Chapter 108

1971 REPLACEMENT PART

Husband and Wife Relationship; Property Rights

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GENERAL PROVISIONS

108.010 Removal of wife's civil disabilities; wife's civil rights same as husband's. All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband hereby are repealed; and all civil rights belonging to the husband not conferred upon the wife prior to June 14, 1941, or which she does not have at common law, hereby are conferred upon her, including, among other things, the right of action for loss of consortium of her husband.

108.020 Nonliability for other spouse's obligations. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage; and except as otherwise provided in ORS 108.040, they are not liable for the separate debts of each other, nor is the rent or income of property owned by either husband or wife liable for the separate debts of the other.

108.030 Liability of husband for civil injuries committed by wife. For all civil injuries committed by a married woman, damages may be recovered from her alone and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist.

108.040 Liability for expenses of family or education of children; time for commencing action; liability after divorce or separation. The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately; provided, however, that:

(1) In cases where it is sought to hold the wife responsible for such expenses either jointly or separately, the action must be commenced within two years after the cause of action accrued.

(2) After divorce the wife is in no wise responsible for debts or family expenses contracted by the husband while they were living together.

(3) After the wrongful separation of one spouse from the other, the one so wronged shall in no wise be responsible for debts contracted by the other subsequent to such separation except for maintenance, support and education of the minor children of the parties.

[Amended by 1965 c.530 §1]

108.050 Nonliability of wife's property for husband's obligations. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired including real or personal property acquired by her own labor during coverture, shall not be subject to the debts or contracts of her husband.

108.060 Noninterest of one spouse in property of other. When property is owned by either husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in ORS 108.040.

108.070 Rights of abandoned wife; adjudication of abandonment. When any married man residing in this state abandons his wife without making suitable provision for her support, and absents himself from this state for a period of one year, the county court of the county in which such wife resides may, upon her petition setting up the facts of such abandonment, verified by her own oath, summarily proceed to hear the petition and adjudge the fact as to such abandonment, which adjudication shall be conclusive as to such fact as to third persons. If such abandonment is adjudged thereupon, such married woman, during the absence of her husband, may in all respects contract in relation to, sell, convey, and deal with her separate property, real and personal, in the same manner as if she were a feme sole.

108.080 Civil remedies between spouses in respect of separate property. Should either the husband or wife obtain possession or control of property belonging to the other either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

108.090 Conveyances, transfers and liens between spouses; creation and dissolution of estates by entireties; validation of prior dissolutions. (1) A conveyance, transfer or lien executed by either husband or wife to or in favor of the other is valid to the same extent as between other persons.

(2) When a husband or wife conveys to the other an undivided one-half of any real property and retains a like undivided half,

and in such conveyance there are used words indicating an intention to create an estate in entirety, said husband and wife hold the real property described in the conveyance by the entirety.

(3) A conveyance from husband or wife to the other of his or her interest in an estate held by them by entirety is valid and dissolves the estate by entirety. All deeds heretofore executed by husband or wife to the other for the purpose of dissolving the estate by entirety are valid.

108.100 Husband and wife as attorney in fact for each other. One spouse may constitute the other his or her attorney in fact to control, sell and convey, mortgage, or bar dower or curtesy for their mutual benefit, and may revoke the same to the same extent and in the same manner as other persons.

108.110 Petition for support of wife and children. Any married woman may apply to the circuit court of the county in which she resides or in which her husband may be found for an order upon her husband to provide for her support or for the support of her minor children, or both, and, if the woman is pregnant, her unborn child, or both, if he is the natural father of such children or unborn child or if he be the adoptive father of such children. Such woman may apply for the order by filing in such county a petition setting forth the facts and circumstances upon which she relies for such order. If satisfied that a just cause exists, the court shall direct that a citation issue to the husband requiring him to appear at a time set by the court to show cause why an order of support should not be entered in the matter. If it appears to the satisfaction of the court that such woman is without funds to employ counsel and is otherwise unable to obtain counsel, the court may make an order directing the district attorney to prepare such petition and citation.
[Amended by 1963 c.497 §1]

108.120 Order on hearing petition; compelling attendance of witnesses; decree or order. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses or the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished.

108.130 Fees. At the time of filing the petition for an order of support, the petitioner shall pay to the clerk of the court a fee of $4, which shall cover all charges incident to the filing of papers necessary to a complete determination of the matter and no part of which shall be applied toward the library fund, of the county. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee.
[Amended by 1965 c.619 §34; 1971 c.621 §23]

108.140 Prenuptial property agreements. A man and woman who are parties to an intended marriage may enter into a prenuptial agreement in writing concerning their respective personal property holdings, and the final disposition thereof, upon such terms and conditions as may be mutually determined. If such intended marriage is consummated, such prenuptial agreement shall be binding upon the parties thereto, their heirs, legal representatives and assigns. This section shall not invalidate prenuptial agreements entered into prior to August 2, 1951.

COMMUNITY PROPERTY MATTERS

108.510 Revocation of election to come under terms of Community Property Law of 1943. (1) Notwithstanding any repeal of chapter 440, Oregon Laws, 1943, known as the Oregon Community Property Law of 1943, any husband and wife who elected to come under the terms thereof may revoke such election upon filing in the office of the Secretary of State a notice of their desire to revoke such election in the following form:

REVOCATION OF ELECTION TO COME UNDER THE OREGON COMMUNITY PROPERTY LAW, CHAPTER 440, OREGON LAWS, 1943

KNOW ALL MEN BY THESE PRESENTS, That we, ——— and ———, hereby state and represent that we are husband and wife; that we reside in ——— County, Oregon, and our post-office address is No. ——— Street, City of ———; that we do hereby revoke our election filed in the office of the

Secretary of State of the State of Oregon on the ——— day of ———, 19—, to avail ourselves of the provisions of chapter 440, Oregon Laws, 1943, being the Oregon Community Property Law.

IN WITNESS WHEREOF we have hereunto set our hands and seals this ——— day of ———, 19—.

———————

———————

STATE OF OREGON, }
County of ———— } ss.

BE IT REMEMBERED that on this —— day of ———, 19—, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named ———— and ————, his wife, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same.

———————

Notary Public for Oregon
My commission expires: ————

Acknowledgments may be taken by any other officer authorized to take acknowledgments.

(2) Such an instrument, together with a fee of $15, shall be presented to the Secretary of State, who thereupon shall file the instrument, properly index it in a book kept for that purpose and transmit to the recording officer of each county in the state the certificate of the Secretary of State, setting forth the nature of such instrument, the names of the parties thereto, the date thereof, and the date of the filing thereof in the office of the Secretary of State. Upon receipt of such certificate, the recording officer shall file it and properly index it in a book kept for that purpose.

(3) Public notice of such revocation exists upon compliance with subsection (2) of this section.

(4) The filing of such revocation operates to restore the title to any community property of persons making the revocation to the status of the property which existed on the date on which such persons filed a certificate of election under the terms of the Oregon Community Property Law of 1943. Such revocation in nowise limits the right of such persons to execute and record such conveyances, assignments and transfers of property, or title thereto, as may operate to effect and make a matter of record the restoration of titles to the status they occupied prior to the filing of the certificate of election.

108.515 Disposition of fees. (1) All moneys received by the Secretary of State under ORS 108.510 shall be paid into the State Treasury to the credit of the General Fund.

(2) Any funds remaining in the Community Property Revocations Account are hereby transferred to the credit of the General Fund.
[Amended by 1959 c.85 §1]

108.520 Effect of Act repealing Community Property Law of 1947. The provisions of ORS 108.530 to 108.550 do not impair or affect any right acquired prior to April 11, 1949, but the same may be enjoyed as fully and to the same extent as if ORS 108.520 to 108.550 had not been passed, under and according to the law in force at the time such right was acquired, except as provided in ORS 108.530 and 108.540.

108.530 Removal of community property status by agreement. Community property acquired during coverture and between July 5, 1947, and April 11, 1949, may be converted into property held as tenants in common or by entirety or as the separate property of either spouse by an agreement in writing evidencing such intent, signed by both husband and wife. If such agreement affects title to real property, it shall describe the property affected thereby, shall be executed and acknowledged in the same manner as deeds and shall be recorded in the deed records of each county in which any such real property is located.

108.540 Removal of community property status by death of either spouse. Upon the death of either spouse after April 11, 1951, all real or personal property which would have been the separate property of such spouse but for the enactment of chapter 525, Oregon Laws 1947, shall be subject to disposition by will and to descent and distribution as the separate property of such decedent as though said chapter 525 had not been passed.

108.550 Reliance on spouse's right to deal with property in his name. Notwithstanding any provisions of chapter 525, Oregon Laws 1947, or any provision of ORS

108.520 to 108.550, any other person may rely, and shall be fully protected in so doing, upon the right of the husband or the wife to receive, manage, control, dispose of or otherwise deal with property standing in his or her name in such manner that, by law, but for the provisions of said statutes, he or she would be entitled so to deal therewith.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel