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NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

relating to

MARRIED WOMEN'S PROPERTY ACTS

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MARRIED WOMEN'S PROPERTY ACTS

Introduction

The married women's property acts comprise the bulk of Chapter 2 of Title 37. We recommend their repeal.

These statutes were enacted between the mid 19th century and the early 20th century to alter the old common law rules that limited a married woman's legal capacity and power to own and control property. When enacted, the married women's property acts served a purpose. Under common law rules in the early 19th century, married women, as opposed to married men and unmarried women had restricted legal and property rights. The married women's property acts changed those rules.

The married women's property acts now seem to be a demeaning relic. These statutes serve no current purpose; no one would now suggest that by marrying, a woman loses her rights to own, control and dispose of property. Whatever the accepted common law principles may have been 150 years ago, they are different today. The common law has been affected by changes in society and practice. No court would find that the common law requires the kind of discrimination that was accepted in the 19th century.

Moreover, Article 1, Paragraph 1 of the New Jersey Constitution guarantees all citizens liberty and equal protection. *See e.g., Lewis v. Harris* 188 N.J. 415 (2006). Civil rights statutes reinforce those guarantees. *See e.g., N.J.S. 10:1-1, 10:1-2 and 10:5-4.* Those protections are inconsistent with the legal disabilities that law in the 19th century imposed on married women. The Constitution would prevent any court from holding that those disabilities were revived by the repeal of the Married Women's Property Acts.

The repeal of the married women's property acts will have no substantive effect. The law treating married women as having the same capacity to control property as others will be unchanged. The repeal will just remove a part of the New Jersey Statutes that is useless and demeaning.

The sections recommended for repeal are:

37:2-1. Married woman as executrix, administratrix, guardian or trustee; sales and conveyances of real estate as such

A married woman may be an executrix, administratrix, guardian or trustee, as if she were a feme sole. If a woman shall marry after her appointment as executrix, administratrix, guardian or trustee, her authority as such fiduciary shall not be extinguished or affected by such marriage, but shall continue as if she were a feme sole.

Any married woman, having power to sell, or having title to real estate as executrix, administratrix, trustee or guardian, either alone or in conjunction with any other person or persons, under any will or other instrument or appointment whatsoever, or acquiring title to real estate as such executrix, administratrix, trustee or guardian under authority of law, may sign, seal, execute, acknowledge and deliver all deeds and conveyances of such real estate, without any order of court and without joining her husband therein, in the same manner as if she were a feme sole, and such deeds and

conveyances shall vest in the purchaser of such real estate as good and valid a title thereto as if such executrix, administratrix, trustee or guardian were a feme sole.

The proceeds of any sale by a married woman as executrix or administratrix, guardian or trustee pursuant to the authority conferred by this section shall, by her, be accounted for and paid over as other moneys belonging to the estate in her hands.

37:2-2. Married woman may make will

Any will or testament, made in due form of law by a married woman above the age of twenty-one years, disposing of any real or personal property, shall be as valid and effectual in law as if she were, at the time of the making thereof, and at the time of her death, an unmarried woman. Nothing herein contained shall be so construed as to authorize any married woman to dispose, by will or testament, of any interest or estate in real property to which her husband would be, at her death, entitled by law, but such interest or estate shall remain and vest in the husband in the same manner as if such will had not been made.

37:2-3. Domicile of married woman

The domicile of a married woman shall be established by the same facts and rules of law as that of any other person for the purposes of voting, office holding, testacy, intestacy, jury service and taxation.

37:2-4. Antenuptial contracts

All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

37:2-5. Right of husband and wife to contract with or sue each other

Nothing in this chapter contained shall enable a husband or wife to contract with or to sue each other, except as heretofore, and except as authorized by this chapter.

37:2-6. Actions or suits by or against married woman without joining husband

A married woman may sue or be sued without joining her husband, in any case whatsoever in which he would not be a necessary party if he were not her husband.

37:2-7. Marriage of female party not to abate action

If a female party to an action in any court of this state marries after action brought, the action shall not abate by reason thereof, but shall proceed to final judgment in the name of the female as plaintiff or as defendant, as the case may be, notwithstanding such marriage.

37:2-8. Married woman solely responsible for her torts

For all torts committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefore, except in cases where he would be jointly responsible with her if the marriage did not exist.

37:2-9. Action by married woman for torts without joining husband

Any married woman may maintain an action in her own name, without joining her husband therein, for all torts committed against her, or her separate property, in the same manner as she lawfully might if a feme sole, and the nonjoinder of the husband shall not be pleaded in any such action. In any such action the husband may join his claim for any damages he may have sustained in connection with or growing out of the injury for which his wife brings her action; but his failure to join shall not prevent him from maintaining a separate action for such damages.

This section shall not be so construed as to interfere with or take away any right of action provided by law for the torts mentioned herein.

37:2-10. Married woman's liability for debts contracted before or after marriage

A husband shall not be liable for the debts of his wife contracted before their marriage, or contracted by her, in her own name, after their marriage, but she shall be liable to be sued separately therefore in her own name, and any property belonging to her shall be liable to satisfy such debts, in the same manner as if she were a feme sole.

37:2-11. Judgments against married women; effect

Any judgment obtained against a married woman by virtue of this chapter shall be valid and effectual, and all property, real or personal, sold under an execution issued thereon, executed according to law, shall become vested in the purchaser as fully and effectually as if the judgment and execution were against an unmarried person; but no judgment against a married woman shall affect any estate, interest or right of her husband in her real property.

37:2-12. Property owned at time of marriage and property acquired thereafter

The real and personal property of a woman which she owns at the time of her marriage, and the real and personal property, and the rents, issues and profits thereof, of a married woman, which she receives or obtains in any manner whatever after her marriage, shall be her separate property as if she were a feme sole.

37:2-13. Wages and earnings

The wages and earnings of a married woman acquired or gained by her in any employment, occupation or trade since July fourth, one thousand eight hundred and fifty-two, or acquired or gained by her prior thereto in any employment, occupation or trade carried on separately from her husband, and all investments of such wages, earnings,

money or property shall be her separate property as if she were a feme sole. All work and labor performed by a married woman, from and after April third, one thousand nine hundred and twenty-eight, for third persons shall, unless there is an agreement on her part to the contrary, be deemed to be performed on her separate account.

37:2-14. Paraphernalia

The paraphernalia of a married woman, being the suitable ornaments and wearing apparel of a married woman, which have come to her through her husband during coverture, shall be her separate property as if she were a feme sole.

37:2-15. Separate property not subject to disposal of husband or liable for his debts

All property, things in action, or other rights or interests, which are by this chapter declared to be the separate property of a married woman, shall not be subject to the disposal of her husband nor liable for his debts.

37:2-16. Contracts of married woman without joinder or consent of husband

Any married woman shall have the right to bind herself by contract in the same manner and to the same extent as though she were unmarried, which contract shall be legal and obligatory, and may be enforced by and against such married woman in her own name and apart from her husband. Any contract relating to or affecting her estate, interest or right in her real property or that of her husband shall be valid without the joinder therein or consent thereto of her husband, but shall not affect any estate, interest or right of her husband in such real estate.

37:2-16.1. Partnership contracts with husband

Any married woman may contract with her husband alone or with her husband and any other person or persons for the formation of a partnership, a limited partnership or a partnership association, between or among them and may engage in, and carry on, business, as a general, or as a limited or special, partner, of any general or limited partnership or as a member of any partnership association, so formed, in the same manner and to the same extent as though she were unmarried, and may enter into contracts as such partner and shall be bound by contracts entered into by the other members of such partnership, limited partnership or partnership association, in the same manner and to the same extent as though she were unmarried. Any such contracts shall be legal and obligatory and may be enforced by and against such married woman, as though she were unmarried.

37:2-16.2. Prior partnership contracts validated

Any contract heretofore made by, or on behalf of, any married woman as a partner with her husband alone or with her husband and any other person or persons shall be legal and obligatory and may be enforced by or against such married woman as though she were unmarried.

37:2-17. Execution by married woman of instruments affecting real property of self or husband without joinder or consent of husband

Any married woman may execute and deliver any instrument relating to or affecting her estate, interest or right in her real property or in that of her husband, with the same effect as if she were unmarried, and any such instrument shall be valid without the joinder therein or consent thereto of her husband; but no conveyance, deed, contract or act of such married woman shall affect any estate, interest or right of her husband in such property.

37:2-17.1. Covenants by married woman; effect

In any deed made after March twentieth, one thousand eight hundred and fifty-seven, by any married woman of full age, who joins with her husband in executing said deed, of any lands or of any estate therein, it shall be lawful for her to enter into any covenant as to the title of the lands thereby conveyed, or against encumbrances thereon, or warranting the same; provided, that such covenants, except so far as relates to land, or some interest therein owned by her in her own right, shall have no greater or other effect than to stop her and all persons claiming as her heirs, or by or through her in the same manner as if she were a single woman.

37:2-18. Conveyance of real estate between husband and wife; tenants by entirety

A married man may convey real estate or any interest therein directly to his wife, and a married woman may convey real estate or any interest therein directly to her husband. Every such conveyance of real estate or any interest therein, located in this State, heretofore or hereafter made, shall be valid and effective to convey the grantor's title and interest therein and thereto, whether both the grantor and grantee or either, respectively, shall have resided at the time of such conveyance within or without this State, and notwithstanding the wife or the husband, respectively, did not or does not join therein and acknowledge of the same as prescribed by law. Any such conveyance heretofore or hereafter made shall convey the entire estate and interest of a married man or married woman in lands held by such husband and wife as tenants by the entirety, including the right of survivorship; and any conveyance heretofore or hereafter made by a married man or married woman to himself or herself and spouse of any real estate held in fee in severalty by such married man or married woman shall be construed to vest an estate by the entirety in such husband and wife, in fee. Any such conveyance shall also release the inchoate or possible future estate by the curtesy or in dower of the husband or wife, as the case may be, in the lands conveyed to the grantee, if so provided in such conveyance.

37:2-18.1. Release of rights of curtesy or dower

A married man may relinquish or release to his wife his right of curtesy in any real estate whereof his wife is seized of an estate of inheritance, and a married woman may relinquish or release to her husband her right of dower in any real estate whereof her husband is seized of an estate of inheritance, by deed duly executed and acknowledged,

in the manner provided by law for deeds to be recorded, or by deed conveying such estate of inheritance in said real estate by said husband to said wife or by said wife to said husband wherein said husband's right of curtesy or said wife's right of dower is specifically relinquished or released and thereafter said real estate may be conveyed, encumbered, devised, or otherwise disposed of, and shall descend, free and clear of any such right or estate of curtesy or dower, but said real estate may descend to said husband or widow, as the case may be, in case of the death of the wife or husband intestate, in accordance with law, notwithstanding such relinquishment or release.

37:2-19. Conveyances by married woman of record for five or more years

When any deed or conveyance of real estate in this state, heretofore or hereafter made, and which purports to convey any estate or interest of any married woman, shall, for a period of five years or more, have stood on record in any of the lawful and appropriate books of record in this state, such deed or conveyance shall, after the lapse of such period, and if otherwise good and valid in all other respects, be good, valid and effectual in law to convey the married woman's estate in such real estate, notwithstanding the absence of, or any informality, imperfection, uncertainty or defect in the acknowledgment or proof of such deed or conveyance, or of the certificate thereof, or any informality, imperfection, uncertainty or defect in or omission to attach a certificate of authority that the officer before whom such acknowledgment or proof was made, was, at the time of the taking of such acknowledgment or proof, authorized by the laws of the state, territory or district of which he was such officer to take acknowledgments or proofs of deeds.

37:2-20. Presumption of conveyance by widow of entire fee in real estate in certain cases

When the records disclose that the title to any real estate is vested partly in the husband, and partly in the husband and wife as tenants by the entirety, and the records further disclose a conveyance by the widow of the entire fee of the land, made after the death of the husband, there being no record of any grant or devise by the husband, or of his heirs, of his or their interest, if any, in such real estate, and such conveyance by the widow has been followed by possession by her grantee and successor in title, although not adverse in character, it shall be conclusively presumed that such widow, at the time of such conveyance, was seized of an entire estate in fee, and such conveyance shall be and is hereby validated and confirmed as effectual in law.

This section shall apply only to cases where the conveyance by the widow shall have been recorded at least sixty years before any action begun by anyone claiming under the husband.

37:2-21. Payment to married woman living separate from husband of proceeds of real estate sold by order of court, free from claims of husband; procedure

Any married woman, whose interest in real estate acquired by descent, gift or devise, has been or may be sold by order or judgment of the Superior Court in any partition or other proceedings, and the proceeds of such sale have been or shall be placed

in the custody of any court of this State, or of any officer thereof, and who shall be living in a state of separation from her husband, continued for three or more years, may apply to the Superior Court for an order directing the clerk of the court, or the person having the custody of such proceeds, to pay the same to her free and discharged of any right of curtesy or of any right, title or interest of her husband therein. The court, upon receiving satisfactory proof that such real estate was acquired as aforesaid, and that the applicant has been living separate and apart from her husband for three or more years next preceding such application, and notice of such application first having been given to the husband, as in the case of absent defendants or such other notice as the court may, by order, direct, may direct the clerk of the court or the person having the custody of such proceeds to pay the same, together with any accumulated interest thereon, directly to the applicant, free and discharged of any right, title or interest of her husband.

37:2-22. Order or judgment of court binding interest of married woman in property or authorizing assignment or conveyance thereof

Notwithstanding that a married woman is restrained from anticipation, the Superior Court may, if it thinks fit and it appears to the court to be for her benefit, by order or judgment and with her consent, bind her interest in any property or authorize her or her trustees to assign or convey the same.

37:2-23. Married woman legally separated from husband; power to convey, mortgage, lease or devise real property

Any married woman who is living in a state of separation from her husband, under and by virtue of the final judgment of any court, when such judgment is founded upon her application for such separation, may, at any time during the continuance of such separation, convey, mortgage and lease or devise any interest, estate or right that she may have in any real property, except such as came to her by gift, through or from her said husband, in the same manner and with the like effect as if she were sole and unmarried.

37:2-24. Husband legally separated from wife; power to convey, mortgage, lease or devise real property

Any married man who is living in a state of separation from his wife under and by virtue of the final judgment of any court, when such judgment is founded upon his application for such separation, may, at any time during the continuance of such separation, convey, mortgage, and lease, or devise any interest, estate or right that he may have in any real property, except such as came to him by gift through or from his said wife, in the same manner, and with like effect as if he were sole and unmarried.

37:2-25. Mental incompetency of husband; conveyance of real estate by wife under order of court; bar to rights of husband

In case any married woman owning lands situate within this State, shall desire to convey the same, but shall not be able to do so by reason of the lunacy or other mental incapacity of her husband to join with her in the execution of proper deeds of conveyance therefore, it shall be lawful for the Superior Court, in an action brought for that purpose,

to direct that such married woman may convey the said lands by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey the said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein, in case he shall survive her. The court may proceed in the action in a summary manner or otherwise.

37:2-26. Procedure on petition of wife for order authorizing conveyance; disposition of proceeds representing interest of husband

If in such an action, the court shall direct that such married woman may convey her lands as aforesaid, it shall ascertain the actual money value of the estate or interest of the husband in such lands, if any, by a calculation based upon the actual cash value of said lands, and upon the expectancy of life of the said husband and wife, in the manner and according to the rules now or hereafter in use in said court. The court shall direct that the value thereof shall be paid out of the purchase-money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband, duly appointed by any competent court of this State or elsewhere, to be held by him as part of the estate of such husband, or if there be no such guardian or committee, then such payment shall be made to the clerk of the court. The court shall specifically direct how much money shall be so paid and to whom such payment shall be made by said purchaser.

37:2-27. "Convey" in sections 37:2-25 and 37:2-26 includes right to mortgage; decree

The word "convey" in sections 37:2-25 and 37:2-26 of this Title shall be so construed as to include the right to mortgage, and any decree, judgment or order of the Court of Chancery or of the Superior Court made after April eighth, one thousand nine hundred and three, pursuant to the provisions of said sections 37:2-25 and 37:2-26, and directing that a married woman may convey her land without the concurrence of her husband because of his lunacy or other mental incapacity, shall be so construed as to include the right to mortgage said premises.

37:2-28. Mental incompetency of husband; sale for reinvestment or exchange of real estate by wife; procedure in Superior Court; bar to rights of husband

In case any married woman owning lands situate within this State has sold or shall be desirous of selling the same, or any part thereof, for the purpose of investing the proceeds thereof in other lands in this State, or has exchanged or shall be desirous of exchanging the same, or any part thereof, for other lands of equal value in this State, but shall not be able to convey her said lands so sold or exchanged, or intended so to be, by reason of the inability of her husband, through lunacy or other mental incapacity, to join with her in the execution of proper deeds of conveyance therefore, it shall and may be lawful for the Superior Court in an action brought for that purpose to confirm or authorize such sale or exchange, and direct that such married woman may convey her lands so sold or exchanged by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey her said lands free from

any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein in case he shall survive her. The court may proceed in the action in a summary manner or otherwise.

37:2-29. Terms and conditions of order for sale for reinvestment or exchange of real estate

Upon making an order or judgment in the action mentioned in section 37:2-28 of this Title it shall not be necessary for said court to ascertain the actual money value of the estate or interest of the husband in such lands, if any, or to direct any sum to be paid out of the purchase-money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband, or to the clerk of the court, as required by section 37:2-26 of this Title; but in making such order or judgment the court may impose such terms or conditions as it shall deem advisable.