

Memorandum 90-107

Subject: Study L-3040 - Community Property Presumption for Joint
Tenancy Upon Death (Manner of Proceeding on Study)

At the April 1990 meeting the Commission directed the staff to prepare a background study to problems involving community property in joint tenancy form. The study is to include:

(1) The practice under the Probate Code of obtaining a court order that joint tenancy property is actually community property.

(2) Whether the Civil Code rule that property held in joint tenancy form by married persons is presumed community property for purposes of dissolution of marriage should be extended to rights at death.

(3) Related issues suggested by the State Bar Probate Section, including whether joint tenancy property of married persons should be converted to community property for all purposes.

(4) A review of recently published law review articles concerning this issue.

A related matter has come to the staff's attention that also should be included in the study. The recent California Supreme Court case of Estate of Propst, 50 Cal. 3d 448 (1990), holds that a personal property joint tenant may unilaterally sever the joint tenancy without the knowledge or consent of the other joint tenant(s). How this can be accomplished for securities (which ordinarily require reregistration by transfer agents) and how it impacts community property rights (since the vast majority of joint tenancies are spousal) is not clear. Any recommendations concerning community property in joint tenancy form should include the practical problems involved in dealing with securities held in joint tenancy form.

This whole matter is a complex one. The staff has a fair amount of background in it and would be able to complete the study in due course. But we are aware of an outstanding consultant who could complete the study much more efficiently than the staff and at less cost to the Commission. That is Professor Jerry Kasner, whom the Commission has currently retained to prepare a background study on the

topic of donative transfers of community property. Professor Kasner has a longstanding interest and involvement in this topic, and has closely followed parallel developments in other community property jurisdictions and their interrelation with federal taxation issues. Professor Kasner is a natural for this study, and would be able to turn to it after the donative transfer project quickly and thoroughly.

The staff recommends that the Commission make a contract with Professor Kasner to prepare a study on community property in joint tenancy form that includes the matters indicated on page one of this memorandum. The study would be due on August 31, 1991, and the compensation would be \$5,000 plus travel expenses in attending Commission meetings and legislative hearings at the Commission's request. There are sufficient funds in the Commission's budget allotment for research to cover this contract.

Respectfully submitted,

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