

REFERENCE TITLE: Marital Property Rights

State of Arizona
Senate
Thirty-first Legislature
First Regular Session

Jim Buckley
Gregg Rosenberg
Frank Kelly
Jack Brown

John Kelly
Gene McCarty
John H. ...
S. B. **1166**
Introduced by *John H. ...*
Douglas Holcomb *Sam Long* *John ...*
AN ACT *Frank Kelly*

RELATING TO MARITAL AND DOMESTIC RELATIONS; PRESCRIBING MARITAL PROPERTY RIGHTS OF SPOUSES AND RIGHTS OF CONVEYANCE OR ABANDONMENT OF HOMESTEADS BY SPOUSES; AMENDING SECTIONS 25-211 AND 25-213, ARIZONA REVISED STATUTES; REPEALING SECTIONS 25-214, 24-215 AND 25-216, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 25-214 AND 25-215, AND AMENDING SECTIONS 33-453 AND 33-1104, ARIZONA REVISED STATUTES.

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 25-211, Arizona Revised Statutes, is amended
3 to read:

4 25-211. Property acquired during marriage as community
5 property; exceptions

6 A. All property acquired by either husband or wife during the
7 marriage, except that which is acquired by gift, devise or descent, or
8 ~~earned by the wife and her minor children while she lives separate and~~
9 ~~apart from her husband,~~ is the community property of the husband and
10 wife.

11 ~~B. During coverture, personal property may be disposed of by the~~
12 ~~husband only.~~

13 Sec. 2. Section 25-213, Arizona Revised Statutes, is amended
14 to read:

15 25-213. Separate property defined

16 A. All property, real and personal, of the husband EACH SPOUSE,

1 owned or claimed by him SUCH SPOUSE before marriage, and that acquired
2 afterward by gift, devise or descent, and also the increase, rents,
3 issues and profits thereof, is his THE separate property OF SUCH SPOUSE.

4 ~~B.--All property, both real and personal, of the wife, owned or~~
5 ~~claimed by her before marriage, and that acquired afterward by gift,~~
6 ~~devise or descent, and also the increase, rents, issues and profits~~
7 ~~thereof, is her separate property.~~

8 ~~G.--The earnings and accumulations of the wife and the minor chil-~~
9 ~~dren in her custody while she lives separate and apart from her husband~~
10 ~~are the separate property of the wife.~~

11 **Sec. 3. Repeals**

12 Sections 25-214, 25-215 and 25-216, Arizona Revised Statutes, are
13 repealed.

14 **Sec. 4. Title 25, chapter 2, article 2, Arizona Revised Statutes,**
15 **is amended by adding new sections 25-214 and 25-215, to read:**

16 **25-214. Management and control**

17 **A. EACH SPOUSE HAS THE SOLE MANAGEMENT, CONTROL AND DISPOSITION**
18 **RIGHTS OF HIS OR HER SEPARATE PROPERTY.**

19 **B. THE SPOUSES HAVE EQUAL MANAGEMENT, CONTROL AND DISPOSITION**
20 **RIGHTS OVER THEIR COMMUNITY PROPERTY, AND HAVE EQUAL POWER TO BIND THE**
21 **COMMUNITY.**

22 **C. EITHER SPOUSE SEPARATELY MAY ACQUIRE, MANAGE, CONTROL OR DIS-**
23 **POSE OF COMMUNITY PROPERTY, OR BIND THE COMMUNITY, EXCEPT THAT JOINDER**
24 **OF BOTH SPOUSES IS REQUIRED IN EITHER OF THE FOLLOWING CASES:**

25 **1. ANY TRANSACTION FOR THE ACQUISITION, DISPOSITION OR ENCUM-**
26 **BRANCE OF AN INTEREST IN REAL PROPERTY OTHER THAN AN UNPATENTED MINING**
27 **CLAIM OR A LEASE OF LESS THAN ONE YEAR.**

28 **2. ANY TRANSACTION OF GUARANTY, INDEMNITY OR SURETYSHIP.**

29 **25-215. Liability of community property and separate**
30 **property for community and separate debts**

31 **A. THE SEPARATE PROPERTY OF A SPOUSE SHALL NOT BE LIABLE FOR THE**
32 **SEPARATE DEBTS OR OBLIGATIONS OF THE OTHER SPOUSE, ABSENT AGREEMENT TO**
33 **THE CONTRARY.**

1 B. THE COMMUNITY PROPERTY IS LIABLE FOR THE PREMARITAL SEPARATE
2 DEBTS OF A SPOUSE, BUT ONLY TO THE EXTENT OF THE VALUE OF THAT SPOUSE'S
3 CONTRIBUTION TO THE COMMUNITY PROPERTY WHICH WOULD HAVE BEEN SUCH SPOUSE'S
4 SEPARATE PROPERTY IF SINGLE.

5 C. EXCEPT AS PROHIBITED IN SECTION 25-214, EITHER SPOUSE MAY CON-
6 TRACT DEBTS AND OTHERWISE ACT FOR THE BENEFIT OF THE COMMUNITY. IN AN
7 ACTION ON SUCH A DEBT OR OBLIGATION THE SPOUSES SHALL BE SUED JOINTLY
8 AND THE DEBT OR OBLIGATION SHALL BE SATISFIED: FIRST, FROM THE COMMUNITY
9 PROPERTY, SECOND, FROM THE SEPARATE PROPERTY OF THE SPOUSE CONTRACTING
10 THE DEBT OR OBLIGATION, AND THIRD FROM THE SEPARATE PROPERTY OF THE OTHER
11 SPOUSE.

12 Sec. 5. Section 33-453, Arizona Revised Statutes, is amended
13 to read:

14 33-453. Conveyance of homestead

15 The homestead of a family shall not be sold and conveyed by the
16 owner, ~~if a married man,~~ A SPOUSE without consent of the wife OTHER
17 SPOUSE. The consent shall be evidenced by the wife EACH SPOUSE joining
18 in the conveyance by signing her name THEIR NAMES thereto, and also by
19 her acknowledgment thereof.

20 Sec. 6. Section 33-1104, Arizona Revised Statutes, is amended
21 to read:

22 33-1104. Abandonment of homestead; encumbrance of
23 homestead; joining of wife

24 A. A homestead may be abandoned only by a declaration of abandon-
25 ment or waiver, or by a grant thereof, or by permanent removal of the
26 claimant from the state.

27 B. A declaration of abandonment, waiver or grant shall be executed
28 by the husband and wife, if the claimant is married, or by the claimant
29 alone, if unmarried. A declaration of abandonment is effectual only from
30 the time of recording it in the office of the county recorder in which
31 the homestead claim was recorded.

32 C. A married man PERSON shall not sell or lease the homestead, or
33 create any lien thereon, without being joined by his wife THE OTHER
34 SPOUSE.