

REPORT
October 8, 1964

To: Members of the Advisory Committee
on Probate Law Revision

From: Stanton W. Allison

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

I have prepared, and hereby submit for consideration by the Advisory Committee, the following revised rough draft of the proposed legislation entitled "Protecting Property Right During Marriage." Incorporated in this revised rough draft are some of the ideas embodied in Mr. Gooding's letter, dated September 14, 1964; my letter, dated October 1, 1964; and Mr. Lundy's report, dated October 1, 1964.

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 specifically described real property or in all real property then or thereafter owned during the marriage 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:

GENERAL DECLARATION CLAIMING MARITAL RIGHT

(name of declarant), the (wife or husband) of (name of husband or wife owning real property), claims a marital right to an undivided one-fourth interest in all real property now or hereafter owned during the marriage in sole right by (name of husband or wife owning real property) and situated in County, State of Oregon.

(Acknowledgment)

Declarant

(3) A declaration applicable to specifically described real property may be in the following form:

SPECIFIC DECLARATION CLAIMING MARITAL RIGHT

_____, the _____ of _____
(name of declarant) (wife or husband) (name of husband or wife)
_____, claims a marital right to an undivided one-fourth
owning real property)
interest in the following described real property owned in sole right by
_____ and situated in _____
(name of husband or wife owning real property)
County, State of Oregon, to wit:

(Description of real property)

(Acknowledgment)

Declarant

(4) An undivided one-fourth interest in real property to which a recorded declaration is applicable, owned during the marriage in sole right by the spouse of the declarant and situated in the county in which the declaration is recorded, shall become vested upon the death of the spouse of the declarant in the declarant as a marital right, unless the marital right has been released or terminated or the declaration has been revoked as provided in this section.

(5) The spouse of the declarant may not convey or mortgage real property to which a recorded declaration is applicable free of the marital right of the declarant unless the declaration has been revoked, the marital right has been terminated or the marital right is released by the declarant joining in the conveyance or executing a separate conveyance or is subordinated by the declar-

ant joining in the mortgage or trust deed.

(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 marital right is terminated by:

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

(b) A decree of permanent or unlimited separation from bed and board specifically terminating the marital right.

(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 marital right terminated.

(9) Nothing in this section shall affect the inheritance rights of a declarant to real property of which the spouse of the declarant died seised as provided in ORS 111.020.

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 to release or subordinate the marital.