

CHAPTER 597

HUSBAND AND WIFE

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597.1 Property rights of married women.

A married woman may own in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him.

[C73, §2202; C97, §3153; C24, 27, 31, 35, 39, §10446; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.1]

597.2 Interest of spouse in other's property.

When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, except as provided in this chapter.

[C73, §2203; C97, §3154; C24, 27, 31, 35, 39, §10447; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.2]

597.3 Remedy by one against the other.

Should the husband or wife obtain possession or control of property belonging to the other 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 extent as if they were unmarried.

[C73, §2204; C97, §3155; C24, 27, 31, 35, 39, §10448; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.3]

597.4 Conveyances to each other.

A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.

[C73, §2206; C97, §3157; C24, 27, 31, 35, 39, §10449; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.4]

597.5 Attorney in fact.

A husband or wife may constitute the other spouse as the husband's or wife's attorney in fact, to control and dispose of the husband's or wife's property, including the relinquishment of homestead rights and surviving spouse's statutory share in the homestead, as provided in section 561.13, for their mutual benefit, and may revoke the appointment, the same as other persons.

[C73, §2210; C97, §3161; C24, 27, 31, 35, 39, §10450; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.5]

91 Acts, ch 106, §2

Referred to in §561.13

597.6 Mental illness — conveyance of property.

Where either the husband or wife is mentally ill and incapable of executing a deed or mortgage relinquishing, conveying, or encumbering the husband's or wife's right to the real property of the other, including the homestead, the other may petition the district court of the county of that spouse's residence or the county where the real estate to be conveyed or encumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed or mortgage and relinquish or encumber the interest of the person with mental illness in said real estate.

[R60, §1500; C73, §2216; C97, §3167; S13, §3167; C24, 27, 31, 35, 39, §10451; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.6]

96 Acts, ch 1129, §113

Referred to in §229.27

[P] See also probate code §633.652

597.7 Proceedings.

The petition shall be verified by the petitioner, and filed in the office of the clerk of the district court of the proper county, notice of which shall be given as in other cases. Upon completed service, the court shall appoint some responsible attorney thereof guardian for the person alleged to be mentally ill, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto, and the guardian shall be allowed by the court a reasonable compensation to be paid as the other costs.

[R60, §1501; C73, §2217; C97, §3168; C24, 27, 31, 35, 39, §10452; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.7]

597.8 Decree.

Upon the hearing of the petition the court, if satisfied that it is made in good faith by the petitioner, and the petitioner is a proper person to exercise the power and make the conveyance or mortgage, and it is necessary and proper, shall enter a decree authorizing the execution of the conveyance or mortgage for and in the name of such husband or wife by such person as the court may appoint.

[R60, §1502; C73, §2218; C97, §3169; S13, §3169; C24, 27, 31, 35, 39, §10453; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.8]

597.9 Conveyances — revocation.

All deeds executed as provided in this chapter shall convey the interest of such person with mental illness in the real estate described, but such power shall cease and be revoked as soon as that person shall again be in good mental health and apply to the court therefor, but such revocation shall not affect conveyances previously made.

[R60, §1503; C73, §2219; C97, §3170; C24, 27, 31, 35, 39, §10454; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.9]

96 Acts, ch 1129, §113

597.10 Abandonment of either — proceedings.

In case the husband or wife abandons the other for one year, or leaves the state and is absent therefrom for such term, without providing for the maintenance and support of the family, or is confined in jail or the penitentiary for such period, the district court of the county where the abandoned party resides may, on application by petition setting forth the facts, authorize the applicant to manage, control, sell, and encumber the property of the guilty party for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court shall be valid to the same extent as if the same was done by the party owning the property.

[C51, §1456 – 1459, 1461; R60, §2508 – 2511, 2513; C73, §2207; C97, §3158; C24, 27, 31, 35, 39, §10455; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.10]

Referred to in §597.11, 597.13, 600.4

[P] Service of notice, R.C.P. 1.302 – 1.315

597.11 Contracts and sales binding.

All contracts, sales, or encumbrances made by either husband or wife under the provisions of section 597.10 shall be binding on both, and during such absence or confinement the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued accordingly.

[C73, §2208; C97, §3159; C24, 27, 31, 35, 39, §10456; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.11]

Referred to in §597.13

597.12 Nonabatement of action.

No action or proceedings shall abate or be affected by the return or release of the person absent or confined, but the person may be permitted to prosecute or defend jointly with the other.

[C73, §2208; C97, §3159; C24, 27, 31, 35, 39, §10457; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.12]

Referred to in §597.13

597.13 Annulment of decree.

The husband or wife affected by the proceedings contemplated in sections 597.10 to 597.12 may obtain an annulment thereof, upon filing a petition therefor and serving a notice on the person in whose favor the same was granted, as in ordinary actions; but the setting aside of such decree or order shall not affect any act done thereunder.

[C51, 1460; R60, §2512; C73, §2209; C97, §3160; C24, 27, 31, 35, 39, §10458; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.13]

597.14 Family expenses.

The reasonable and necessary expenses of the family and the education of the 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.

[C51, §1455; R60, §2507; C73, §2214; C97, §3165; S13, §3165; C24, 27, 31, 35, 39, §10459; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.14]

Referred to in §537.7103

[P] Spousal support debt for medical assistance to institutionalized spouse; chapter 249B

597.15 Custody of children.

If one spouse abandons the other spouse, the abandoned spouse is entitled to the custody of the minor children, unless the district court, upon application for that purpose, otherwise directs, or unless a custody decree is entered in accordance with chapter 598B. In this section “*abandon*” does not include:

1. The departure of a spouse due to physical or emotional abuse.
2. The departure of a spouse accompanied by the minor children.

[C51, §1462; R60, §2514; C73, §2215; C97, §3166; C24, 27, 31, 35, 39, §10460; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.15]

85 Acts, ch 18, §1; 99 Acts, ch 103, §43

597.16 Wages of married person — actions by.

A married person may receive the wages for the person’s personal labor, and maintain an action therefor in the person’s own name, and hold the same in the person’s own right, and may prosecute and defend all actions for the preservation and protection of the person’s rights and property, as if unmarried.

[C73, §2211; C97, §3162; C24, 27, 31, 35, 39, §10461; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.16]

597.17 Liability for separate debts.

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each

other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other.

[C51, §1453; R60, §2505; C73, §2212; C97, §3163; C24, 27, 31, 35, 39, §10465; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.17]

597.18 Contracts of married person.

Contracts may be made by a married person and liabilities incurred, and the same enforced by or against the person, to the same extent and in the same manner as if the person were unmarried.

[C51, §1454; R60, §2506; C73, §2213; C97, §3164; C24, 27, 31, 35, 39, §10466; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.18]

597.19 Spouse not liable for torts of other spouse.

For civil injuries committed by a married person, damages may be recovered from the person alone, and the partner shall not be liable therefor, except in cases where the partner would be jointly liable if the marriage did not exist.

[C73, §2205; C97, §3156; C24, 27, 31, 35, 39, §10467; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.19]