

QUASI COMMUNITY PROPERTY  
DRAFTING COMMITTEE COMMENTS

(Enacted as RCW 26.16.220 - 250)

Ch. 72, Laws of 1986

The purpose of the Quasi-Community property concept is to provide some attributes of community property ownership to property brought into Washington State by married couples. These attributes would be applied upon the death of the first spouse.

This concept is akin to legislation creating Quasi-Community property in both California and Idaho and is designed to substantially equate the testamentary disposition of a Washington domiciliary of property acquired in common law and community property states. In common law states, upon the death of the spouse who earned income, the non-earning spouse is granted a non-barrable share in the accumulated earnings of the deceased spouse. In community property states, the non-earning spouse already owns a portion of the accumulated earnings of the other spouse. Accordingly, on the death of the spouse who earned income, that portion already owned by the survivor is retained by him or her. In both instances, some property is available to the survivor.

If a couple brings accumulated earnings into Washington State from a common law state, Washington will recognize the property as the separate property of the earning spouse and will apply its own laws of descent and distribution which do not recognize a non-barrable share. Thus the surviving spouse has neither the non-barrable share protection of the state of acquisition, nor the community property protection of the state of disposition.

This legislation does not change the character of property during the marriage. However, upon the death of the earning spouse, property which would have been community had it been acquired while the decedent was domiciled in Washington will be treated as community property for disposition purposes. Upon the death of the earning spouse, the non-earning spouse is protected through entitlement to one-half of the quasi community property. The other one-half of the quasi community property is subject to

disposition under the decedent's testamentary plan. Where there is no testamentary plan, the decedent's one-half descends under the laws of intestacy as though it were community property.

## PROPOSED STATUTE

### ' 1 Definition - Quasi Community Property

As used in this chapter, the term quasi community property shall mean all personal property wherever situated and all real property situated in this state which is not community property and which was acquired:

(a) By the decedent while domiciled elsewhere and which would have been the community property of the decedent and of the decedent's surviving spouse had the decedent been domiciled in this state at the time of its acquisition; or

(b) In derivation or in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the original property was acquired.

As used in this section, personal property does not include, and real property does include, leasehold interests in real property.

Comment: Based on California Probate Code ' 66 and Idaho Code ' 15-2-201. This statute characterizes as quasi community property all non-community property which is owned by a person domiciled in Washington at death and which would have been community property had Washington been the decedent's domicile at the time the property was acquired.

### ' 2 Disposition of Quasi Community Property on Death

Upon the death of any person domiciled in this state, one-half of the decedent's quasi community property shall belong to the decedent's surviving spouse and the other one-half of such property shall be subject to testamentary disposition by the decedent, and in the absence thereof, shall descend in the manner provided for community property under chapter 11.04 RCW.

Comment: This statute vests a surviving spouse with one-half of the quasi community property owned by a Washington domiciliary at the time of the domiciliary's death. The remaining one-half interest will be subject to disposition under the terms of the decedent's testamentary plan, whether by will,

trust or other similar device. In the event the decedent dies intestate, the remaining one-half interest will be treated as community property and will descend in the manner provided by RCW 11.04.015, the Washington statute of descent and distribution. This statute is intended to create rights and obligations with respect to quasi community property which are comparable to those imposed on community property.

' 3     Recapture of Certain Quasi Community Property

A.     If a decedent domiciled in this state on the date of his or her death made a lifetime transfer of quasi community property to a person other than the surviving spouse without adequate consideration and without the consent of the surviving spouse, within nine months of the date of the decedent's death the surviving spouse may require the transferee to restore to the decedent's estate one-half of such property, if the transferee retains such property, and, if not, one-half of its proceeds, or, if none, one-half of its value at the time of transfer, if:

- (1)     The decedent retained, at the time of his death, the possession or enjoyment of or the right to income from the property;
- (2)     The decedent retained, at the time of his death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit; or
- (3)     The decedent held the property at the time of his death with another with the right of survivorship.

B.     All property restored to the decedent's estate under this section shall belong to the surviving spouse pursuant to RCW [ ' 2] as though the transfer had never been made.

Comment: Based on California Probate Code ' 102 and Idaho Code ' 15-2-202. This statute provides a surviving spouse with a power to require recontribution to the estate of a portion of quasi community property incompletely conveyed by the decedent to a third party before death. This statute will only act on quasi community property in which the decedent retained one of the interests enumerated by the statute. The purpose of the statute is again to equate quasi community property with community property by preventing one spouse from eliminating the other spouse's inchoate interest in the quasi community property by gift when the transferor retains one of the enumerated rights or powers. If the

decedent makes a conveyance which divests him of all interest in the property, or under which none of the interests enumerated by the statute are retained, the conveyance will be complete and the surviving spouse will have no entitlement to such property.

' 4     Limitation of Chapter

The characterization of property as quasi community property by this chapter shall be effective solely for the purpose of determining the disposition of such property at the time of a death. For all other purposes property characterized as quasi community property by this chapter shall be characterized without regard to the provisions of this chapter.

Comment: This provision is intended to make clear that the quasi community property rules apply only at the time of the death of the spouse who acquired the property. This statute does not give the non-acquiring spouse any immediate right to or control over such property during the acquiring spouse's lifetime. Similarly, the non-acquiring spouse shall have no power of testamentary disposition over the quasi community property during the acquiring spouse's life.

Subject to the requirements of RCW 11.40, these provisions will have no effect on the rights of a decedent's creditors to attach property owned by him or her at the time of death, even though characterized as quasi community property. Nothing in these provisions is intended to bar a husband and wife from entering into an agreement waiving or changing any rights granted by them.