right and the spouse of such married person does not join in the conveyance or mortgage, the conveyance or mortgage shall include the statement under oath of such married person that the real property is not the place of residence of such married person, of his spouse or of both.