

Memorandum 82-93

Subject: Study L-625 - Probate Law and Procedure (Contractual Arrangements Relating to Death)

Attorney Kenneth Klug raises a question concerning the scope of a waiver by one spouse of "all rights" in the estate of the other (see proposed Section 111.060). Mr. Klug says that:

if "all rights" are waived, then the waiver should also apply to joint tenancy survivorship, insurance benefits, and pension benefits. We recommend that a general waiver of "all rights" be expanded to in fact include all rights rather than enact a statutory rule that a broad statement has only limited application.

However, Section 111.060 does not purport to be an exclusive statement of the effect of an "all rights" waiver. See Section 111.020(b). It makes clear that it does not deal with the effect of such a waiver on rights of survivorship, and the staff is of the view that it should not. The section is taken from the UPC, and only applies to rights of the surviving spouse in the decedent's probate estate. Nonprobate rights would continue to be governed by decisional law. To make this clear, the staff proposes to add the following language to the Comment to Section 111.060: "Section 111.060 does not deal with the effect of a waiver of 'all rights' on rights other than those described in subdivision (a) of Section 111.020. See Section 111.020(b)."

Respectfully submitted,

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