

REPORT

September 11, 1964

To: Members of the Advisory Committee  
on Probate Law Revision

From: Stanton W. Allison and Robert W. Lundy

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

Prior to the last meeting of the Advisory Committee, we submitted a rough draft of proposed legislation entitled "Protecting Property Right During Marriage," dated August 4, 1964. The aim of that rough draft was to provide protection, by means of a recorded declaration, of a right of a surviving spouse to receive, upon the death of the other spouse, a fee estate in an undivided one-fourth interest in real property owned during the marriage by the other spouse in his sole right against an attempt by the owner spouse to convey or mortgage such real property without the joinder of the nonowner spouse in the conveyance or mortgage, and thus to defeat or diminish the right of the surviving spouse to receive such an interest in the real property by intestate succession or election against will under the provisions of the rough draft entitled "Changing Dower and Curtesy," dated August 4, 1964.

The rough draft entitled "Protecting Property Right During Marriage," dated August 4, 1964, was considered at length at the last meeting of the committee, and a number of objections thereto were raised. See Minutes, Probate Advisory Committee Meeting, 8/22/64, pages 3, 4 and 7 to 9, and Appendix A. At that meeting Mr. Allison indicated that we would endeavor to prepare and submit a revised rough draft embodying the declaration device to protect a property right during marriage, which would meet some of the objections raised. See Minutes, Probate Advisory Committee Meeting, 8/22/64, page 11. Following is such a revised rough draft.

#### 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 in which real property owned by the spouse of the declarant in his sole right is situated a written, signed and acknowledged declaration claiming a marital right in and to an undivided one-fourth interest in the real property so owned in the county by the spouse of the declarant. The declaration shall include a statement of the effect of the recording of the declaration as provided in subsection (3) of this section. The declaration may be in the

following form:

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DECLARATION CLAIMING MARITAL RIGHT

\_\_\_\_\_, declarant, is now married to \_\_\_\_\_  
(name of husband  
or wife owning real property), the owner of real property in \_\_\_\_\_  
County, State of Oregon, in sole right, and declarant hereby claims a marital  
right in and to an undivided one-fourth interest in and to all real property  
now or hereafter owned during the marriage by \_\_\_\_\_  
(name of husband or wife owning  
real property), the spouse of the declarant, in sole right, in the above named  
county.

The effect of the recording of this declaration, as provided in section 1,  
chapter \_\_\_\_\_, Oregon Laws 1965 (Enrolled \_\_\_\_\_ Bill \_\_\_\_\_), is that the above  
named spouse of the declarant may not, during the marriage and while this  
declaration remains unrevoked, convey or mortgage real property owned in sole  
right by such spouse in the county in which this declaration is recorded free  
of the marital right of declarant in and to an undivided one-fourth interest  
in such real property unless declarant either joins in the conveyance or  
executes a separate conveyance to release the marital right, or joins in the  
mortgage to subordinate the marital right.

(Acknowledgment)

\_\_\_\_\_  
Declarant

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(2) If a declaration claiming a marital right has been recorded as provided  
in subsection (1) of this section, upon the death of the spouse of the declarant  
an undivided one-fourth interest in and to all real property owned during the

marriage by the spouse of the declarant in sole right in the county in which the declaration is recorded shall become vested in the declarant, unless the marital right has been released either by the joinder by the declarant in a conveyance or the execution of a separate conveyance, or the declaration has been revoked as provided in subsection (4) of this section.

(3) If a declaration claiming a marital right has been recorded as provided in subsection (1) of this section, the spouse of the declarant may not, during the marriage and while the declaration remains unrevoked, convey or mortgage real property owned in sole right by such spouse in the county in which the declaration is recorded free of the marital right of the declarant in and to an undivided one-fourth interest in such real property unless the declarant either joins in the conveyance or executes a separate conveyance to release the marital right, or joins in the mortgage to subordinate the marital right.

(4) A declaration recorded as provided in subsection (1) of this section is revoked by:

(a) 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 was recorded.

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

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

(d) A court order as provided in subsection (5) of this section.

(5) The spouse of a declarant, or any person to whom he conveys or mortgages real property to which a declaration recorded as provided in subsection (1) of this section 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 revocation of the declaration.

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 to cause a declaration claiming a marital right of the ward or a revocation thereof to be recorded as provided in section 1 of this 1965 Act.