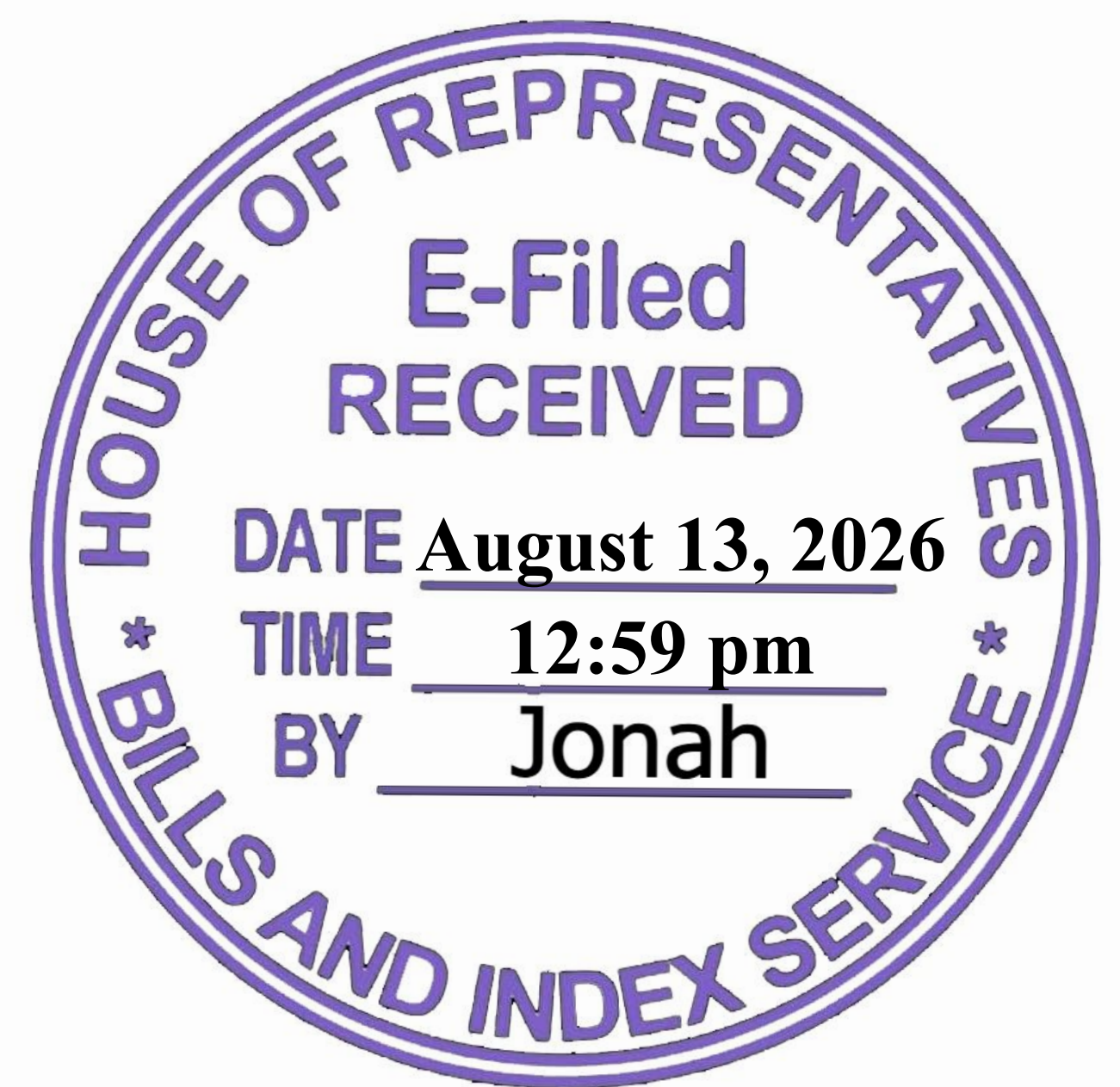




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Twentieth Congress
Second Regular Session

HOUSE BILL NO. 10775



Introduced by Representative Ma. Cristina Talavera Lopez

AN ACT EQUALIZING DECISION-MAKING BETWEEN THE SPOUSES IN THE ADMINISTRATION OF ABSOLUTE COMMUNITY AND CONJUGAL PARTNERSHIP PROPERTY, ELIMINATING THE PREFERENCE ACCORDED TO THE HUSBAND'S DECISION IN CASES OF DISAGREEMENT, PROVIDING MECHANISMS FOR SHARED DECISION-MAKING, AMENDING FOR THE PURPOSE ARTICLES 96 AND 124 OF THE FAMILY CODE OF THE PHILIPPINES, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Articles 96 and 124 of the Family Code of the Philippines provide that the administration and enjoyment of the community property and of the conjugal partnership property shall belong to both spouses jointly, and then provide that where the spouses disagree, "the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision." The rule has stood unchanged since the Code took effect on 3 August 1988.

The provision resolves a disagreement between two equally situated spouses by reference to sex alone. It does not ask which of them is better informed as to the property, which of them acquired it, which of them administers it in fact, or which decision better serves the family. The wife is not heard on the merits; she is overruled by operation of law. Moreover, the wife's remedy is not a remedy against the decision but against its consequences: she must go to court against a contract already executed, and she must do so within five years reckoned from that contract, a period that may well expire before she learns of the transaction at all.

The reach of these provisions should not be understated. Absolute community of property is the default regime for all marriages celebrated under the regime of the Family Code without a marriage settlement. Article 96 therefore governs the property relations of the great majority of Filipino married couples, and Article 124 governs those whose regime is the conjugal partnership of gains.

These provisions are inconsistent with Article II, Section 14 of the 1987 Constitution, which requires the State to ensure the fundamental equality before the law of women and men. They are likewise inconsistent with the international commitments of the Philippines, specifically Article 16(1)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women, which the Philippines ratified in 1981, guaranteeing to both spouses the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. The Philippine Commission on Women, in its Policy Brief No. 6, has recommended the amendment of Articles 14, 96, 124, 211 and 225 for according greater weight to the judgment of the husband or father than to that of the wife or mother.

Congress has already begun this work. Republic Act No. 10572 amended Articles 73 and 111 so that either spouse may exercise a profession without the consent of the other, and may dispose of exclusive property without such consent. Articles 96 and 124 are the unfinished portion of that reform.

But the repeal of the preference is not by itself sufficient. Earlier measures proposed to delete the offending clause and to require the spouses to resort to the courts in every case of disagreement. Judicial recourse is appropriate for genuine and substantial deadlocks, but it cannot govern the ordinary and time-bound acts by which property is kept, and a spouse who is abroad or otherwise unreachable cannot give timely consent. Banks, lessees, registries and other third persons are likewise left without a rule as to whose signature is sufficient, and will ordinarily require the concurrence of both spouses for every act, however routine. The resulting delay is borne by the family, and the loss by the property itself.

This measure therefore removes the preference and supplies in its place a clear and workable framework for the joint administration of marital property. In substance:

- (1) It declares that both spouses have equal authority in the administration and enjoyment of the community property and of the conjugal partnership property, and that no preference shall be accorded to either spouse by reason of sex or gender.
- (2) It distinguishes acts of ordinary administration from acts exceeding it. Acts of ordinary administration, being acts of management, preservation and utilization in the ordinary course, may be performed by either spouse acting alone, and are presumed as to third persons in good faith to carry the consent of the other.
- (3) It provides that an act of ordinary administration performed over the known objection of the other spouse shall be unenforceable as between the spouses until ratified, so that the presumption protects the third person without shielding the spouse who acted.
- (4) It preserves without change the existing rule that a disposition or encumbrance requires the written consent of the other spouse or the authority of the court, and that in the absence thereof the disposition or encumbrance is void, construed as a continuing offer perfectible upon acceptance or judicial

authorization. Nothing in this Act may be invoked to validate a disposition or encumbrance made without such consent or authority.

- (5) It permits either spouse to act alone where the act is urgent, that is, where deferring it until the concurrence of both spouses is obtained would result in the imminent loss, destruction or substantial deterioration of the property, in default upon an obligation chargeable to it, or in the failure to provide for the support of the family, subject to the duty to inform the other spouse at the earliest opportunity, and provided that no disposition or encumbrance may be made under this authority.
- (6) It affords either spouse recourse to a summary judicial proceeding in cases of disagreement, to be resolved in accordance with the best interest of the family, and it corrects the reckoning of the five-year period so that it runs from the later of the date the contract was entered into or the date the non-consenting spouse learned of it.

The measure secures the equal standing of the wife without diminishing that of the husband. The rule it substitutes turns on the nature of the act, its urgency, and the best interest of the family rather than on sex, and accords equal recognition to the husband who administers the property in fact. It gives families and the institutions that deal with them a predictable rule of decision, so that no household loses property, credit or support on account of a gap in the law.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



MA. CRISTINA TALAVERA LOPEZ
Representative, ALONA Party List



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**AN ACT EQUALIZING DECISION-MAKING BETWEEN THE SPOUSES IN THE
ADMINISTRATION OF ABSOLUTE COMMUNITY AND CONJUGAL
PARTNERSHIP PROPERTY, ELIMINATING THE PREFERENCE ACCORDED TO
THE HUSBAND'S DECISION IN CASES OF DISAGREEMENT, PROVIDING
MECHANISMS FOR SHARED DECISION-MAKING, AMENDING FOR THE
PURPOSE ARTICLES 96 AND 124 OF THE FAMILY CODE OF THE PHILIPPINES,
AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

SECTION 1. *Short Title.* – This Act shall be known as the “*Equality in
Administration of Property of Spouses Act.*”

SECTION 2. *Declaration of Policy.* — It is the policy of the State to ensure
the fundamental equality before the law of women and men, to recognize the equal
and shared responsibility of both the husband and wife in the establishment of their
family life, as well as the ownership, management, administration, enjoyment and
disposition of their marital property, and to hold the best interest of the family
paramount in all matters affecting such property.

Towards this end, the State shall eliminate every preference accorded by law
to the decision of one spouse by reason of sex or gender, and shall in its place
provide clear, workable and accountable rules and mechanisms for the exercise of
shared decision-making, including where a decision cannot be deferred.

SECTION 3. Article 96 of Executive Order No. 209, otherwise known as the
“*Family Code of the Philippines,*” is hereby amended to read as follows:

"Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. **BOTH SPOUSES SHALL HAVE EQUAL AUTHORITY IN MAKING DECISIONS CONCERNING THE ADMINISTRATION OF THE COMMUNITY OF PROPERTY, AND NEITHER SPOUSE SHALL HAVE SUPERIOR AUTHORITY OVER THE OTHER. NO PREFERENCE SHALL BE ACCORDED TO EITHER PARENT BY REASON OF SEX OR GENDER.** [In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.]

"AN ACT OF ORDINARY ADMINISTRATION MAY BE PERFORMED BY EITHER SPOUSE ACTING ALONE. AS TO THIRD PERSONS ACTING IN GOOD FAITH, AN ACT OF ORDINARY ADMINISTRATION PERFORMED BY ONE SPOUSE IS PRESUMED TO HAVE BEEN PERFORMED WITH THE CONSENT OF THE OTHER. AS BETWEEN THE SPOUSES, AN ACT OF ORDINARY ADMINISTRATION PERFORMED OVER THE KNOWN OBJECTION OF THE OTHER SHALL BE UNENFORCEABLE UNTIL RATIFIED.

"FOR THIS PURPOSE, AN ACT OF ORDINARY ADMINISTRATION REFERS TO AN ACT OF MANAGEMENT, PRESERVATION OR UTILIZATION OF THE COMMUNITY PROPERTY IN THE ORDINARY COURSE, INCLUDING THE COLLECTION OF FRUITS, RENTS, INCOME AND CREDITS; THE PAYMENT OF TAXES, ASSESSMENTS, PREMIUMS AND THE ORDINARY EXPENSES OF MAINTENANCE AND REPAIR; THE LEASE OF PROPERTY FOR A PERIOD NOT EXCEEDING ONE (1) YEAR; THE DEPOSIT AND WITHDRAWAL OF FUNDS FOR THE ORDINARY EXPENSES OF THE FAMILY; AND ANY OTHER ACT NOT AMOUNTING TO A DISPOSITION OR ENCUMBRANCE OR OTHERWISE EXCEEDING THE ORDINARY COURSE OF ADMINISTRATION.

"AN ACT EXCEEDING ORDINARY ADMINISTRATION SHALL REQUIRE THE CONSENT OF BOTH SPOUSES AND, WHERE THE LAW SO REQUIRES, THE APPROVAL OF THE COURT. SHOULD EITHER SPOUSE PERFORM ALONE AN ACT REQUIRING THE CONSENT OF BOTH, THE RIGHT ACQUIRED BY THE THIRD PERSON THEREUNDER SHALL NOT BE ENFORCEABLE UNTIL RATIFIED BY THE OTHER SPOUSE. ANY

THIRD PERSON WHO ACTS IN GOOD FAITH UPON THE WRITTEN REPRESENTATION OF ONE SPOUSE THAT THE OTHER HAS CONSENTED SHALL INCUR NO LIABILITY BY REASON OF THE ABSENCE OF SUCH CONSENT, AND THE SPOUSE WHO MAKES A FALSE REPRESENTATION SHALL BE LIABLE FOR DAMAGES; PROVIDED, THAT THIS PARAGRAPH SHALL NOT APPLY TO, AND SHALL IN NO CASE BE INVOKED TO VALIDATE, A DISPOSITION OR ENCUMBRANCE MADE WITHOUT THE WRITTEN CONSENT OF THE OTHER SPOUSE OR THE AUTHORITY OF THE COURT.

"WHERE AN ACT IS URGENT AND THE OTHER SPOUSE CANNOT BE REACHED THROUGH REASONABLE DILIGENCE OR, HAVING BEEN REACHED, FAILS OR REFUSES TO ACT WITHIN THE TIME THE CIRCUMSTANCES ALLOW, EITHER SPOUSE MAY ACT ALONE; PROVIDED, THE SPOUSE SO ACTING SHALL INFORM THE OTHER OF THE ACT AT THE EARLIEST OPPORTUNITY BY ANY PRACTICABLE MEANS INCLUDING ELECTRONIC MEANS; PROVIDED, FURTHER, THAT NO DISPOSITION OR ENCUMBRANCE MAY BE MADE UNDER THIS PARAGRAPH.

"FOR THIS PURPOSE, AN URGENT ACT REFERS TO AN ACT WHICH, IF DEFERRED UNTIL THE CONCURRENCE OF BOTH SPOUSES IS OBTAINED, WOULD RESULT IN THE IMMINENT LOSS, DESTRUCTION OR SUBSTANTIAL DETERIORATION OF THE COMMUNITY PROPERTY, IN DEFAULT UPON AN OBLIGATION CHARGEABLE TO IT UNDER ARTICLE 94, OR IN THE FAILURE TO PROVIDE FOR THE SUPPORT OF THE FAMILY.

"THE INVOCATION OF THE PRECEDING TWO PARAGRAPHS IN BAD FAITH, OR THE DELIBERATE FAILURE TO GIVE THE NOTICE REQUIRED HEREIN, SHALL NOT VALIDATE THE ACT AS BETWEEN THE SPOUSES. THE DELIBERATE CREATION OF THE URGENCY RELIED UPON SHALL BE PRESUMED TO BE BAD FAITH.

"IN CASE OF DISAGREEMENT BETWEEN THE SPOUSES, EITHER SPOUSE MAY SEEK JUDICIAL RELIEF FROM THE PROPER COURT. THE PROCEEDING SHALL BE SUMMARY IN NATURE, AND THE COURT SHALL RESOLVE THE MATTER IN ACCORDANCE WITH THE BEST INTEREST OF THE FAMILY. WHERE THE DISAGREEMENT CONCERNS AN ACT ALREADY

PERFORMED, RECOURSE MUST BE AVAILED OF WITHIN FIVE (5) YEARS FROM THE DATE THE CONTRACT WAS ENTERED INTO OR FROM THE DATE THE NON-CONSENTING SPOUSE ACQUIRED KNOWLEDGE THEREOF. DAMAGES AND EXPENSES OF LITIGATION WHICH DID NOT REDOUND TO THE BENEFIT OF THE FAMILY SHALL BE BORNE BY THE SPOUSE WHO ACTED AND SHALL NOT BE CHARGED TO THE COMMUNITY PROPERTY.

"In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors."

SECTION 4. Article 124 of Executive Order No. 209, otherwise known as the *"Family Code of the Philippines,"* is hereby amended to read as follows:

"Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. **BOTH SPOUSES SHALL HAVE EQUAL AUTHORITY IN MAKING DECISIONS CONCERNING THE ADMINISTRATION OF THE CONJUGAL PARTNERSHIP PROPERTY, AND NEITHER SPOUSE SHALL HAVE SUPERIOR AUTHORITY OVER THE OTHER. NO PREFERENCE SHALL BE ACCORDED TO EITHER PARENT BY REASON OF SEX OR GENDER.** [In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.]

"AN ACT OF ORDINARY ADMINISTRATION MAY BE PERFORMED BY EITHER SPOUSE ACTING ALONE. AS TO THIRD PERSONS ACTING IN GOOD FAITH, AN ACT OF ORDINARY ADMINISTRATION PERFORMED BY ONE SPOUSE IS PRESUMED TO HAVE BEEN PERFORMED WITH THE CONSENT OF THE OTHER. AS BETWEEN THE SPOUSES, AN ACT OF ORDINARY ADMINISTRATION PERFORMED OVER THE

KNOWN OBJECTION OF THE OTHER SHALL BE UNENFORCEABLE UNTIL RATIFIED.

"FOR THIS PURPOSE, AN ACT OF ORDINARY ADMINISTRATION REFERS TO AN ACT OF MANAGEMENT, PRESERVATION OR UTILIZATION OF THE COMMUNITY PROPERTY IN THE ORDINARY COURSE, INCLUDING THE COLLECTION OF FRUITS, RENTS, INCOME AND CREDITS; THE PAYMENT OF TAXES, ASSESSMENTS, PREMIUMS AND THE ORDINARY EXPENSES OF MAINTENANCE AND REPAIR; THE LEASE OF PROPERTY FOR A PERIOD NOT EXCEEDING ONE (1) YEAR; THE DEPOSIT AND WITHDRAWAL OF FUNDS FOR THE ORDINARY EXPENSES OF THE FAMILY; AND ANY OTHER ACT NOT AMOUNTING TO A DISPOSITION OR ENCUMBRANCE OR OTHERWISE EXCEEDING THE ORDINARY COURSE OF ADMINISTRATION.

"AN ACT EXCEEDING ORDINARY ADMINISTRATION SHALL REQUIRE THE CONSENT OF BOTH SPOUSES AND, WHERE THE LAW SO REQUIRES, THE APPROVAL OF THE COURT. SHOULD EITHER SPOUSE PERFORM ALONE AN ACT REQUIRING THE CONSENT OF BOTH, THE RIGHT ACQUIRED BY THE THIRD PERSON THEREUNDER SHALL NOT BE ENFORCEABLE UNTIL RATIFIED BY THE OTHER SPOUSE. ANY THIRD PERSON WHO ACTS IN GOOD FAITH UPON THE WRITTEN REPRESENTATION OF ONE SPOUSE THAT THE OTHER HAS CONSENTED SHALL INCUR NO LIABILITY BY REASON OF THE ABSENCE OF SUCH CONSENT, AND THE SPOUSE WHO MAKES A FALSE REPRESENTATION SHALL BE LIABLE FOR DAMAGES; PROVIDED, THAT THIS PARAGRAPH SHALL NOT APPLY TO, AND SHALL IN NO CASE BE INVOKED TO VALIDATE, A DISPOSITION OR ENCUMBRANCE MADE WITHOUT THE WRITTEN CONSENT OF THE OTHER SPOUSE OR THE AUTHORITY OF THE COURT.

"WHERE AN ACT IS URGENT AND THE OTHER SPOUSE CANNOT BE REACHED THROUGH REASONABLE DILIGENCE OR, HAVING BEEN REACHED, FAILS OR REFUSES TO ACT WITHIN THE TIME THE CIRCUMSTANCES ALLOW, EITHER SPOUSE MAY ACT ALONE; PROVIDED, THE SPOUSE SO ACTING SHALL INFORM THE OTHER OF THE ACT AT THE EARLIEST OPPORTUNITY BY ANY PRACTICABLE MEANS INCLUDING ELECTRONIC MEANS; PROVIDED, FURTHER, THAT

NO DISPOSITION OR ENCUMBRANCE MAY BE MADE UNDER THIS PARAGRAPH.

"FOR THIS PURPOSE, AN URGENT ACT REFERS TO AN ACT WHICH, IF DEFERRED UNTIL THE CONCURRENCE OF BOTH SPOUSES IS OBTAINED, WOULD RESULT IN THE IMMINENT LOSS, DESTRUCTION OR SUBSTANTIAL DETERIORATION OF THE COMMUNITY PROPERTY, IN DEFAULT UPON AN OBLIGATION CHARGEABLE TO IT UNDER ARTICLE 94, OR IN THE FAILURE TO PROVIDE FOR THE SUPPORT OF THE FAMILY.

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"IN CASE OF DISAGREEMENT BETWEEN THE SPOUSES, EITHER SPOUSE MAY SEEK JUDICIAL RELIEF FROM THE PROPER COURT. THE PROCEEDING SHALL BE SUMMARY IN NATURE, AND THE COURT SHALL RESOLVE THE MATTER IN ACCORDANCE WITH THE BEST INTEREST OF THE FAMILY. WHERE THE DISAGREEMENT CONCERNS AN ACT ALREADY PERFORMED, RECOURSE MUST BE AVAILED OF WITHIN FIVE (5) YEARS FROM THE DATE THE CONTRACT WAS ENTERED INTO OR FROM THE DATE THE NON-CONSENTING SPOUSE ACQUIRED KNOWLEDGE THEREOF. DAMAGES AND EXPENSES OF LITIGATION WHICH DID NOT REDOUND TO THE BENEFIT OF THE FAMILY SHALL BE BORNE BY THE SPOUSE WHO ACTED AND SHALL NOT BE CHARGED TO THE COMMUNITY PROPERTY.

"In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract

upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors."

SECTION 6. Nothing in this Act shall be construed to create or revive any preference in favor of either spouse by reason of sex or gender, or to diminish the requirement of written consent or judicial authority for the disposition or encumbrance of community or conjugal partnership property. Where a provision of the Family Code is capable of two constructions, the same shall be resolved in favor of the construction that gives equal weight to the decision of each spouse.

SECTION 5. *Separability Clause.* – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions which are not affected shall continue to be in full force and effect.

SECTION 6. *Repealing Clause.* – All laws, presidential decrees, executive orders, or issuances, or any part thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 7. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or any newspaper of general circulation.

Approved,