

Memorandum 90-78

Subject: Study L-3009 - Repeal of Civil Code Section 704 (U. S.
Savings Bonds)

At the last meeting, the Commission asked the staff to consider whether Civil Code Section 704 should be repealed. Attached is a *Tentative Recommendation Relating to Repeal of Civil Code Section 704 (U. S. Savings Bonds)* recommending the section be repealed. The section is superseded by federal regulations, and it does not reflect California cases holding that it cannot be used to defeat rights of a surviving spouse where community funds are used to buy U. S. savings bonds with a pay-on-death provision in favor of a third person.

The staff recommends the Commission approve the Tentative Recommendation for distribution for comment.

Respectfully submitted,

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Staff DraftTENTATIVE RECOMMENDATION
relating to
REPEAL OF CIVIL CODE SECTION 704
(U. S. SAVINGS BONDS)

Civil Code Section 704 provides that:

(1) United States bonds¹ registered in the names of two persons as co-owners in the alternative shall, on death of either co-owner, become the sole property of the surviving co-owner.²

(2) United States bonds registered in the name of one person payable on death to a named survivor shall, on death of the owner, become the sole property of the named survivor.

(3) If federal laws or regulations governing issuance of United States bonds provide otherwise, they are controlling.

The matters covered in Section 704 are governed entirely by federal regulations.³ Moreover, Section 704 says nothing about the rights of surviving spouse where the deceased spouse used community

1. Section 704 applies to "United States savings bonds or other bonds or obligations of the United States, however designated."

2. Section 704 provides for survivorship despite co-ownership in the alternative "or" form. In most U. S. jurisdictions, the alternative "or" form does not create a joint tenancy with right of survivorship. Annot., 171 A.L.R. 522, 528-31 (1947); 10 Am. Jur. 2d *Banks* § 369, at 333 (1963).

3. See 31 C.F.R. §§ 315.0-315.93 (1989). See also *Conrad v. Conrad*, 66 Cal. App. 2d 280, 283, 152 P.2d 221 (1944) (federal regulations control). Federal regulations provide that, except for errors, registration of United States savings bonds "is conclusive of ownership." 31 C.F.R. § 315.5(a) (1989). If one co-owner named on a bond has died, the surviving owner "will be recognized as its sole and absolute owner, and payment or reissue will be made as though the bond were registered in the name of the survivor alone." 31 C.F.R. § 315.70(b) (1989). If the owner of a bond registered in beneficiary form has died and is survived by the beneficiary, "the beneficiary will be recognized as the sole and absolute owner of the bond. Payment or reissue will be made as though the bond were registered in the survivor's name alone." 31 C.F.R. § 315.70(c) (1989).

funds to buy United States bonds to benefit a third person. Under California community property law, one spouse may not make a gift of community funds without written consent of the other spouse. The U. S. Supreme Court has held that federal law does not prevent imposition of a trust on bond proceeds to protect community property rights of a surviving spouse.⁵ The California cases protect the rights of the surviving spouse by imposing a trust on the proceeds where the deceased spouse has used community funds to buy United States bonds.⁶

Section 704 is unnecessary because the matter is covered by federal regulations.⁷ Section 704 is misleading because it is inconsistent with California community property law. The Law Revision Commission recommends Section 704 be repealed.

4. Civ. Code § 5125(b).

5. *Yiatchos v. Yiatchos*, 376 U.S. 306 (1964). See also Note, *Yiatchos v. Yiatchos: A Sequel to Free v. Bland*, 38 S. Cal. L. Rev. 335 (1965).

6. *Estate of Bray*, 230 Cal. App. 2d 136, 40 Cal. Rptr. 750 (1964); *Chase v. Leiter*, 96 Cal. App. 2d 439, 451-54, 215 P.2d 756 (1950); Note, *Community Property: Survivorship Provisions of United States Savings Bonds: In re Bray's Estate*, 5 Santa Clara Lawyer 196 (1965). But see *Estate of Raphael*, 115 Cal. App. 2d 525, 252 P.2d 979 (1953) (transmutation agreement did not affect U. S. bonds).

7. Section 704 is unnecessary to recognize the validity of a nonprobate transfer of a United States bond: Probate Code Section 160, revised and renumbered as Probate Code Section 5000 by Chapter 79 of the Statutes of 1990, provides that a nonprobate transfer provision in a bond or other written instrument is not invalid because the instrument does not comply with the requirements for execution of a will, and that the Probate Code does not invalidate the instrument.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following repeal:

Civil Code § 704 (repealed). Rights in U. S. savings bonds at death

~~704. All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the names of two persons as co-owners in the alternative, shall, upon the death of either of the registered co-owners, become the sole and absolute property of the surviving co-owner, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.~~

~~All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the name of one person payable on death to a named survivor, shall, upon the death of the registered owner, become the sole and absolute property the surviving beneficiary named therein, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.~~

~~This section shall not be construed to mean that prior to the enactment hereof the law of this State was otherwise than as herein provided.~~

Comment. Former Section 704 is repealed. The matter covered in the former section is governed by federal regulations. See 31 C.F.R. §§ 315.0-315.93 (1989). See also *Conrad v. Conrad*, 66 Cal. App. 2d 280, 152 P.2d 221 (1944) (federal regulations controlling); Prob. Code § 5000 (pay-on-death provision in written instrument not invalid because not executed with formality of a will).