

The Commonwealth of Massachusetts

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REPORT

OF THE

SPECIAL COMMISSION

RELATIVE TO THE

ESTABLISHMENT OF COMMUNITY PROPERTY  
RIGHTS BETWEEN HUSBAND AND WIFE  
IN THIS COMMONWEALTH

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MAY 21, 1948

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# The Commonwealth of Massachusetts

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CORNELIUS J. MOYNIHAN of Newton, *Counsel.*

FREDERICK A. McDERMOTT of Needham, *Research Assistant.*

# The Commonwealth of Massachusetts

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## RESOLVE CREATING COMMISSION.

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### CHAPTER 76.

#### RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE ESTABLISHMENT OF COMMUNITY PROPERTY RIGHTS BETWEEN HUSBAND AND WIFE IN THIS COM- MONWEALTH.

*Resolved*, That an unpaid special commission, to consist of three members of the senate to be designated by the president thereof, five members of the house of representatives to be designated by the speaker thereof, and three persons to be appointed by the governor, is hereby established for the purpose of making an investigation and study of the subject matter of current house document numbered twenty-two hundred and forty-six, relative to the establishment of community property rights between husband and wife in Massachusetts. The commission shall be provided with quarters in the state house, may hold hearings and require the attendance and testimony of witnesses under oath and the production of books and papers. It may employ such clerical and legal expert assistance as may be necessary, may travel within and without the commonwealth in pursuance of its duties, and may also incur such other incidental expenses as may be necessary in the conduct of the investigation and study, and may expend for said purposes such sums as may be appropriated therefor. The commission shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry said recommendations into effect, by filing the same with the clerk of the house of representatives on or before the first Wednesday of December in the current year.

*Approved June 28, 1947.*

# The Commonwealth of Massachusetts

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## REPORT OF THE SPECIAL COMMISSION RELATIVE TO THE ESTABLISHMENT OF COMMUNITY PROPERTY RIGHTS BETWEEN HUSBAND AND WIFE IN THIS COMMONWEALTH.

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MAY 21, 1948.

*To the Honorable Senate and House of Representatives.*

The Special Commission appointed under the above title, under chapter 76 of the Resolves of 1948, herewith submits the following report.

### I.

#### ORGANIZATION.

The fact that the so-called community property States, at the time the Commission was appointed, enjoyed a favored status under federal income tax legislation was and is so well known as to need no elaboration in this report. It was also common knowledge that a number of other States had recently adopted legislation to secure for their citizens the same favorable status. Legislation designed for that purpose was pending in this Commonwealth (1947, House, No. 2246).

The desirability of obtaining relief from federal taxation for citizens of the Commonwealth was clear, but the question whether legislation which would create that result was desirable and practicable, in view of the tremendous changes in our laws that would necessarily follow, posed a serious problem.

The Commission has made a thorough and detailed investigation and study of the desirability and practica-

bility of legislation to establish a system of community property rights in this Commonwealth. A number of the members attended the National Tax Conference, and there received the benefit of consultation with experts in the field of such legislation from all over the country. Several public hearings were held at the State House. Proposed legislation was carefully examined and analyzed. Consideration was given to the civil law concept of community property, and to the constitutional and statutory provisions of the States in this country having similar systems. The Commission employed as counsel, Cornelius J. Moynihan, Esquire, of Newton, professor of the law of property in Boston College Law School; and as research assistant, Frederick A. McDermott, Esquire, of Needham, associate professor in the same law school. A subcommittee of the Commission met frequently in executive session with counsel and drafted a bill embodying what were deemed to be the most desirable provisions for this type of legislation. The draft bill was discussed exhaustively at numerous meetings of the Commission.

## II.

### RECOMMENDATIONS.

The action of the United States Congress in amending the federal income tax law so as to provide for splitting of income between husband and wife has removed the discriminatory tax advantage formerly given to spouses in community property States (Revenue Act of 1948, Public Law 471, 80th Congress, 2nd Session). This change has removed the necessity of legislation in this Commonwealth to obtain the tax relief desired.

Therefore the Commission does not recommend the enactment of legislation to establish a community property system in this Commonwealth.

However, in the event that the General Court shall deem it desirable for other reasons to enact such legislation, the Commission attaches hereto, as Appendix A, a draft bill which a majority of the Commission recom-

mends as the most desirable form of such legislation in the light of the existing law of the Commonwealth.

If the Congress should in the future repeal the provisions of the Revenue Act of 1948, allowing the splitting of income between husband and wife, and restore the law as it previously stood, the Commission is of the opinion that the General Court should at that time give renewed consideration to the question of enacting community property legislation.

Respectfully submitted,

EDWARD M. ROWE,

*Chairman.*

EARLE S. BAGLEY,

*Vice-Chairman.*

RICHARD H. LEE.

MICHAEL A. FLANAGAN.

A. JAMES CASNER.

JOHN F. RICH.

EARLE S. TYLER.

JEREMIAH KAMENS.

ERNEST W. DULLEA.

MINORITY REPORT.

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## COMMUNITY PROPERTY: MORAL OR EXPEDIENT?

In view of the provisions of the 1948 Revenue Act that the United States Congress has adopted, which automatically provides for the splitting of the combined income of married couples for federal income tax purposes, there is no need for the State of Massachusetts to enact community property legislation.

I write this minority report with great reluctance. As the only woman on the eleven-member Commission appointed to investigate and study the establishment of community-property rights between husband and wife in this Commonwealth, it has been my steadfast principle to be in accord and harmony with my associates.

I pay high tribute to my eminent colleagues, all of whom have contributed valuable service, and to our chairman, Senator Edward M. Rowe, who has conducted our meetings with dignity and ability. The facts with regard to community-property legislation, and the status of women and children under it, have been considered by this State for more than a year. Prior to the appointment of this Commission, hearings relative to proposed community-property legislation were held last year by the Legal Affairs Committee of the Massachusetts General Court. This year similar hearings were conducted by this Commission to which I have had the signal honor of being appointed by the Chief Executive of the Commonwealth. So, being cognizant of the serious responsibility of having a part in the work of an important Commission, a sense of duty as the only woman member, and in a sense, a representative of the interests of women and children, has led me to outline what I believe to be the irrefutable case against the adoption of community-property law in Massachusetts, and indicate the reasons that I cannot

agree with the majority of the Commission who have recommended a "draft bill as containing the most suitable provision for this type of legislation."

Perhaps it is unnecessary to make the point that community-property is a historical continuum, to use that awkward Latin term which has come to us through German metaphysics. The concept of community-property, which is of Germanic origin, is based on the assumption that both spouses contribute to acquisitions made during marriage, and that both should have a vested interest in such acquisitions.

The system was adopted in France and Spain and transplanted to their colonies in the New World, so that today it exists in thirteen States of this country. California, Nevada and Texas incorporated community-property in their Constitutions soon after their admission to the Union. Arizona, Idaho, Louisiana, New Mexico and Washington adopted the system by statute. Oklahoma and Hawaii enacted it in 1945. Pennsylvania's community-property law, effective September 1, 1947, was declared on November 26, 1947, to be unconstitutional. The enactment in 1947 of community-property laws in Michigan, Nebraska and Oregon, I believe, is the product of high surtaxes.

In my opinion, from my intensive study of the proposed community-property legislation, it is a rich man's device — a contrivance to give married couples who have an income of over \$5,000 annually, with a net income of \$2,000 after deductions, a tax advantage. But the complicated proposed community-property law would place a woman in no greater position of equality with her husband than she presently enjoys under the fundamental and traditional law of this Commonwealth. Women were not in a position of equality under the common law, neither are they in a position of equality under the community-property systems thus far adopted in the thirteen States.

I could not recommend for enactment any community-property law which is not a law in which husband and

wife genuinely share in income, in management, in control, in disposition, in ownership, and in expenditure of property and income. Because the proposed bill does not meet that test, and fails in other respects, particularly in sections dealing with the inheritance rights of children, I am not in accord with it.

The women and children of this State should not confide their moral and economic interests to a rich man's device in which women are used as scapegoats, and which they will be unable to rely upon for their own protection.

The women of this State do not slumber. They will never bow or yield to the injustices to women and children contained in this proposed bill. Women are people, and they compose more than half the population of this State.

Four points should be made:

1. The proposed law would create a great deal of expensive and trouble-breeding litigation. It would take Massachusetts a generation to learn to live with it.

2. The proposed draft contravenes the principal basis of community-property legislation. It is not a purely logical community-property law in which husband and wife would genuinely share in income, in management, in control, in disposition, in ownership, and in expenditure of property and income.

3. There is no justification for the proposed diminution of the inheritance of children.

4. It is neither moral nor expedient to change the fundamental and traditional law of this Commonwealth in order to obtain a tax benefit that would probably be temporary in character.

1. The proposed law would create a great deal of expensive and trouble-breeding litigation. It would take Massachusetts a generation to learn to live with it.

The question whether the fundamental and traditional law of Massachusetts should be changed to community-property law presents a grave question of policy.

If Massachusetts were to enact the community-property law, difficulties would eventually arise in every family, when (1) disharmony in the marital relationship devel-

oped, or (2) upon dissolution of the marriage, and inevitably (3) upon death of either spouse.

The principal drawbacks of the proposed community-property law are found in its complexities. The draft proposes three kinds of property: (1) separate property of the husband; (2) separate property of the wife; (3) community property.

From the moment community property is enacted into law in this State, no longer would the vow, "with all my worldly goods I thee endow" have any meaning. It would be nullified by law. It would mean, "with none of my worldly goods do I thee endow." Under the community-property law, each spouse should say, "what is mine you will never get."

But after marriage the earnings of either spouse would belong to both spouses. That fact would make it mandatory for every husband and every wife to keep written and exact financial accounts between themselves. Some marriages are ended by divorce; but all are dissolved by death. When a marriage comes to an end in a Community-Property State there must be an exact accounting, required by law.

Section 15 of the draft makes specific provisions which would result in many changes in the distribution of estates. In the event of the death of a spouse that owned a business this section by its very nature would cause confusion and possible disruption in the administration of business. The community-property system would be workable only by employing competent legal counsel and accountants.

2. The proposed draft contravenes the principal basis of community-property legislation. The bill is not a purely logical community-property law in which husband and wife would genuinely share in income, in management, in control, in disposition, in ownership, and in expenditure of property and income.

In the drafting of the Massachusetts statute the sub-committee of the Commission followed the pattern of modern community-property States such as Michigan, which requires the wife to join in a conveyance of com-

munity realty. The wife's failure to join in a conveyance of community realty would render the conveyance invalid. But what is the effect of subsections II and III of section 7, relative to the community-personal property (which sometimes is larger than the community-property realty), which provides that "the spouse having management, control and power of disposition of community personal property shall not without the consent of the other spouse transfer or encumber such property without fair consideration . . . except that such spouse may make any gift of such property which is not unreasonable in the light of the social and economic position of the spouses"?

That contravenes the very fundamental principle of the marital partnership that should be the real basis of community property.

Under these sections the spouse in control (usually the husband) can make any gift and challenge the other spouse to prove it unreasonable.

How under these sections (subsection II and III of section 7) can spouses be called co-owners, or partners, when either the husband or wife can give away community personal property without the consent of the other, assuming only that such gift is "reasonable"?

This section would create a basis for litigation between husband and wife which has not heretofore existed. It would bring about a suppressed discontent which in many cases might well be a contributing factor in breaking up marriages.

I believe even that these subsections II and III of section 7 would not be constitutional legislation, and that if they are not eliminated their legality should be tested by requesting an advisory opinion from the Supreme Judicial Court.

3. There is no justification to the proposed diminution of interest of the inheritance rights of children.

Section 6 would preserve dower and curtesy. Nothing has been done with respect to the laws of descent and distribution or the rights of a surviving husband or wife in the property of the other. The net result is that ap-

parently the surviving spouse takes the right now provided by law in addition to his or her rights in the community property. This results in a diminution of the interest of surviving children for which there is no justification. Children now get two thirds of intestates property; under the proposed law they would get only one third.

4. It is neither moral nor expedient to change the fundamental and traditional law of this Commonwealth in order to obtain a tax benefit that will probably be temporary in character.

The paramount reason community-property legislation is being promoted in this State is because it is a device that results in tax savings. There is no longer any need for Massachusetts to consider the adoption of community-property legislation inasmuch as Congress has already acted to cure the tax inequities existing between community property States and common law States.

In community property States there are far more joint returns than separate returns, because to the great majority of people it makes no difference in taxes. In order to get any savings out of community-property law a family would have to have more than \$3,000 taxable income above exemptions, *i.e.*, a family would have to be in a surtax bracket to get any tax advantage. Below that point there is no tax saving.

#### CONCLUSION.

It is neither moral or expedient to change the fundamental and traditional law of this Commonwealth in order to obtain a tax benefit for a few citizens that will only be temporary in character.

The proposed community-property legislation is not a cure-all for the ills that prevail in other community property States, and would follow in this State should the proposed draft be enacted.

The fundamental and traditional law of Massachusetts has survived. The fundamental and traditional law of Massachusetts will survive. That is the lesson of our

history which every law-abiding person in Massachusetts understands.

The traditional and fundamental law of this State did not become such by chance. It is not new. It has millennial history behind it. It is interwoven with our American way of life. In behalf of the people it is committed to the preservation of the loftiest ideals and purpose of human freedom and American Democracy.

By ADA F. YORK.

MAY 20, 1948.

## PROPOSED LEGISLATION.

## APPENDIX A.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Eight.

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A SYSTEM  
OF COMMUNITY PROPERTY BETWEEN HUSBAND AND WIFE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The General Laws are hereby amended by insert-  
2 ing after chapter two hundred and nine the following  
3 chapter:—

4 CHAPTER 209A.

## 5 COMMUNITY PROPERTY.

## 6 Section 1. Separate Property of the Husband.—

7 (a) The separate property of the husband shall be  
8 all interests in property, real and personal, legal and  
9 equitable, which are —

10 I. Owned by him before marriage or before the  
11 effective date of this act, whichever is later.

12 II. Afterwards acquired by him by gift, bequest,  
13 devise, inheritance or intestate succession.

### 14 III. Afterwards acquired by him as a result of

15 injury to his person or reputation or as a result of  
16 injury to or loss of his separate property as herein  
17 defined.

18 IV. Afterwards acquired by him from the sale,  
19 transfer or exchange of his separate property as herein  
20 defined, or acquired by him with the proceeds of such  
21 sale, transfer or exchange, or in any other manner  
22 acquired with or from his separate property as herein  
23 defined.

24 V. Afterwards acquired by him as the income of  
25 or the product of his separate property as herein de-  
26 fined to the extent that such income or product is  
27 attributable to such property as distinguished from  
28 the management thereof or personal services ren-  
29 dered in relation thereto.

30 (b) The husband shall have the right to manage,  
31 control, dispose of and otherwise deal with his sepa-  
32 rate property as provided by existing law. Such  
33 separate property shall be governed in all respects by  
34 existing law except to the extent that the subsequent  
35 provisions of this chapter are specifically applicable.

36 *Section 2. Separate Property of the Wife.* — (a)  
37 The separate property of the wife shall be all interests  
38 in property, real and personal, legal and equitable,  
39 which are —

40 I. Owned by her before marriage or before the  
41 effective date of this act, whichever is later.

42 II. Afterwards acquired by her by gift, bequest,  
43 devise, inheritance or intestate succession.

44 III. Afterwards acquired by her as a result of  
45 injury to her person or reputation or as a result of  
46 injury to or loss of her separate property as herein  
47 defined.

48 IV. Afterwards acquired by her from the sale,  
49 transfer or exchange of her separate property as  
50 herein defined, or acquired by her with the proceeds  
51 of such sale, transfer or exchange, or in any other  
52 manner acquired with or from her separate property  
53 as herein defined.

54 V. Afterwards acquired by her as the income of  
55 or the product of her separate property as herein  
56 defined to the extent that such income or product is  
57 attributable to such property as distinguished from  
58 the management thereof or personal services rendered  
59 in relation thereto.

60 (b) The wife shall have the right to manage, con-  
61 trol, dispose of and otherwise deal with her separate  
62 property as provided by existing law. Such separate  
63 property shall be governed in all respects by existing  
64 law except to the extent that the subsequent provi-  
65 sions of this chapter are specifically applicable.

66 *Section 3. Effect of Holding Property in Joint  
Names of Husband and Wife.* — Property, real and  
68 personal, may be held in the names of both husband  
69 and wife in joint tenancy, tenancy by the entirety,  
70 tenancy in common or as community property. In-  
71 terests in property held by both husband and wife as  
72 joint tenants, tenants by the entirety or tenants in  
73 common shall be separate property even though ac-  
74 quired with community property. A transfer or con-  
75 veyance of property to a husband and wife shall  
76 create a tenancy in common unless a contrary inten-  
77 tion is expressed or manifestly implied in the transfer  
78 or conveyance.

79 *Section 4. Community Property.* — (a) All prop-  
80 erty which is not separate property of either the hus-

81 band or the wife or both, as defined in sections one,  
82 two and three of this chapter, and which is acquired  
83 by either the husband or wife or both after marriage  
84 or on or after the effective date of this act, whichever  
85 is later, shall be community property of the husband  
86 and wife, and each shall have as an incident of mar-  
87 riage a vested undivided one half interest therein.

88 (b) In any proceeding in which the nature of the  
89 ownership of property by a spouse is in issue the bur-  
90 den of proof shall be on the party affirming that such  
91 property is separate property.

92 *Section 5. Transfers and Conveyances to Husband  
93 or Wife and between Husband and Wife.* — Subject to  
94 the recording provisions of section three of chapter  
95 two hundred and nine and to the rights of creditors —

96 (a) The husband or wife may transfer or convey  
97 his or her interest in any community property to the  
98 other spouse, and the transfer or conveyance shall  
99 operate to make such property the separate property  
100 of such other spouse.

101 (b) The husband and wife may transfer or convey  
102 their interests in any community property to them-  
103 selves as joint tenants, tenants by the entirety, or  
104 tenants in common, and the transfer or conveyance  
105 shall operate to make such property their separate  
106 property.

107 (c) The husband or wife may transfer or convey  
108 any of his or her separate property to himself or her-  
109 self, and the other spouse and the transfer or convey-  
110 ance shall operate to make such property community  
111 property if such intention is expressed or manifestly  
112 implied in the transfer or conveyance.

113 (d) The husband or the wife may declare by a

114 written instrument duly signed by him or her that  
115 separate real or personal property standing in his or  
116 her name and described in such instrument shall be  
117 community property, and such declaration shall have  
118 the effect of making the property so described com-  
119 munity property; provided, however, that a declara-  
120 tion in respect of real property shall be duly signed,  
121 sealed, acknowledged and recorded in the registry of  
122 deeds for the county or district in which the property  
123 is situated.

124 (e) The husband and the wife may declare by a  
125 written instrument duly signed, sealed and acknowl-  
126 edged by them, and recorded in the registry of deeds  
127 for the county or district where the property is situ-  
128 ated, that real property standing in the name of one  
129 of the spouses and described in such instrument is  
130 the separate property of the spouse in whose name  
131 such property stands, and such declaration shall have  
132 the effect of making the property so described the  
133 separate property of such spouse. The declaration  
134 may be annexed to the instrument conveying real  
135 property to one of the spouses, or may be in the form  
136 of a separate instrument.

137 (f) The husband or the wife may by a written  
138 statement signed by him or her assent to the pay-  
139 ment out of community property of a premium on a  
140 life insurance or endowment policy, and the payment  
141 if made with such assent of the other spouse shall  
142 have the same effect, with respect to rights under  
143 the policy, as if made out of the separate property of  
144 the spouse paying the premium.

145 *Section 6. Curtesy and Dower.* — No right of cur-  
146 tesy or dower shall exist in community property,

147 but this act shall not affect the right of a spouse to  
148 courtesy or dower in the separate property of the  
149 other spouse.

150     *Section 7. Management, Control and Disposition of*  
151 *Community Property.* — (a) The wife shall have the  
152 right to receive, manage, control, dispose of, and  
153 otherwise deal with that portion of the community  
154 property which consists of her earnings for personal  
155 services, and all other community property which  
156 shall stand in her name, subject to the limitations set  
157 forth in paragraph (d) below.

158     (b) The husband and the wife shall have joint  
159 control, management and power of disposition of  
160 community property standing in the name of both  
161 husband and wife. Nothing in this paragraph shall  
162 be deemed to affect the existing law as to property  
163 held in joint tenancy, tenancy in common, or tenancy  
164 by the entirety.

165     (c) The husband shall have the right to receive,  
166 manage, control, dispose of, and otherwise deal with  
167 all community property other than that described in  
168 paragraphs (a) and (b) of this section, subject to the  
169 limitations set forth in paragraph (d) below.

170     (d) I. The interest and rights of a spouse in com-  
171 munity real property standing in the name of the  
172 other spouse shall not be affected by an instrument  
173 conveying, encumbering or leasing such property  
174 unless both spouses join in the instrument.

175     II. The spouse having management, control and  
176 power of disposition of community personal property  
177 shall not without the consent of the other spouse  
178 transfer or encumber such property without fair con-  
179 sideration as defined in section three of chapter one  
180 hundred and nine A, except that such spouse may  
181 make any gift of such property which is not unrea-

182 sonable in the light of the social and economic posi-  
183 tion of the spouses.

184 III. The rights to manage, control, dispose of and  
185 otherwise deal with community property provided in  
186 this section shall be exercised in good faith for the  
187 benefit of the community. In the event of any viola-  
188 tion by the husband or the wife of the limitations  
189 imposed on the power to manage, control, dispose of  
190 and otherwise deal with community property the  
191 aggrieved spouse shall be entitled to appropriate re-  
192 lief in equity; provided, however, that such violation  
193 shall not affect the rights of, or impose any liability  
194 on, any person acquiring community personal prop-  
195 erty for fair consideration and without actual knowl-  
196 edge of such violation.

197 *Section 8. Rights of Creditors.* — (a) As used in  
198 this section, (1) "liable" shall mean liable to, or sub-  
199 ject to, all the remedies, legal and equitable, avail-  
200 able under existing law for the enforcement of credi-  
201 tors' rights; (2) "inception of the community" shall  
202 mean the date of marriage or the effective date of  
203 this act, whichever is later.

204 (b) In addition to the liability thereof otherwise  
205 provided by law, the separate property of the wife  
206 and that portion of the community property under  
207 the management, control and power of disposition of  
208 the wife shall be liable for debts contracted or liabili-  
209 ties incurred by the wife.

210 (c) In addition to the liability thereof otherwise  
211 provided by law, the separate property of the husband  
212 and that portion of the community property under  
213 the management, control and power of disposition of  
214 the husband shall be liable for debts contracted or  
215 liabilities incurred by the husband.

216 (d) In addition to the liability otherwise provided

217 by law, the separate property of either the husband  
218 or the wife or both, and the community property  
219 under the management, control and power of dis-  
220 position of either the husband or the wife or both,  
221 shall be liable for debts contracted and liabilities in-  
222 curred jointly by the husband and the wife.

223 (e) All debts contracted and liabilities incurred by  
224 either the husband or the wife or both prior to the in-  
225 ception of the community shall be enforceable by  
226 creditors to the same extent as they were prior to the  
227 inception of the community, and in addition such  
228 debts and liabilities shall be enforceable under the pro-  
229 visions of this section to the same extent as if they  
230 had been contracted or incurred subsequent to the  
231 inception of the community.

232 (f) Nothing in this section shall be deemed to affect  
233 the existing law as to rights of creditors with respect  
234 to tenancies by the entirety, joint tenancies, or ten-  
235 ancies in common.

236 *Section 9. Adjustments of Interests of Husband and*  
237 *Wife.* — As between the husband and the wife com-  
238 munity property shall be first resorted to for the satis-  
239 faction of debts contracted and liabilities incurred for  
240 the protection or benefit of the community property  
241 or the community, and the separate property of the  
242 husband or the wife shall be first resorted to for the  
243 satisfaction of debts contracted and liabilities in-  
244 curred for any other purpose. In the event that  
245 community property is applied to the satisfaction of  
246 debts and liabilities other than those contracted or  
247 incurred for the protection or benefit of the commu-  
248 nity property or the community, the amount which  
249 has been so applied shall be chargeable against the  
250 interest of the spouse who contracted the debt or in-

251 cured the liability, and upon any division of the  
252 community property by reason of termination of the  
253 community the respective interests of the husband  
254 and wife in the community property shall be adjusted  
255 accordingly.

256 *Section 10. Parties to Suits by and against the*  
*257 Community.* — (a) Suits by the community. I. The  
258 wife shall be a necessary party plaintiff and the hus-  
259 band shall be a proper party plaintiff in any civil  
260 proceeding brought to establish or enforce a com-  
261 munity right or interest which is subject to the sole  
262 management and control of the wife.

263 II. The husband shall be a necessary party plain-  
264 tiff and the wife shall be a proper party plaintiff  
265 in any civil proceeding brought to establish or enforce  
266 a community right or interest which is subject to the  
267 sole management and control of the husband.

268 III. Both the husband and the wife shall be neces-  
269 sary parties plaintiff in any civil proceeding brought  
270 to establish or enforce a community right or interest  
271 which is subject to the joint management and control  
272 of the husband and the wife; provided, however, that  
273 if a spouse unreasonably refuses to join as a party  
274 plaintiff, the other spouse shall be entitled to appro-  
275 priate relief in equity.

276 (b) Suits against the community. Both the hus-  
277 band and the wife shall be necessary parties defend-  
278 ant in any civil proceeding in which it is sought to  
279 enforce the liability of community property under  
280 the provisions of section eight or to affect the owner-  
281 ship of or to foreclose an encumbrance on community  
282 property.

283 *Section 11. Support of Spouse and Minor Children.*  
284 — Nothing contained in this act shall be deemed to

285 affect or modify the existing law as to the duty of  
286 one spouse to support the other spouse and minor  
287 children.

288 *Section 12. Exemptions and Homestead.* — (a)  
289 Nothing in this act shall be deemed to affect or  
290 modify the exemptions to which the husband and the  
291 wife, or either of them, are entitled by existing law.

292 (b) An estate of homestead, whether it is separate  
293 property or community property, shall not be con-  
294 veyed or encumbered except as provided by existing  
295 law.

296 *Section 13. Incapacity of Spouse.* — If a spouse  
297 has been adjudged insane, or a spendthrift, or a per-  
298 son incapable of properly caring for his or her prop-  
299 erty, the probate court may upon the petition of the  
300 other spouse enter a decree authorizing the petition-  
301 ing spouse to manage, control and dispose of the com-  
302 munity property then under the management, con-  
303 trol and power of disposition of the respondent spouse.  
304 The court may enter such other or further orders and  
305 decrees relative to the management, control and dis-  
306 position of community property as may be just,  
307 proper and equitable. The remedy provided in this  
308 section shall be in addition to the remedies available  
309 under existing law.

310 *Section 14. Divorce, Separation, and Support.* —  
311 (a) Upon a divorce the court may partition or divide  
312 community property between the parties in such pro-  
313 portions and in such manner as the court shall deem  
314 just, proper and equitable under the circumstances  
315 of the case. The respective interests of the parties  
316 in any community property which is not partitioned  
317 or divided by decree of the court shall thereafter be  
318 those of tenants in common.

319 (b) The probate court may in any proceeding under  
320 the provisions of sections thirty, thirty-two, thirty-  
321 five and thirty-six of chapter two hundred and nine  
322 enter such orders and decrees relative to the parti-  
323 tion, division, management and control of community  
324 property as the court from the facts may deem just,  
325 proper and equitable under the circumstances of the  
326 case. In any such proceeding the court may enter a  
327 decree that property thereafter acquired by the  
328 spouses or either of them shall be separate property.

329 *Section 15. Death of Spouse and Administration of*  
330 *Estate*. — (a) Upon the death of one spouse, the  
331 surviving spouse shall continue to own an undivided  
332 one half interest in the community real property, and  
333 the other undivided one half interest in such real prop-  
334 erty shall pass as the property of the deceased spouse  
335 in accordance with the applicable laws of testate or  
336 intestate succession, subject to the provisions of this  
337 section.

338 (b) Title to all the community personal property  
339 shall vest for purposes of administration in the ex-  
340 ecutor or administrator of the deceased spouse, and  
341 subject to such administration the surviving spouse  
342 shall continue to have an undivided one half interest  
343 therein, and the other undivided one half interest  
344 therein shall pass as the property of the deceased  
345 spouse in accordance with the applicable laws of  
346 testate or intestate succession.

347 (c) The surviving spouse may at any time petition  
348 the probate court for authority to manage and con-  
349 trol until further order of the court any property,  
350 real or personal, which at the death of the deceased  
351 spouse was community property, or was commingled  
352 community property and separate property of the

353 surviving spouse, and was at such time under the  
354 management and control of the surviving spouse or  
355 under the joint management and control of both  
356 spouses. The petition shall be accompanied by an  
357 inventory listing all such property to which the peti-  
358 tion relates. The petition may be allowed, in whole  
359 or in part, without special notice, or with such special  
360 notice as the court may order to be given prior to or  
361 after the granting of such authority. A surviving  
362 spouse to whom such authority is granted shall be  
363 under a duty to account to the executor or adminis-  
364 trator, and in the case of community real property,  
365 to the heirs or devisees of the deceased spouse. Be-  
366 fore granting such authority the court shall require  
367 the surviving spouse to give a bond, with or without  
368 sureties, payable to the judge of said court and his  
369 successors in such sum and with such conditions as  
370 the court may deem proper. Such bond may be  
371 put in suit by the executor or administrator and the  
372 heirs or devisees. The court may, at any time,  
373 modify or revoke such authority, and may enter such  
374 further orders as shall be proper and reasonable for  
375 the protection of all interested persons. Nothing in  
376 this section shall prevent the surviving spouse from  
377 acting as executor or administrator of the estate of  
378 the deceased spouse.

379 (d) Subject to the provisions of paragraph (c) of  
380 this section, the executor or administrator of the  
381 deceased spouse shall administer, in addition to the  
382 separate property of the deceased spouse, all com-  
383 munity personal property, and with respect to com-  
384 munity real property and the debts for which such  
385 property is liable under section eight shall have the  
386 rights, powers and duties provided for executors and  
387 administrators by chapter two hundred and two.

388 (e) The executor or administrator shall in the in-  
389 ventory required to be filed under the provisions of  
390 section twenty-two of chapter sixty-five and section  
391 five of chapter one hundred and ninety-five list sepa-  
392 rately all community property and all separate prop-  
393 erty of the deceased spouse, and shall in his accounts  
394 set forth separate schedules relative to community  
395 property and such separate property.

396 (f) The probate court shall upon the petition of  
397 the executor or administrator or of any interested  
398 person, after such notice as it may order, determine  
399 whether and to what extent any property was at the  
400 death of the deceased spouse community property or  
401 the separate property of either spouse or both spouses.

402 (g) Upon the making of such determination the  
403 probate court shall enter an appropriate decree in  
404 accordance therewith, and may issue such orders,  
405 including orders relative to the execution and delivery  
406 of conveyances, transfers, waivers, releases and other  
407 instruments, as may be appropriate to implement  
408 the decree.

409 (h) The probate court shall have jurisdiction to  
410 determine whether and to what extent debts, judg-  
411 ments and liabilities and expenses of administration  
412 are payable out of community property or out of the  
413 separate property of the deceased spouse.

414 (i) A creditor of the surviving spouse having a  
415 claim for which community property is liable under  
416 the provisions of section eight of this chapter may  
417 present his claim to the probate court within one  
418 year after the giving of bond by the executor or ad-  
419 ministrator, and if, upon examination thereof, the  
420 court finds that such claim is or may become justly  
421 due and community property is liable therefor it shall  
422 order the executor or administrator to retain in his

423 hands sufficient community property to satisfy the  
424 same. But if the surviving spouse or any interested  
425 person offers to give bond to the alleged creditor  
426 with sufficient surety or sureties for the payment of  
427 his claim if it is proved to be due, the court may order  
428 such bond to be taken instead of requiring com-  
429 munity property to be retained as aforesaid. Nothing  
430 in this paragraph shall affect the rights which a  
431 creditor may have against the surviving spouse or  
432 his or her property.

433 (j) After payment or discharge, or provision for  
434 payment or discharge, of debts, judgments, liabilities  
435 and expenses chargeable against the community  
436 property, the executor or administrator shall execute  
437 and deliver such instruments as shall be appropriate  
438 to transfer or distribute the remainder of the com-  
439 munity property to the persons entitled thereto.

440 *Section 16. Applicability of Act to Personal and*  
441 *Real Property.* — This act shall apply to personal  
442 property, wherever situated, acquired by a husband  
443 or wife while domiciled in this commonwealth, and  
444 shall apply to real property situated in this common-  
445 wealth wherever the husband or wife are domiciled.

446 *Section 17. Protection of Banks, Life Insurance*  
447 *Companies and Fraternal Benefit Societies.* — Not-  
448 withstanding the provisions of this act —

449 (a) Any payment by a bank, as defined in section  
450 one of chapter one hundred and sixty-seven, of any  
451 deposit or any part thereof or any interest or divi-  
452 dends thereon, made in accordance with the terms  
453 of the contract of deposit or of any written modifica-  
454 tion thereof, shall be a valid payment unless before  
455 such payment is made the bank has been notified  
456 in writing that some other person claims an interest  
457 in such deposit or the interest or dividends thereon.

458 (b) Any payment by a life company, as defined  
459 in section one hundred and eighteen of chapter one  
460 hundred and seventy-five, a fraternal benefit society  
461 as defined in section one of chapter one hundred and  
462 seventy-six, or a savings and insurance bank as de-  
463 fined in section five of chapter one hundred and  
464 seventy-eight, made in accordance with the terms of  
465 a policy issued or contract entered into by such  
466 company, society or bank, or of any valid written  
467 assignment or modification thereof, shall be a valid  
468 payment unless before such payment is made the  
469 company, society or bank has been notified in writing  
470 that some other person claims an interest in such  
471 policy or contract or the proceeds or payments  
472 thereunder.

473 *Section 18. Act not Retroactive.* — This act shall  
474 not be construed to operate retroactively, and any  
475 right established or accrued, and any action taken  
476 prior to the effective date of this act, shall be gov-  
477 erned by the law in force at the time such right was  
478 established or accrued or such action was taken.

479 *Section 19. Title of Act.* — This act and all amend-  
480 ments thereto shall be known and may be cited as  
481 the Massachusetts Community Property Act.

482 *Section 20. Separability of Provisions of Act.* — If  
483 any section, subsection, paragraph, sentence, clause  
484 or phrase of this act shall be held invalid, the validity  
485 of the remainder of the act shall not be affected  
486 thereby.

487 *Section 21. Repeal of Acts Inconsistent with Com-  
488 munity Property Act.* — All acts and parts of acts  
489 inconsistent with the provisions of this act are hereby  
490 repealed to the extent of such inconsistency.





