Chapter 108

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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recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband hereby are repealed; and all civil rights belonging to the husband not conferred upon the wife prior to June 14, 1941, or which she does not have at common law, hereby are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.

108.015 Domicile of married person or minor child. (1) Each married person may establish and maintain a domicile in the State of Oregon as if that person were not married.

(2) The domicile of a minor shall follow the domicile of the parents of the minor unless the parents establish separate domiciles. If the parents establish separate domiciles, the minor's domicile shall be that of the parent with whom the minor resides. However, if there has been a legal separation, annulment or dissolution, the minor's domicile shall be that of the parent to whom custody of the minor has been legally given. [1975 c.434 §1; 1981 c.775 §8]

Note: 108.015 was enacted into law by the Legislative Assembly but was not added to and made a part of ORS chapter 108 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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 of parents for expenses of family and education of children. (1)(a) The expenses of the family and the education of the minor 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.

(b) As used in this subsection:

(A) "Expenses of the family" includes only expenses incurred for the benefit of a member of the family.

(B) "Family" means the husband, wife and minor children of the husband and wife.

(2) Notwithstanding subsection (1) of this section, after the separation of one spouse from the other spouse, a spouse is not responsible for debts contracted by the other spouse after the separation except for debts incurred for maintenance, support and education of the minor children of the spouses.

(3) For the purposes of subsection (2) of this section, spouses shall be considered separated if they are living in separate residences without intention of reconciliation at the time the debt is incurred. The court may consider the following factors in determining whether the spouses are separated in addition to such other factors as may be relevant:

(a) Whether the spouses subsequently reconciled.

(b) The number of separations and reconciliations of the spouses.

(c) The length of time the spouses lived apart.

(d) Whether the spouses intend to reconcile.

(e) Whether the spouses have filed a petition for separation or dissolution.

(4) An action under this section shall be commenced within the period otherwise provided by law. [Amended by 1965 c.530 §1; 1993 c.598 §1; 2005 c.732 §3]

108.045 Liability of stepparent for expenses of family and education of children. (1) The expenses of the family and the education of minor children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them. However, with regard to stepchildren, the obligation shall cease upon entry of a judgment of dissolution.

(2) As used in this section, "stepchild" means a child under the age of 18, or a child attending school as defined in ORS 107.108 who is in the custody of one biological or adoptive parent who is married to and not legally separated from a person other than the second biological or adoptive parent of such child.

(3) Notwithstanding subsection (1) of this section, the legal duty of a parent to provide support for a child, as otherwise required by law, shall not be affected. [Formerly 109.053]

Note: 108.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 108 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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 [Repealed by 1999 c.182 §1]

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 spouse and children; rules. (1) Any married person may apply to the circuit court of the county in which the married person resides or in which the spouse may be found for an order upon the spouse to provide for support of the married person or for the support of minor children and children attending school, or both, and, if the married person initiating the action for support is a woman who is pregnant, her unborn child, or both, if her spouse is the natural father of such children, children attending school or unborn child or if her spouse is the adoptive father of such children or children attending school. The married person initiating the action for support may apply for the order by filing in such county a petition setting forth the facts and circumstances upon which the married person relies for such order. If satisfied that a just cause exists, the court shall direct that the married person's spouse appear at a time set by the court to show cause why an order of support should not be entered in the matter. The provisions of ORS 107.108 apply to an order entered under this section for the support of a child attending school.

(2) As used in this section, "child attending school" has the meaning given that term in ORS 107.108.

(3) The petitioner shall state in the petition, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving children of the marriage, including a proceeding brought under ORS 107.085, 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving children of the marriage.

(4) The petitioner shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The petitioner shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (3) of this section.

(5) The provisions of this section apply equally to cases where it is the husband making application for a support order.

(6) In any proceeding under this section, the obligee, as that person is defined in ORS 110.303, is a party to the proceeding. [Amended by 1963 c.497 §1; 1973 c.827 §12d; 1975 c.140 §1; 1975 c.458 §13; 1979 c.90 §1; 1981 c.669 §2; 1993 c.596 §18; 1995 c.343 §23; 1997 c.704 §54; 2001 c.334 §7; 2003 c.73 §53a; 2003 c.116 §7; 2005 c.560 §16]

108.120 Support judgment 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 judgment or orders as

are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished.

(3) The judgment or order is final as to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment or order. The court may not set aside, alter or modify any portion of the judgment or order that provides for any payment of money, either for minor children or for the support of a party, that has accrued before the motion is served. However, the court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child. [Amended by 1989 c.812 §6; 1997 c.707 §21; 2003 c.419 §2; 2003 c.576 §133a]

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 $6, which shall cover all charges incident to the filing of documents necessary to a complete determination of the matter and no part of which shall be applied toward the library fund of the county. Payment of the fee is subject to the provisions of ORS 21.680 to 21.698 applicable to waiver, deferral and payment of fees. [Amended by 1965 c.619 §34; 1971 c.621 §23; 1975 c.607 §23; 1981 s.s. c.3 §89; 1983 c.673 §25; 2003 c.737 §§53,54; 2005 c.702 §§61,62,63; 2007 c.129 §22; 2007 c.493 §16]

108.140 [Repealed by 1987 c.715 §10]

COMMUNITY PROPERTY MATTERS

108.510 Revocation of election to come under terms of Community Property Law of 1943; fee. (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 PERSONS 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 _____, 2_____, 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 _____, 2_____.

_____

_____

STATE OF OREGON,)
) ss.
County of _____)

BE IT REMEMBERED that on this _____ day of _____, 2_____, 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 spouse's 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.

108.610 [Formerly 184.885; 1983 c.480 §1; 2001 c.900 §237; renumbered 409.290 in 2005]

108.620 [Formerly 184.890; 1983 c.480 §2; 1993 c.546 §97; renumbered 409.292 in 2005]

108.630 [1981 c.357 §5; 1983 c.480 §3; renumbered 409.294 in 2005]

108.640 [1981 c.357 §§6,8; 1983 c.480 §4; renumbered 409.296 in 2005]

108.650 [1981 c.357 §7; renumbered 409.298 in 2005]

108.660 [1981 c.357 §9; 1983 c.480 §5; 1995 c.79 §36; renumbered 409.300 in 2005]

108.662 [1995 c.555 §5; 2001 c.829 §3; 2005 c.700 §6; renumbered 409.304 in 2005]

PREMARITAL AGREEMENTS

108.700 Definitions for ORS 108.700 to 108.740. As used in ORS 108.700 to 108.740:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. [1987 c.715 §1]

Note: 108.700 to 108.740 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 108 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

108.705 Agreement to be in writing; consideration not required. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration. [1987 c.715 §2]

Note: See note under 108.700.

108.710 Subjects of agreement; child support not to be adversely affected. (1) Parties to a premarital agreement may contract with respect to:

(a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property;

(c) The disposition of property upon separation, marital dissolution, death or the occurrence or nonoccurrence of any other event;

(d) The modification or elimination of spousal support;

(e) The making of a will, trust or other arrangement to carry out the provisions of the agreement;

(f) The ownership rights in and disposition of the death benefit from a life insurance policy;

(g) The choice of law governing the construction of the agreement; and

(h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement. [1987 c.715 §3]

Note: See note under 108.700.

108.715 Agreement effective upon marriage. A premarital agreement becomes effective upon marriage. [1987 c.715 §4]

Note: See note under 108.700.

108.720 Modification of agreement; consideration not required. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration. [1987 c.715 §5]

Note: See note under 108.700.

108.725 Party may prove agreement unenforceable; when court may require support; determination of unconscionability. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) That party did not execute the agreement voluntarily; or

(b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of whether a premarital agreement is unconscionable shall be decided by the court as a matter of law. [1987 c.715 §6]

Note: See note under 108.700.

108.730 Effect of void marriage. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result. [1987 c.715 §7]

Note: See note under 108.700.

108.735 Statute of limitations; defenses. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party. [1987 c.715 §8]

Note: See note under 108.700.

108.740 Short title; construction; severability. (1) ORS 108.700 to 108.740 may be cited as the Uniform Premarital Agreement Act.

(2) ORS 108.700 to 108.740 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

(3) If any provision of ORS 108.700 to 108.740 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 108.700 to 108.740 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 108.700 to 108.740 are severable. [1987 c.715 §9]

Note: See note under 108.700.