

REPORT

October 1, 1964

To: Members of the Advisory Committee
on Probate Law Revision

From: Robert W. Lundy
Chief Deputy Legislative Counsel

Subject: Revised rough draft on "Protecting Property Right During Marriage."

Prior to the August 22 meeting of the Advisory Committee, Mr. Allison and I submitted a rough draft of proposed legislation entitled "Protecting Property Right During Marriage," dated August 4, 1964. That rough draft was considered at the August 22 meeting. See Minutes, Probate Advisory Committee Meeting, 8/22/64, pages 3, 4 and 7 to 9, and Appendix A.

Prior to the September 12 meeting, Mr. Allison and I submitted a revised rough draft of the proposed legislation, dated September 11, 1964. That revised rough draft was considered at the September 12 meeting. See Minutes, Probate Advisory Committee Meeting, 9/12/64, pages 7 to 10, and Appendix.

I have prepared the following new revised rough draft of the proposed legislation pursuant to and based upon action by the committee at the September 12 meeting, and have incorporated therein some of the ideas embodied in the draft prepared by Mr. Gooding, dated September 14, 1964, and sent to all members of the committee. Mr. Allison did not participate in the preparation of the following new revised rough draft and thus bears no responsibility therefor.

Protecting Property Right During Marriage

Section 1. (1) A married person, referred to in this section as the declarant, may cause to be recorded in the record of deeds of any county a written, signed and acknowledged declaration claiming a marital right to an undivided one-fourth interest in all or specifically described real property owned in sole right by the spouse of the declarant and situated in the county.

(2) A declaration applicable to all real property may be in the following form:

to which the declaration is applicable becomes vested in the declarant upon the death of the spouse of the declarant.

(5) If a recorded declaration is not sooner revoked, the spouse of the declarant may not convey or mortgage the real property to which the declaration is applicable free of the marital right unless the declarant either joins in the conveyance or executes a separate conveyance thereby releasing the marital right, or joins in the mortgage or trust deed thereby subordinating the marital right.

(6) A recorded declaration may be revoked as to all or part of the real property to which it is applicable by a written, signed and acknowledged revocation caused by the declarant to be recorded in the record of deeds of the county in which the declaration is recorded.

(7) A recorded declaration is revoked by:

(a) A decree declaring the marriage void or dissolved.

(b) A decree of permanent or unlimited separation from bed and board specifically revoking the declaration.

(c) The death of the declarant before the death of the spouse of the declarant.

(d) A court order as provided in subsection (8) of this section.

(8) The spouse of a declarant, or any person to whom he conveys or mortgages real property to which a recorded declaration is applicable without the joinder of the declarant, may maintain, within 10 years after the date of the recording of the declaration, an action to determine the validity and sufficiency of the declaration in the circuit court for the county in which the declaration is recorded. If the court finds that the declaration is invalid or insufficient, the court shall order the declaration revoked.

Section 2. Section 3 of this Act is added to and made a part of ORS
126.006 to 126.565.

Section 3. A guardian of the estate, with prior approval of the court by
order, may exercise for and on behalf of the ward the right of the ward under
section 1 of this 1965 Act to cause a revocation of a recorded declaration
claiming a marital right of the ward to be recorded or release or subordinate
the marital right.