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TALKING POINTS  
SB 1056

1. General Subject of Bill

This bill parallels the prior enactment by the legislature of Community Property With Right of Survivorship in real property in Sections 15-6-401 and 402, Idaho Code. That enactment has greatly helped estate planning for married couples who want to pass their real property to each other at first death and want to avoid having to probate the property to get that passage. All that is needed is the recording of a death certificate to automatically transfer the property to the surviving spouse.

This bill extends that same concept to personal property (essentially any property that is not real property) by adding Sections 15-5-403 and 404, Idaho Code.

2. Existing Problem

There are no current provisions in the Idaho code for Community Property With Right of Survivorship outside of real estate. Many types of personal property, especially brokerage accounts and bank accounts, would benefit from having this type of ownership. Indeed, a number of stock broker institutions already have a check off on their forms for CPWROS, but will not let it be used in Idaho because there is no Idaho enabling legislation for that type of ownership. Joint Tenancy With Right of Survivorship does not give the same tax advantages, specifically stepped up basis on both halves of the property at first death of a husband and wife, but instead only allows the stepped up basis on one-half of the property.

3. Solution in Bill

This bill creates the ownership method of Community Property With Right of Survivorship for personal property (all property except real property). The creation of the ownership is covered in 15-5-403 and the termination of the ownership and other provisions are covered in 15-5-404. The elements of the bill are:

- The interest can be created either by a husband and wife who already own the property

jointly or by either of them who hold the property in their sole name. This gives flexibility and simplicity to creating the ownership.

- If the CPWROS interest is created, the property is guaranteed to pass to the surviving spouse, since the bill provides that the first deceased spouse does not have a right of disposition at death for the CPWROS property. This gives certainty, and protection, to each spouse in their estate planning. One spouse cannot secretly have a Will that leaves that spouse's half of the community property to some one other than the surviving spouse. Of course, this only applies to property for which the CPWROS ownership has been created, so the couple can plan for which of their assets will have the guaranteed passage to the surviving spouse and which can be left by the first to die spouse to other beneficiaries, perhaps children by a prior marriage, or to a charity. Again, the provisions emphasize flexibility and clarity.

- The interest is created and effective when the proper document is delivered to the entity which holds the personal property. This means that the ownership will then be reflected in the actual records of the entity holding the personal property. The primary use of this method will be with brokerage accounts. Many such accounts already have the CPWROS option on their forms, but require that there be local enabling law before the option can be used. There would a similar situation for bank accounts. This bill creates that enabling law and therefore allows the use of that option.

- The interest can be terminated by either spouse by a document that contains the requirements of 16-6-404(1) (a) through (c) and is delivered to the entity holding the personal property. Those requirements are that: (1) the document has to be in writing and executed by one of the spouses; (2) the document has to set forth that there is an intent to terminate the survivorship right, a description of the instrument that created the right of survivorship, including the date of that instrument, and a description of the personal property affected by the document. This again is both to create certainty and clarity in any termination, and to allow the entity holding the personal property to know exactly which property is affected by the termination. The delivery must be done prior to the death of the first to die spouse. Again, this prevents hidden or secret documents trying to pervert the intent of the creation of the CPWROS ownership.

- Upon termination of the interest, the ownership reverts to community property, but without the right of survivorship. This means that the property does remain as community property, but that normal procedures would be followed for transfer of the property upon the death of either spouse.

- Divorce or annulment of the marriage, unless the court orders otherwise, severs the interests of the parties into tenancy in common. Obviously, a divorced couple no longer has community property. Tenancy in common means that each party can deal independently with their portion of the property, whether for sale or for distribution at death. There are provisions to protect innocent third parties relying on the CPWROS interest being in effect, most commonly creditors or lenders. Again, certainty and clarity are the aim.

- Finally, if both spouses die and it is impossible to tell which survived, then the right of survivorship is terminated and the property is treated as community property. This will usually only be applicable when the spouses have different provision for heirs if their spouse predeceases them. Essentially, one-half of the property would pass through the estate of each spouse. In the great majority of cases, the spouses will have the same beneficiaries, usually the children and there would be a joint probate of the two persons. But sometimes, each will leave their assets, if their spouse does not survive them, to a different set of beneficiaries. In that case, one-half of the property would pass to the beneficiaries of one spouse and one -half to the beneficiaries of the other spouse.

#### 4. Possible Questions

Does this bill reduce any of the protections of community property? No. In fact, it increases them by giving a method whereby a surviving spouse can be certain that he or she will receive the property after death of the other spouse. It also preserves the stepped up basis on both halves of the property at first death which is a major advantage of community property.

Will this have any effect on tax revenues? No. The only difference in simple community property ownership and CPWROS ownership is that only a death certificate is required to pass the property to the survivor. This will eliminate the need for probates or summary administrations at the first death of a husband and wife. This will lower the costs for the surviving spouse and speed up the passage of the property to the surviving spouse. The only persons losing out will be attorneys not doing as many probates and summary administrations, but probate attorneys are in agreement that probate and summary administration should only be used when necessary and that the public is best served by methods which pass assets most efficiently.

#### 5. Fiscal Impact

There will be no fiscal impact. The bill should if anything reduce or eliminate the costs of proceedings and free up court time.

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OUTLINE OF SB 1056  
COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP  
IN PERSONAL PROPERTY

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This bill extends that same concept to personal property (essentially any property that is not real property) by adding Sections 15-5-403 and 404, Idaho Code. It has the following elements:

- The interest can be created either by a husband and wife who already own the property jointly or by either of them who hold the property in their sole name.
- If the CPWROS interest is created, the property is guaranteed to pass to the surviving spouse, since the bill provides that the first deceased spouse does not have a right of disposition at death for the CPWROS property. This gives certainty, and protection, to each spouse in their estate planning.
- The interest is created and effective when the proper document is delivered to the entity which holds the personal property. The primary use of this method will be with brokerage accounts. Many already have the CPWROS option on their forms, but require that there be local enabling law before the option can be used. There would a similar situation for bank accounts.
- The interest can be terminated by either spouse by a document that contains the requirements of 16-6-404(1) (a) through (c) and is delivered to the entity holding the personal property. The delivery must be done prior to the death of the first to die spouse.
- Upon termination of the interest, the ownership reverts to community property, but without the right of survivorship.
- Divorce or annulment of the marriage, unless the court orders otherwise, severs the interests of the parties into tenancy in common. There are provisions to protect innocent third parties relying on the CPWROS interest being in effect, most commonly creditors or lenders.
- Finally, if both spouses die and it is impossible to tell which survived, then the right of survivorship is terminated and the property is treated as community property. This will usually only be applicable when the spouses have different provision for heirs if their spouse predeceases them. Essentially, one-half of the property would pass through the estate of each spouse.