

First Supplement to Memorandum 92-35

Subject: Study F-1000 - Comments for Family Code and Conforming Changes

Attached to this supplementary memorandum are draft copies of newly revised Comments to Divisions 6 through 8 and 10 through 12 of the Family Code. These new pages replace the pages of the same numbers in the attachment to Memorandum 92-35. The Comments to Divisions 9, 13, and 20 are still being revised for style and conformity to the amendments made to the bill on March 23, 1992. The staff continues to review the Comments for revisions made necessary by the amendments submitted with Memorandum 92-32.

Respectfully submitted,

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DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

PART 1. GENERAL PROVISIONS

CHAPTER 1. APPLICATION OF PART

§ 2000. Application to dissolution, nullity, and legal separation proceedings

Comment. Section 2000 is new and is drawn from Rule 1201(c) (“proceeding” defined) of the California Rules of Court (Family Law Rules). A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties includes not only a determination of marital status, but also determinations of property rights, support, and custody matters. See Section 2010 (authority of court). See also Cal. R. Ct. 1206 (general law applicable), 1207 (other proceedings); Division 1 (commencing with Section 1) (preliminary provisions and definitions), Division 2 (commencing with Section 200) (general provisions).

CHAPTER 2. JURISDICTION

§ 2010. Authority of court

Comment. Section 2010 continues the first part of former Civil Code Section 4351 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The phrase “proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties” has been substituted for “proceedings under this part.” The former reference to “this part” referred to the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). See also Section 2556 (continuing jurisdiction to award community estate property or adjudicate debts).

§ 2011. Jurisdiction over property of spouse served by publication

Comment. Section 2011 continues former Civil Code Section 4813 without substantive change. The references to proceedings under “this part,” meaning proceedings under the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), have been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined).

§ 2012. Special appearance in opposition to order made during pendency of objection to jurisdiction

Comment. Section 2012 continues former Civil Code Section 4356 without substantive change. The reference to proceedings under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Section 2012 enables the respondent to contest preliminary orders in family law proceedings without prejudicing the respondent’s right to litigate the personal jurisdiction of the court by special appearance pursuant to Code of Civil Procedure Section 418.10. For background on former Civil Code Section 4356, see *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm’n Reports 243 (1984).

CHAPTER 3. PROCEDURAL PROVISIONS

§ 2020. Responsive pleading

Comment. Section 2020 continues former Civil Code Section 4355 without substantive change. The reference to proceedings under “this part,” meaning the former Family Law Act (former Part 5

(commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2021. Joinder of interested person and employee pension benefit plan as parties

Comment. Section 2021 continues former Civil Code Section 4363 without substantive change. The references to proceedings under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), have been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims).

§ 2022. Evidence collected by eavesdropping

Comment. Section 2022 continues former Civil Code Section 4361 without substantive change. Language in the former section limiting its application to proceedings for dissolution, nullity, or legal separation has been omitted as surplus. See Section 2000 (application of part).

§ 2023. Payment of obligation directly to creditor

Comment. Section 2023 continues former Civil Code Section 4358 without substantive change. The reference to any proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2024. Notice concerning effect of judgment on will, insurance, and other matters

Comment. Section 2024 continues former Civil Code Section 4352 without change. See also Prob. Code § 6122 & Comment (provisions in will revoked by dissolution or annulment of testator’s marriage). For background on former Civil Code Section 4352, see *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm’n Reports 2301, 2485 (1982).

§ 2025. Appeal of bifurcated issue

Comment. Section 2025 continues former Civil Code Section 4365(a) without substantive change. References to the “superior” court have been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to any proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Former Civil Code Section 4365(b), which required the Judicial Council to establish rules for certification of appeals of bifurcated issues by July 1, 1989, has been omitted as obsolete. See Cal. R. Ct. 1269.5 (certification of appeals of bifurcated issues other than marital status). See also Section 211 (Judicial Council rules of practice and procedure). For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2026. Effect of reconciliation of parties

Comment. Section 2026 continues former Civil Code Section 4381 without substantive change. The reference to a court order under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

CHAPTER 4. RESTRAINING AND PROTECTIVE ORDERS

Article 1. Orders in Summons

§ 2030. Temporary restraining order in summons

Comment. The introductory part of Section 2030 restates the first sentence of former Code of Civil Procedure Section 412.21(a) without substantive change. Subdivisions (a), (b) and (c) continue former Code of Civil Procedure Section 412.21(a)(1)-(3) without change. The former limitation to proceedings commenced on or after July 1, 1990 has been omitted as obsolete. The former language limiting application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part). For general provisions on temporary restraining orders in summons, see Part 3 (commencing with Section 231) of Division 2.

§ 2031. Rights, title, and interest of purchaser for value

Comment. Section 2031 is new.

Article 2. Orders During Pendency of Proceeding

§ 2035. Ex parte protective orders during pendency of proceeding; purposes of order

Comment. Section 2035 continues the first paragraph of former Civil Code Section 4359(a) without substantive change. Subdivision (c) also continues the third part of former Civil Code Section 5102(a) without substantive change. The third part of former Civil Code Section 5102(a) duplicated, in substance, former Civil Code Section 4359(a)(3), both former sections provided for ex parte temporary exclusion from dwelling orders in dissolution, nullity, or legal separation proceedings.

The language in both of the former sections limiting their application to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). A reference to Part 4 (commencing with Section 240) of Division 2 has been substituted for the reference to Code of Civil Procedure Section 527 found in both former sections. This is not a substantive change, since Part 4 of the Family Code continues the applicable parts of Code of Civil Procedure Section 527.

In subdivision (b), the word "telephoning" has been added. This conforms with the mandatory Judicial Council temporary restraining order form. See Cal. R. Ct. 1285.05.

For general provisions relating to ex parte temporary restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Sections 2030 (temporary restraining order in summons), 2036.5 (exclusion from dwelling following notice and hearing), 3100 & 3101 (visitation rights where domestic violence prevention order in effect). For comparable provisions, see Sections 5550, 5650 & 5700 (Domestic Violence Prevention Law), 7710 (Uniform Parentage Act).

§ 2036. Limitation on issuance of mutual restraining order

Comment. Section 2036 continues the second paragraph of former Civil Code Section 4359(a) without substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 5514 (Domestic Violence Prevention Law), 7711 (Uniform Parentage Act).

§ 2036.5 Order excluding party from dwelling issued after notice and hearing

Comment. Section 2036.5 continues without substantive change the last part of former Civil Code Section 5102(a), which provided for obtaining an order excluding a party from a dwelling after notice and hearing. For comparable provisions, see Sections 5751 (Domestic Violence Prevention Law), 7721 (Uniform Parentage Act).

§ 2037. Required statements in order

Comment. The introductory part of Section 2037 restates the third paragraph of former Civil Code Section 4359(a) without substantive change. Language has been added that limits application of subdivisions (a)-(c) to temporary orders to the extent those orders protect against domestic violence.

Subdivision (a) is new and is drawn from former Code of Civil Procedure Section 552 (former Domestic Violence Prevention Act).

Subdivision (b) supersedes the first sentence of former Civil Code Section 4359(c) and is drawn from the mandatory Judicial Council temporary restraining order form. See Cal. R. Ct. 1285.05.

Subdivision (c) continues former Civil Code Section 4359(d) without substantive change. Subdivision (c) applies to any order under this article to the extent it protects against domestic violence, while the former provision applied only to orders under former Civil Code Section 4359(a)(2), now Family Code Section 2035(b).

For comparable provisions, see Section 5515, 5652, 5702 & 5803 (Domestic Violence Prevention Law), 7730 & 7731 (Uniform Parentage Act).

§ 2038. Transmittal to local law enforcement agency

Comment. Section 2038 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4359(b). See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 5800 (Domestic Violence Prevention Law), 7740 (Uniform Parentage Act).

§ 2039. Law enforcement agency to make information concerning order available to law enforcement officers

Comment. Section 2039 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4359(b). See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 5801 (Domestic Violence Prevention Law), 7741 (Uniform Parentage Act).

§ 2040. Enforcement of order

Comment. Section 2040 continues the last paragraph of former Civil Code Section 4359(b) without substantive change. There is no comparable provision in the Domestic Violence Prevention Law or the Uniform Parentage Act. However, the mandatory Judicial Council temporary restraining order form, required in proceedings under the Domestic Violence Prevention Law and the Uniform Parentage Act, contains a notice that states substantially the same enforcement requirements. See Cal. R. Ct. 1296.10 (mandatory order to show cause and temporary restraining order form).

§ 2041. Service of restraining order against domestic violence by law enforcement officer

Comment. Section 2041 continues former Civil Code Section 4359(e) without substantive change. See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 5802 (Domestic Violence Prevention Law), 7742 (Uniform Parentage Act).

§ 2042. Penalty for violation of restraining order against domestic violence

Comment. Section 2042 continues the last sentence of former Civil Code Section 4359(c) without substantive change. For comparable provisions, see Sections 5807 (Domestic Violence Prevention Law), 7743 (Uniform Parentage Act).

§ 2043. Judicial Council forms and instructions

Comment. Section 2043 continues the last paragraph of former Civil Code Section 4359(a) without substantive change. For a comparable provision, see Section 5520 (Domestic Violence Prevention Law). There is no comparable provision in the Uniform Parentage Act, however, the Judicial Council has adopted mandatory forms for use in obtaining similar orders under the Uniform Parentage Act. See Cal. R. Ct. 1296 (application and declaration for restraining orders), 1296.10

(order to show cause and temporary restraining order), 1296.29 (restraining order after hearing), 1296.61 (standard restraining order). See also Section 211 & Comment (Judicial Council rules for practice and procedure).

Article 3. Judgment

§ 2045. Protective orders included in judgment

Comment. Section 2045 restates former Civil Code Sections 4458 and 4516 without substantive change. This section also includes exclusion from dwelling orders, under Section 2035(c). This is not a new authority, however, since the former sections included the authority, pursuant to former Civil Code Section 4359(a)(6), now Family Code Section 2035(d), to make any other orders necessary to enforce an exclusion from dwelling order. This section is consistent with the language of the comparable section of the Uniform Parentage Act. See Section 7750. References in both former sections to a judgment entered pursuant to “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), have been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

CHAPTER 5. NOTICE TO INSURANCE CARRIERS

§ 2050. Notice of pending proceeding

Comment. Section 2050 continues former Civil Code Section 4366(a) without substantive change. The language limiting the application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part).

§ 2051. Notice of entry and requirements of judgment

Comment. Section 2051 continues former Civil Code Section 4366(b) without substantive change. The language limiting the application of the former section to dissolution, nullity, or legal separation proceedings has been omitted as surplus. See Section 2000 (application of part).

§ 2052. Manner of giving notice

Comment. Section 2052 continues former Civil Code Section 4366(c) without substantive change. A reference to “first class” mail has been substituted for the former reference to “regular” mail to conform to similar sections that allow service of similar notices by mail. See, e.g., Section 5252 (service of notice of intent to seek earnings assignment order for support).

§ 2053. Policyholder to furnish other party with name and address of insurer

Comment. Section 2053 continues former Civil Code Section 4366(d) without change.

CHAPTER 6. EMPLOYEE PENSION BENEFIT PLAN AS PARTY

Article 1. Joinder of Plan

§ 2060. Application and order for joinder of plan

Comment. Subdivision (a) of Section 2060 continues the first sentence of former Civil Code Section 4363.1(a) without substantive change. The reference to a proceeding under “this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. See Section 2000 (application to dissolution, nullity, or legal separation proceedings).

Subdivision (b) continues the last part of former Civil Code Section 4351 without substantive change. For an exception to this general rule, see Section 5103 (support order may be enforced against an employee pension benefit plan regardless whether joined as party). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims).

§ 2061. Pleading of party requesting joinder

Comment. Section 2061 continues the second sentence of former Civil Code Section 4363.1(a) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2062. Service upon trustee, administrator, or agent of plan

Comment. Section 2062 restates the last four sentences of former Civil Code Section 4363.1(a) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2063. Notice of appearance and responsive pleading by plan

Comment. Subdivision (a) of Section 2063 continues the first sentence of former Civil Code Section 4363.1(b) without substantive change. Subdivision (b) continues former Civil Code Section 4363.2(b) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2064. Plan need not pay filing fees

Comment. Section 2064 continues the last sentence of former Civil Code Section 4363.1(b) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2065. Entry of default of plan

Comment. Section 2065 continues former Civil Code Section 4363.1(c) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

Article 2. Proceedings After Joinder**§ 2070. Provisions governing proceeding in which plan has been joined**

Comment. Section 2070 continues former Civil Code Section 4363.2(a) without substantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2071. Notice to plan of proposed property settlement; response by plan

Comment. Section 2071 continues former Civil Code Section 4363.2(c) without substantive change. The phrase “before any hearing at which the proposed property settlement will be a matter before the court” has been substituted for “prior to the interlocutory hearing.” This is a technical, nonsubstantive change. See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2072. Appearance by plan at hearing

Comment. Section 2072 continues without substantive change the first two sentences of the first paragraph of former Civil Code Section 4363.2(d). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2073. Order affecting plan made at hearing not attended by plan

Comment. Section 2073 continues without substantive change the last two sentences of the first paragraph of former Civil Code Section 4363.2(d). See also Sections 80 (“employee pension benefit plan” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

§ 2074. Motion to set aside or modify order

Comment. Subdivisions (a) and (b) of Section 2074 continue former Civil Code Section 4363.2(e) without substantive change. Subdivision (c) continues the last paragraph of former Civil Code Section 4363.2(d) without substantive change. In subdivision (a), a reference to Section 2073 has been substituted for the broader reference to former Civil Code Section 4363.2(d). This is not a substantive change, since the relevant part of the former subdivision is continued in Section 2073.

See also Sections 65 (“community property” defined in Section 760 *et seq.*), 80 (“employee pension benefit plan” defined), 125 (“quasi-community property” defined), 755 (discharge of employee benefit plan from adverse claims), 2000 (application to dissolution, nullity, or legal separation proceedings).

CHAPTER 7. RESTORATION OF WIFE’S FORMER NAME

§ 2080. Restoration of wife’s former name

Comment. Section 2080 continues former Civil Code Sections 4362(a) and 4457(a) without substantive change. This section retains the application of the former sections to proceedings for dissolution and nullity, but not to proceedings for legal separation.

Former Civil Code Sections 4362(d) and 4457(d), which prohibited certain actions by businesses based on a woman’s use of her birth or former name are continued in Code of Civil Procedure Section 1279.6 without substantive change.

§ 2081. Restoration not to be denied for any reason other than fraud

Comment. Section 2081 continues former Civil Code Sections 4362(c) and 4457(c) without substantive change.

§ 2082. Common law right to change name not limited

Comment. Section 2082 continues without change and generalizes former Civil Code Sections 4362(b) and 4457(b). This section applies to the entire Family Code; the broader of the two former sections, former Civil Code Section 4362(b), applied only to the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

CHAPTER 8. UNIFORM DIVORCE RECOGNITION ACT

§ 2090. Short title

Comment. Section 2090 continues former Civil Code Section 5000 without substantive change. See also Sections 3 (construction of provisions drawn from uniform act), 13 (severability of provisions).

§ 2091. Effect of foreign divorce of parties domiciled in this state

Comment. Section 2091 continues former Civil Code Section 5001 without change.

§ 2092. Prima facie evidence of domicile

Comment. Section 2092 continues former Civil Code Section 5002 without substantive change. The word “hereafter” used in Section 2092 is to be construed as of the time former Civil Code Section 5002 was enacted. See 1969 Cal. St. ch. 1608 (former Civ. Code § 5002 enacted Sept. 6, 1969); Section 2 (provision to be construed as a restatement and continuation and not as a new enactment).

§ 2093. Full faith and credit limitation

Comment. Section 2093 continues former Civil Code Section 5004 without substantive change. See also Section 13 (severability of provisions).

PART 2. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE**CHAPTER 1. VOID MARRIAGE****§ 2200. Incestuous marriages**

Comment. Section 2200 continues former Civil Code Section 4400 without change.

§ 2201. Bigamous and polygamous marriages

Comment. Section 2201 continues former Civil Code Section 4401 without substantive change.

CHAPTER 2. VOIDABLE MARRIAGE**§ 2210. Grounds for adjudging marriage a nullity**

Comment. Section 2210 continues former Civil Code Section 4425 without substantive change.

§ 2211. Limitations on obtaining judgment of nullity

Comment. Section 2211 continues former Civil Code Section 4426 without substantive change. In subdivision (a)(2), “underage” has been substituted for “nonaged,” to conform to language used in other sections of this code. See, e.g., Sections 302 & 353 (underage applicants for marriage license), 1814(b)(5) (conciliation counselor recommendations on marriage where party underage). In subdivisions (d) and (e), specific descriptions of the party have been substituted for the general reference to the injured party. For background on former Civil Code Section 4426, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm’n Reports 501 (1978).

§ 2212. Effect of judgment of nullity

Comment. Subdivision (a) of Section 2212 continues former Civil Code Section 4429 without change. Subdivision (b) continues former Civil Code Section 4451 without change.

CHAPTER 3. PROCEDURAL PROVISIONS**§ 2250. Petition for judgment of nullity; filing and service**

Comment. Section 2250 continues former Civil Code Section 4450 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 2080-2082 (restoration of wife’s former name).

§ 2251. Status of putative spouse; division of quasi-marital property

Comment. Section 2251 continues the first three sentences of former Civil Code Section 4452 without substantive change. A reference to the division governing property division has been substituted for the narrower reference to former Civil Code Section 4800. This is not intended as a substantive change.

§ 2252. Liability of quasi-marital property for debts

Comment. Section 2252 continues the last sentence of former Civil Code Section 4452 without substantive change. Under Section 2252, quasi-marital property is treated the same as community and quasi-community property for purposes of creditors’ remedies. See Section 916 (liability of property after division). For background on former Civil Code Section 4452, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm’n Reports 1 (1984).

§ 2253. Custody of children

Comment. Section 2253 continues former Civil Code Section 4454 without substantive change. References to sections in this code have been substituted for the reference to former Civil Code Section 4600. See also Section 3022 (best interest of the child).

§ 2254. Support of putative spouse

Comment. Section 2254 continues former Civil Code Section 4455 without substantive change.

§ 2255. Attorney's fees and costs

Comment. Section 2255 continues former Civil Code Section 4456 without substantive change. A reference to Part 5 (commencing with Section 270) of Division 2 has been substituted for the narrower reference to former Civil Code Section 4370. This is not intended as a substantive change.

PART 3. DISSOLUTION OF MARRIAGE**CHAPTER 1. EFFECT OF DISSOLUTION****§ 2300. Effect of dissolution**

Comment. Section 2300 continues former Civil Code Section 4501 without substantive change. The words "when it becomes final" have been added to recognize that there is a waiting period before the judgment of dissolution becomes final. See Section 2339 (waiting period before dissolution judgment becomes final). See also Sections 2340-2344 (date of termination).

CHAPTER 2. GROUNDS FOR DISSOLUTION OR LEGAL SEPARATION**§ 2310. Grounds for dissolution or legal separation**

Comment. Section 2310 continues former Civil Code Section 4506 without substantive change. The former reference to "decree" has been omitted as surplus.

§ 2311. Irreconcilable differences defined

Comment. Section 2311 continues former Civil Code Section 4507 without change.

§ 2312. Proof required for dissolution on grounds of incurable insanity

Comment. Section 2312 continues former Civil Code Section 4510(a) without change. For background on former Civil Code Section 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

§ 2313. Duty of support not affected by dissolution on grounds of insanity

Comment. Section 2313 continues former Civil Code Section 4510(b) without substantive change. The former reference to "decree" has been omitted as surplus. For background on former Civil Code Section 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501, 930 (1978).

CHAPTER 3. RESIDENCE REQUIREMENTS**§ 2320. Residence requirement for dissolution judgment**

Comment. Section 2320 continues former Civil Code Section 4530(a) without substantive change. See also Code Civ. Proc. § 395 (venue for marriage dissolution proceeding).

§ 2321. Conversion of separation proceeding to dissolution proceeding

Comment. Section 2321 continues former Civil Code Section 4530(b) without substantive change.

§ 2322. Separate domicile or residence

Comment. Section 2322 continues former Civil Code Section 4531 without substantive change.

CHAPTER 4. GENERAL PROCEDURAL PROVISIONS

§ 2330. Petition

Comment. Subdivision (a) of Section 2330 continues the first sentence of former Civil Code Section 4503 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Code of Civil Procedure Section 429.10 without substantive change. The phrase “or for legal separation” has been added. This is not a substantive change, since the mandatory Judicial Council form petition for legal separation includes this information. See Cal. R. Ct. 1281.

§ 2330.5. Financial declarations not required in certain default cases

Comment. Section 2330.5 continues former Civil Code Section 4364 without substantive change. The word “judgment” has been substituted for “decree.” The phrase “income and expense declarations and property declarations” has been substituted for “a financial declaration” to conform with the language of California Rule of Court 1243. See also Sections 95 (“income and expense declaration” defined), 115 (“property declaration” defined).

§ 2331. Service on other spouse

Comment. Section 2331 continues the last sentence of former Civil Code Section 4503 without change. See also Section 2332 (service on guardian or conservator of insane spouse where dissolution based on incurable insanity).

§ 2332. Representation of insane spouse by guardian, conservator, or guardian ad litem

Comment. Section 2332 continues former Civil Code Section 4510(c)-(d) without substantive change. In subdivisions (a) and (b), “filing the petition” has been substituted for “bringing the action.” For background on former Civil Code Section 4510, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm’n Reports 501, 930 (1978).

§ 2333. Court finding and order where grounds is irreconcilable differences

Comment. Section 2333 continues the first sentence of former Civil Code Section 4508(a) without substantive change.

§ 2334. Continuance for reconciliation

Comment. Section 2334 continues the last three sentences of former Civil Code Section 4508(a) without substantive change. The former reference to “maintenance and education” of children has been omitted as surplus. See Section 150 (“support” when used with reference to a minor child includes maintenance and education). In subdivision (c), “termination of the period of the continuance” has been substituted for “termination of such 30-day period” to conform with other language in this section.

§ 2335. Evidence of specific acts of misconduct

Comment. The introductory part and subdivision (a) of Section 2335 continue former Civil Code Section 4509 without substantive change. The phrase “under this part,” meaning under the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus.

Subdivision (b) is a new provision that recognizes that evidence of specific acts of misconduct is admissible in proceedings to obtain or retain in effect a domestic violence prevention order. See, e.g., Section 2036 (presentation of evidence of abuse or domestic violence required for mutual restraining order).

See also Section 75 (“domestic violence prevention order” defined), 3022 (history of abuse of child or other parent must be considered in determining best interest of child for purposes of custody).

§ 2336. Proof required for default

Comment. Section 2336 continues former Civil Code Section 4511 without substantive change. In subdivision (a), “judgment” has been substituted for “decree.”

§ 2337. Severance and grant of early trial on issue of dissolution of status of the marriage

Comment. Section 2337 continues former Civil Code Section 4515 without substantive change. The phrase “under this part,” meaning under the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), has been omitted as surplus. In subdivision (a), “proceeding” has been substituted for “action.” In subdivision (b)(1), “community estate” has been substituted for “community property” to conform to the language of Division 7 (commencing with Section 2500). See, e.g., Section 2550 (equal division of community estate). See also Sections 2501 (“community estate” defined). Throughout this section, “any” has been substituted for “any and all,” since “all” is surplus.

§ 2338. Decisions; judgments

Comment. Section 2338 continues former Civil Code Section 4512 without substantive change. In subdivision (a), “proceeding” has been substituted for “action” and the reference to legal separation has been added. This is not a substantive change. See Cal. R. Ct. 1206 (general law applicable); Section 210 (general rules of practice and procedure). The effect of subdivision (a) is that the rule regarding filing of decisions and statements applicable to civil actions generally is the rule in proceedings for dissolution or legal separation. See also Code Civ. Proc. § 632 (statement of decision not required unless requested).

In subdivision (b), the phrase “judgment of dissolution shall be entered” has been substituted for “a judgment shall be entered declaring that the parties are entitled to have their marriage dissolved.” This conforms with the language of Section 2340 and with the mandatory Judicial Council judgment form. See Cal. R. Ct. 1287.

§ 2339. Waiting period before dissolution judgment becomes final

Comment. Section 2339 restates the first sentence of former Civil Code Section 4514(a) without substantive change. In subdivision (a), “judgment of dissolution” has been substituted for “judgment entered pursuant to Section 4512.” This is not a substantive change, since former Civil Code Section 4512 provided for a judgment of dissolution. Subdivision (a) includes new language concerning the effect of the expiration of the waiting period. This is not a substantive change. See Sections 2300 (effect of judgment of dissolution when it becomes final), 2340 (date judgment becomes final for purpose of terminating marriage relationship).

§ 2340. Statement in judgment of date marriage terminates

Comment. Section 2340 continues second sentence of former Civil Code Section 4514(a) without substantive change. The word “judgment” has been substituted for “decree.”

§ 2341. Effect of appeal or motion for new trial

Comment. Subdivision (a) of Section 2341 continues the last sentence of former Civil Code Section 4514(a) without substantive change. Subdivision (b) continues former Civil Code Section 4514(b) without substantive change. For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2342. Calculating date judgment becomes final where joint petition for summary dissolution is revoked

Comment. Section 2342 continues former Civil Code Section 4514(c) without substantive change. The phrase “the date the judgment becomes a final judgment under Section 2339” replaces “the permissible date of entry of judgment pursuant to this section.” This is not a substantive change, since the relevant part of the former section is continued in Section 2339.

§ 2343. Court may retain jurisdiction over date of termination or order termination at future specified date

Comment. Section 2343 continues former Civil Code Section 4514(e) without change.

§ 2344. Effect of death of either party after entry of judgment

Comment. Section 2344 restates former Civil Code Section 4514(d) without substantive change. The language of the former provision has been revised to recognize that the judgment is entered and becomes final when the time runs, without further action by the court. In subdivision (b), “if the marriage takes place before the death of the other party” has been added to recognize that death of a party also dissolves a marriage. See Section 722 (methods of dissolution).

§ 2345. Consent of parties to legal separation

Comment. Section 2345 continues the first sentence of former Civil Code Section 4508(b) without substantive change.

§ 2346. Entry of judgment nunc pro tunc

Comment. Section 2346 continues former Civil Code Section 4513 without substantive change. In subdivision (a), “judgment of dissolution of the marriage” has been substituted for “decree of dissolution.” Throughout this section “proceeding” has been substituted for “action.” For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2347. Legal separation judgment does not bar subsequent dissolution judgment

Comment. Section 2347 continues the last sentence of former Civil Code Section 4508(b) without substantive change.

CHAPTER 5. SUMMARY DISSOLUTION

§ 2400. Conditions necessary at commencement of proceeding

Comment. Section 2400 continues former Civil Code Section 4550 without substantive change. In subdivision (a)(8), “executed” has been substituted for “duly executed,” since the word “duly” is surplus. In subdivision (a)(10), “judgment of dissolution of marriage pursuant to Section 2403” has been substituted for “final judgment” to recognize that the judgment can be set aside pursuant to Section 2405. This substitution has been made throughout this chapter.

§ 2401. Joint petition

Comment. Section 2401 continues former Civil Code Section 4551 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 2402. Revocation of joint petition and termination of proceeding

Comment. Section 2402 continues former Civil Code Section 4552 without substantive change.

§ 2403. Entry of judgment of dissolution

Comment. Section 2403 continues former Civil Code Section 4553 without substantive change.

§ 2404. Effect of entry of judgment

Comment. Section 2404 continues former Civil Code Section 4554 without substantive change. For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2405. Action to set aside judgment

Comment. Section 2405 continues former Civil Code Section 4555 without substantive change.

§ 2406. Brochure describing summary dissolution proceedings

Comment. Section 2406 continues former Civil Code Section 4556 without substantive change.

DIVISION 7. DIVISION OF PROPERTY

PART 1. DEFINITIONS

§ 2500. Application of definitions

Comment. Section 2500 is new and is comparable to Probate Code Section 20. This section is a standard provisions found in many other codes. See, e.g., Corp. Code § 5; Evid. Code § 100; Food & Agric. Code § 25; Veh. Code § 100. The introductory part of Section 2500 recognizes that the context of a particular section may require that a phrase used in the section be given a meaning different from the definition provided in this part.

§ 2501. “Community estate”

Comment. Section 2501 continues without change and generalizes the last paragraph of former Civil Code Section 4800(a). The scope of this definition has been expanded to apply to all of Division 7. Formerly, the definition applied only to the provisions of former Civil Code Section 4800. This is not a substantive change. See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined).

§ 2502. “Separate property”

Comment. Section 2502 continues former Civil Code Section 4804 without substantive change insofar as it applied to division of property. See also Sections 130 (“separate property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined). For a comparable definition applicable to support, see Section 3515.

PART 2. GENERAL PROVISIONS

§ 2550. Equal division of community estate

Comment. Section 2550 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4800(a). The phrase “or as otherwise provided in this division” has been substituted for “or as otherwise provided in this section,” which referred to former Civil Code Section 4800.” See Sections 2251 & 2252 (division of “quasi-marital property” in a proceeding for nullity), 2501 (“community estate” defined); see also Sections 1620 (contract between married persons concerning their property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2650 (division of jointly held separate property), 2660 (real property located in another state), 3592 (obligations of property settlement discharged in bankruptcy).

§ 2551. Characterization of liabilities as separate or community and confirming or assigning them to parties

Comment. Section 2551 continues the second paragraph of former Civil Code Section 400(a) without substantive change. A reference to “Part 6 (commencing with Section 2620)” has been substituted for the narrower reference to former Civil Code Section 4800(c). This is not intended as a substantive change.

§ 2552. Valuation date for assets and liabilities

Comment. Section 2552 continues without substantive change the last sentence of the first paragraph of former Civil Code Section 4800(a). In subdivision (a), the phrase “upon dissolution of marriage or legal separation” has been added and is drawn from the first sentence of former Civil Code Section 4800(a).

§ 2553. Orders necessary to carry out purposes of this division

Comment. Section 2553 continues former Civil Code Section 4800(f) without substantive change. The phrase “the purposes of this division” has been substituted for “the purposes of this

section,” which referred to former Civil Code Section 4800. See also Section 3592 (obligations of property settlement discharged in bankruptcy).

§ 2554. Arbitration where parties do not voluntarily agree to division

Comment. Section 2554 continues former Civil Code Section 4800.9 without substantive change. In the introductory clause, “this division” has been substituted for “this section,” which referred to former Civil Code Section 4800. In subdivision (a), the phrase “value of the community and quasi-community property” has been substituted for “value of the community property” in both sentences of the subdivision. This conforms the valuation rule to the division rule. For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2555. Revision of property disposition on appeal

Comment. Section 2555 continues former Civil Code Section 4810 without substantive change. The phrase “as provided in this division” has been substituted for “as above provided.” This is not a substantive change, since the “above provided” provisions having to do with disposition of property are continued in this division. For other sections in this code dealing with appeals generally, see Section 210 Comment.

§ 2556. Continuing jurisdiction to award community estate property or adjudicate debts

Comment. Section 2556 continues former Civil Code Section 4353 without substantive change. In the introductory clause, “proceeding” has been substituted for “action.” The term “community estate” has been substituted for “community” to conform with language of the Section 2550 regarding property subject to division. See also Section 2501 (“community estate” defined) See also *In re Marriage of Craig*, 219 Cal. App. 3d 683, 686, 268 Cal. Rptr 396 (1990) (“California’s marital property laws are designed to provide for uniform treatment of quasi-community and community property where the parties have changed their domicile to this state and seek to legally alter their marital status in a California court. This intent is apparent from statutes such as [former Civil Code Section] 4800 (equal division of ‘community estate’ consisting of community and quasi-community property) and [former Civil Code Section] 4800.5 (power to order conveyance of out-of-state property)”).

PART 3. PRESUMPTION CONCERNING PROPERTY HELD IN JOINT FORM

§ 2580. Community property presumption for property held in joint form

Comment. Subdivision (a)(1) of Section 2580 restates the first sentence of former Civil Code Section 4800.1(b) (as enacted by 1983 Cal. Stat. ch. 342, § 1), with the addition of language that codifies the constitutional limitations on the application of Section 2580. Subdivision (a)(2) restates the first sentence of former Civil Code Section 4800.1(b) (as amended by 1986 Cal. Stat. ch. 539, § 1), with the addition of language that codifies the constitutional limitations on the application of Section 2580.

Subdivision (b) of Section 2580 continues the last part of former Civil Code Section 4800.1(b) without substantive change.

Subdivision (c) of Section 2580 is new and makes clear that the law concerning property not described in subdivision (a) is not affected by Section 2580. Accordingly, the character of the interest in property acquired in joint tenancy form by the parties before January 1, 1984, is not determined under or affected by Section 2580. Likewise, the character of the interest in property acquired by the parties before January 1, 1987, and held in tenancy in common, tenancy by the entirety, or as community property is not determined under or affected by Section 2580. See also Section 2650 (division of jointly held separate property).

Former Civil Code Section 4800.1(a), which sought to justify the application of former Civil Code Sections 4800.1 and 4800.2 without regard to the date the property was acquired, has not been continued. Instead, subdivision (a) of Section 2580 codifies case law holding that the section cannot

constitutionally be applied to the property described in subdivision (a) prior to the date of acquisition specified in paragraph (1) or (2) of subdivision (a), whichever is applicable. See, e.g., *In re Marriage of Cairo*, 204 Cal. App. 3d 1255, 251 Cal. Rptr. 731 (1988); *In re Marriage of Lockman*, 204 Cal. App. 3d 782, 251 Cal. Rptr. 434 (1988); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988); *In re Marriage of Hopkins and Axene*, 199 Cal. App. 3d 288, 245 Cal. Rptr. 433 (1987); *In re Marriage of Griffis*, 187 Cal. App. 3d 156, 231 Cal. Rptr. 510 (1986); see also *In re Marriage of Fabian*, 41 Cal. 3d 440, 715 P.2d 253, 224 Cal. Rptr. 333 (1986); *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

Under Section 2580, all property held in joint form by the spouses is presumed to be community property absent a written agreement otherwise. Under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions, absent an express agreement otherwise. When enacted in 1983 (as former Civil Code Sections 4800.1 and 4800.2), these provisions were intended to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court's interpretation of former law in the *Lucas* case of the community property presumption for a joint tenancy single-family residence to find a gift of separate funds used to acquire a community asset absent an express agreement otherwise. See *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). The *Lucas* decision was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence under former law by evidence of an oral agreement that the residence is separate property. This rule promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long before filed a joint tenancy deed could be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646 (1984) (disapproved in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985)).

The community property presumptions created by subdivision (a) of Section 2580 are applicable only in dissolution and legal separation proceedings. The presumptions govern both real and personal property, whether situated in California or another jurisdiction, and include property acquired during marriage while domiciled in another jurisdiction. The presumptions also govern property initially acquired before marriage, the title to which is taken in joint form or as community property by the spouses during marriage. The measure of the separate property contribution under Section 2640 in such a case is the value of the property at the time of its conversion to joint or community property form.

Subdivision (b) of Section 2580 requires a writing to rebut the community property presumption. To permit oral statements to defeat the community property presumption for purposes of dissolution of marriage would frustrate the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration.

Section 2580 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, together with Section 2640, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at

dissolution or to make a present gift for that purpose. Casual statements made during marriage generally are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

For background on former Civil Code Section 4800.1, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

PART 4. SPECIAL RULES FOR DIVISION OF COMMUNITY ESTATE

§ 2600. Special rules for division of community estate

Comment. Section 2600 continues the introductory part of former Civil Code Section 4800(b) without substantive change.

§ 2601. Awarding asset to one party to effect substantially equal division

Comment. Section 2601 continues former Civil Code Section 4800(b)(1) without substantive change. References to community estate have been added here to conform with language in the remainder of this division. See, e.g. Section 2550 (equal division of community estate).

§ 2602. Award or offset of amount deliberately misappropriated by party

Comment. Section 2602 continues former Civil Code Section 4800(b)(2) without substantive change.

§ 2603. Community estate personal injury damages

Comment. Section 2603 continues former Civil Code Section 4800(b)(4) without substantive change. See also Sections 780-783 (damages for injuries to married person).

§ 2604. Award where community estate less than \$5,000 and one party cannot be located

Comment. Section 2604 continues former Civil Code Section 4800(b)(3) without substantive change. A reference to community estate has been added here to conform with language in the remainder of this division. See, e.g., Section 2550 (equal division of community estate).

PART 5. RETIREMENT PLAN BENEFITS

§ 2610. Division of retirement plan benefits

Comment. Section 2610 continues former Civil Code Section 4800.8 without change. In subdivision (a), a reference to "this division" has been substituted for the narrower reference to former Civil Code Section 4800. This is not intended as a substantive change.

PART 6. DEBTS AND LIABILITIES

§ 2620. Confirmation or division of debts of community estate

Comment. Section 2620 continues the introductory part of former Civil Code Section 4800(c) without substantive change. See also Sections 916 (liability after property division), 2551 (characterizing liabilities as separate or community by court and confirming or assigning them to parties), 2552 (valuation date for liabilities).

§ 2621. Debts incurred before marriage

Comment. Section 2621 continues former Civil Code Section 4800(c)(1) without change.

§ 2622. Debts incurred after marriage but before separation

Comment. Section 2622 continues former Civil Code Section 4800(c)(2) without substantive change.

§ 2623. Debts incurred after separation but before judgment

Comment. Section 2623 continues former Civil Code Section 4800(c)(3) without change.

§ 2624. Debts incurred after entry of judgment

Comment. Section 2624 continues former Civil Code Section 4800(c)(4) without substantive change.

§ 2625. Separate debts

Comment. Section 2625 continues former Civil Code Section 4800(d) without substantive change.

§ 2626. Reimbursement for debts paid after separation but before trial

Comment. Section 2626 continues former Civil Code Section 4800(e) without substantive change.

§ 2627. Educational loans and tort liability

Comment. Section 2627 continues former Civil Code Section 4800(b)(5) without substantive change.

§ 2628. Notice in judgment that creditor may be able to collect debt or obligation notwithstanding its being assigned to other party

Comment. Section 2628 continues former Civil Code Section 4800.6 without change. See also Section 916 (liability after property division)

PART 7. REIMBURSEMENTS**§ 2640. Separate property contributions to acquisition of property**

Comment. Section 2640 continues former Civil Code Section 4800.2 without substantive change. In subdivision (b), “community estate property” has been substituted for “community property,” to codify case law holding that the section applies to quasi-community property as well as to community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990). See also Section 2501 (“community estate” defined). In subdivision (b), the phrase “acquired on or after January 1, 1984, by the parties during marriage” has been added to codify a case law rule, based on impairment of vested rights without due process, that the section cannot constitutionally be applied to a case where the property was acquired prior to the effective date of the section. See, e.g., *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr. 396 (1990); *In re Marriage of Cairo*, 204 Cal. App. 3d 1255, 251 Cal. Rptr. 731 (1988); *In re Marriage of Lockman*, 204 Cal. App. 3d 782, 251 Cal. Rptr. 434 (1988); *In re Marriage of Bankovich*, 203 Cal. App. 3d 49, 249 Cal. Rptr. 713 (1988); *In re Marriage of Hopkins and Axene*, 199 Cal. App. 3d 288, 245 Cal. Rptr. 433 (1987); *In re Marriage of Griffis*, 187 Cal. App. 3d 156, 231 Cal. Rptr. 510 (1986); see also *In re Marriage of Fabian*, 41 Cal. 3d 440, 715 P.2d 253, 224 Cal. Rptr. 333 (1986); *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985); Section 2580 & Comment (community property presumption for property held in joint form).

When enacted in 1983 (as former Civil Code Section 4800.2), Section 2640 reversed the rule of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980), and cases following it, which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift. Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time

the contribution is made. Under this rule, if the property has since appreciated in value, the community is entitled to the appreciation. If the property has since depreciated in value, reimbursement may not exceed the value of the property; if both parties are entitled to reimbursement and the property has insufficient value to permit full reimbursement of both, reimbursement should be on a proportionate basis.

For background on former Civil Code Section 4800.2, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

§ 2641. Community contributions for education or training

Comment. Section 2641 continues former Civil Code Section 4800.3 without substantive change.

In subdivision (a), the reference to quasi-community property has been added. Former Civil Code Section 4800.3 referred only to community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 686, 268 Cal. Rptr 396 (1990) ("California's marital property laws are designed to provide for uniform treatment of quasi-community and community property where the parties have changed their domicile to this state and seek to legally alter their marital status in a California court. This intent is apparent from statutes such as [former Civil Code Section] 4800 (equal division of 'community estate' consisting of community and quasi-community property) and [former Civil Code Section] 4800.5 (power to order conveyance of out-of-state property)").

In subdivision (b)(2), the reference to this division has been substituted for the narrower reference to former Civil Code Section 4800. This is not intended as a substantive change. In subdivision (d), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801. This is not a substantive change, since the relevant portion of the former section is continued in Section 4320.

Section 2641 provides authority for reimbursement of educational expenses that have benefited primarily one party to the marriage. Although the education, degree, or license or the resulting enhanced earning capacity is not "property" subject to division, community expenditures for them are properly subject to reimbursement. See subdivision (d).

Subdivision (a) does not detail the expenditures that might be included within the concept of "community contributions." These expenditures would at least include cost of tuition, fees, books and supplies, and transportation.

Subdivision (b)(1) states the basic rule that community contributions must be reimbursed. The reimbursement right is limited to cases where the earning capacity of a party is substantially enhanced. This limitation is intended to restrict litigation by requiring that the education or training must demonstrably enhance earning capacity and to implement the policy of the section to redress economic inequity. However, it is not required that the party actually work in an occupation to which the enhancement applies; community contributions were made to the enhancement for the benefit of one party, who retains the potential to realize the enhancement in the future. Unless the rebuttable presumption of subdivision (c)(1) is overcome, reimbursement is limited to contributions made during the preceding ten years to minimize proof problems as well as potential inequity. Interest at the legal rate (Code Civ. Proc. § 685.010) accrues only from the end of each year in which expenditures were made, in order to simplify accounting for numerous small expenditures made over the course of the education or training.

Subdivision (c) is intended to permit the court to avoid the provisions of this section in an appropriate case. For example, if one party receives a medical education, degree, and license at community expense, but the marriage endures for some time with a high standard of living and substantial accumulation of community assets attributable to the medical training, it might be inappropriate to require reimbursement. Subdivision (c)(1). If both parties receive education or

training at community expense, it may be inappropriate to require reimbursement even though the exact amounts expended for each are not equal. Subdivision (c)(2). This limitation is especially important where one party received education or training more than 10 years before the commencement of the dissolution or legal separation proceeding. See subdivision (c)(1). If toward the end of a lengthy marriage one party, who had been a homemaker during the marriage and had never completed an education or developed job skills, receives education or training to enable him or her to be gainfully employed, reimbursement could be improper. Subdivision (c)(3). Absent the education or training, support might be necessary to maintain the party or to permit the party to obtain education or training.

Subdivision (e) recognizes that at the time community contributions are made to the education or training of a spouse, the parties may have an agreement as to the conditions of the contributions. Since such agreements may be subject to litigation, subdivision (e) requires a writing.

For background on former Civil Code Section 4800.3, see *Recommendation Relating to Reimbursement of Educational Expenses*, 17 Cal. L. Revision Comm'n Reports 229 (1984). See also *In re Marriage of Sullivan*, 37 Cal. 3d 762, 691 P.2d 1020, 209 Cal. Rptr. 354 (1984).

PART 8. JOINTLY HELD SEPARATE PROPERTY

§ 2650. Division of jointly held separate property

Comment. Section 2650 continues former Civil Code Section 4800.4(a) without substantive change. The term "community estate" has been substituted for "community property and quasi-community property." This is not a substantive change. See Section 2501 ("community estate" defined).

Section 2650 applies regardless of when the separate property was acquired. Former Civil Code Section 4800.4(b), which provided that the "section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before, on, or after January 1, 1986" has been omitted as unnecessary in view of Section 4(c).

When enacted in 1985 (as former Civil Code Section 4800.4), Section 2650 reversed the former rule that the court in a dissolution or legal separation proceeding had no jurisdiction over property of the parties other than community or quasi-community property. Section 2650 supplements provisions governing community property held in joint tenancy form by extending the jurisdiction of the court to separate property held in joint tenancy form as well. The section is consistent with the general rule that the court has jurisdiction to settle the property rights of the parties and with the principle that the court has jurisdiction to settle matters submitted to it by the parties. See Section 2010 (authority of court). The section is also consistent with the rule that the court may reserve jurisdiction to divide community property that has become tenancy in common by operation of law upon dissolution or separation. See, e.g., *Marriage of Borges*, 83 Cal. App. 3d 771, 148 Cal. Rptr. 118 (1978); *Comment, Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979).

Section 2650 supplements the other provisions of this division by giving the court express jurisdiction over joint tenancy or tenancy in common separate property submitted by a party in a proceeding for division of the community estate. Property subject to division includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 2660 (community and quasi-community property). See also Section 2011 (jurisdiction over property of spouse served by publication). The court's jurisdiction extends only to the interests of the spouses, whether equal or unequal, and the court may not affect interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

It should be noted that division of property pursuant to this section is subject to the same limitations applicable to division of the community estate. Therefore, an express agreement of the parties

precluding partition or other division of the property and providing a mechanism for dispute resolution or otherwise governing their rights in the property prevails over this section. See Section 2550 (equal division of community estate “[e]xcept upon the written agreement of the parties”).

For background on former Civil Code Section 4800.4, see *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm’n Reports 147 (1986); 18 Cal. L. Revision Comm’n Reports 365 (1986).

PART 9. REAL PROPERTY LOCATED IN ANOTHER STATE

§ 2660. Division where community estate includes real property located in another state

Comment. Section 2660 continues former Civil Code Section 4800.5 without substantive change. References to this division have been substituted for narrower references to former Civil Code Section 4800. Section 2660 specifies the procedure to be followed when the property subject to division includes real property situated in another state.

When real property is acquired in another state with community funds, the property is treated as community property for the purpose of division on dissolution of the marriage or on legal separation. See *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P.2d 905 (1944); *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm’n Reports 113, 119 n. 12 (1969). Quasi-community property likewise may include real property situated in another state. See 125 (“quasi-community property” defined). See also *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm’n Reports 113 (1969).

Section 2660 recognizes that the judgment of the court dividing the property cannot directly affect real property in another state, even though the court has personal jurisdiction over both spouses, unless the judgment is allowed that effect by the laws of the state in which the property is situated. *Fall v. Eastin*, 215 U.S. 1 (1909); *Rozan v. Rozan*, 49 Cal. 2d 322, 317 P.2d 11 (1957); *Taylor v. Taylor*, 192 Cal. 71, 218 P. 756 (1923). On the other hand, where the court has personal jurisdiction over both parties, it may order one of the parties to execute a deed by acting in personam; if the person so ordered does execute the deed, it effectively conveys the interest transferred, even though executed under threat of contempt proceedings. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff’d*, *Fall v. Eastin*, 215 U.S. 1 (1909).

Section 2660 requires that the court first attempt to effect the equal division of the community property and quasi-community property required by this division without making any change in the nature of the interests held in the real property situated in the other state. This will be the result where the value of the other community and quasi-community property is equal to or exceeds the value of the real property situated in the other state that is subject to division. Where the court determines that the real property situated in another state or an interest in such property must be transferred from one party to the other to effect the equal division of community and quasi-community property required by this division, the court may order the parties to execute the necessary conveyances or to take other actions — such as selling the property and including the proceeds in the property division — that may be necessary to effect an equal division of the community and quasi-community property, and may enforce its order by contempt proceedings. If a party refuses to execute the instrument necessary to effect the transfer or sale of the property or to take some other necessary action, the problem may be dealt with by awarding the money value of the property or interest therein to the other party, which award must be given full faith and credit. *Fall v. Fall*, 75 Neb. 104, 113 N.W. 175 (1907), *aff’d*, *Fall v. Eastin*, 215 U.S. 1 (1909).

For background on former Civil Code Section 4800.5, see *Recommendation Relating to Quasi-Community Property*, 9 Cal. L. Revision Comm’n Reports 113 (1969); *Report of Assembly Committee on Judiciary on Assembly Bill 124*, 10 Cal. L. Revision Comm’n Reports 1042-43 (1971).

DIVISION 8. CUSTODY OF CHILDREN

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 3000. Application of definitions

Comment. Section 3000 is new and is comparable to Section 50.

§ 3002. “Joint custody”

Comment. Section 3002 continues former Civil Code Section 4600.5(d)(1) without change.

§ 3003. “Joint legal custody”

Comment. Section 3003 continues former Civil Code Section 4600.5(d)(5) without change.

§ 3004. “Joint physical custody”

Comment. Section 3004 continues former Civil Code Section 4600.5(d)(3) without change.

§ 3006. “Sole legal custody”

Comment. Section 3006 continues former Civil Code Section 4600.5(d)(4) without change.

§ 3007. “Sole physical custody”

Comment. Section 3007 continues former Civil Code Section 4600.5(d)(2) without change.

CHAPTER 2. GENERAL PROVISIONS

§ 3010. Right of parent to custody, services, and earnings of unmarried minor child

Comment. Section 3010 continues former Civil Code Section 197 without substantive change. The word “unemancipated” has been substituted for “unmarried.” This is not a substantive change. See Section 7002 (conditions of emancipation). See also Sections 3013 (payment of earnings to minor), 3014 (parent may relinquish right of controlling child and receiving child’s earnings).

§ 3011. Right of parent to determine residence of child

Comment. Section 3011 continues former Civil Code Section 213 without substantive change. The word “court” is substituted for “proper Court.” This is not a substantive change, since “proper” is surplus. See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

§ 3012. Parent cannot control property of child

Comment. Section 3012 continues former Civil Code Section 202 without change. See also Section 3902 (court allowance to parent for support of child from child’s property).

§ 3013. Payment of earnings to minor

Comment. Section 3013 restates former Civil Code Section 212 without substantive change. The word “shall” has been substituted for “may.” This is consistent with Probate Code Section 2601(a)(2) (earnings shall be paid to ward unless otherwise ordered by court). The word “earnings” has been substituted for “wages” to conform with terminology in other sections of this code and to provide consistent treatment of different forms of income. See, e.g., Section 5206 (“earnings” defined). The phrase “employed in service” has been omitted as obsolete. See also Section 3014 (relinquishment by parent of right to receive earnings of child).

§ 3014. Parent may relinquish control and earnings of child

Comment. Section 3014 continues former Civil Code Section 211 without substantive change.

§ 3015. When parental authority ceases

Comment. Section 3015 continues former Civil Code Section 204 without substantive change. See also Sections 7050-7052 (effect of emancipation of minor under Emancipation of Minors Law).

§ 3016. Compensation where adult child continues to serve and be supported by parent

Comment. Section 3016 continues former Civil Code Section 210 without substantive change.

§ 3017. Order for support where custodial parent receiving public assistance

Comment. Section 3017 continues former Civil Code Section 4600.2 without substantive change. A reference to sections in the Family Code has been substituted for the narrower references in former Civil Code Section 4600.2. This is not intended as a substantive change.

§ 3018. Remedy for abuse of parental authority

Comment. Section 3018 continues former Civil Code Section 203 without change.

PART 2. RIGHT TO CUSTODY OF MINOR CHILD

CHAPTER 1. GENERAL PROVISIONS

§ 3020. Legislative findings and declarations

Comment. Section 3020 continues the first paragraph of former Civil Code Section 4600(a) without substantive change. The reference in former Civil Code Section 4600 to the section setting out the factors to be considered in determining the best interest of the child has been omitted as surplus. See Section 3022 (factors to be considered in determining best interest of child). See also Section 2253 (determining custody in nullity proceeding).

§ 3021. Authority of court to make custody order

Comment. Section 3021 continues without change the first sentence of the second paragraph of former Civil Code Section 4600(a). As to court jurisdiction, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act). See also Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3022. Factors considered in determining best interest of child

Comment. Section 3022 continues former Civil Code Section 4608 without substantive change. A reference to this division has been substituted for a narrower reference to "this title." The former reference to "this title" referred to former Title 4 (commencing with Civil Code Section 4600) of the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change. See also Sections 70 ("domestic violence" defined), 3040 (order of preference in awarding custody), 3041 (additional requirements for custody award to nonparent), 3042 (consideration of wishes of child in custody case), 3043 (nomination of guardian by parent), 3044 (parent convicted under certain Penal Code provisions), 3080 (presumption for joint custody where parents agree to joint custody).

§ 3023. Preference for trial on issue of custody

Comment. Section 3023 continues former Civil Code Section 4600.6 without change. See also Sections 3041 (excluding public from hearing on award of custody to nonparent), 4003 (separate trial on issue of child support).

§ 3024. Notice to other parent of change of residence of child

Comment. Section 3024 continues former Civil Code Section 4600.5(m) without substantive change. Although former Civil Code Section 4600.5 related to joint custody, subdivision (m) of that section (continued in Section 3024) was not by its terms limited to a joint custody order. Accordingly,

Section 3024 applies to any custody order, not just a joint custody order. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3025. Parental access to records

Comment. Section 3025 continues former Civil Code Section 4600.5(*l*) without substantive change. Although former Civil Code Section 4600.5 related to joint custody, subdivision (*l*) of that section (continued in Section 3025) was not by its terms limited to a joint custody order. Accordingly, Section 3025 applies whether or not custody is pursuant to a joint custody order.

§ 3026. Family reunification services

Comment. Section 3026 restates former Civil Code Section 4609 without substantive change. A reference to “proceeding brought under this code” has been substituted for a narrower reference to “proceeding brought under this part.” The former reference to “this part” referred to the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change.

§ 3027. Monetary sanction for false accusation of child abuse or neglect

Comment. Section 3027 continues former Civil Code Section 4611 without substantive change. A reference to “proceeding under this code” has been substituted for a narrower reference to “proceeding under this title.” The former reference to “this title” referred to former Title 4 (commencing with Civil Code Section 4600) of the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change.

§ 3028. Compensation for failure to assume caretaker responsibility or for thwarting other parent’s visitation or custody rights

Comment. Section 3028 continues former Civil Code Section 4700(b) without substantive change. In subdivision (a), a reference to “order entered under this code” has been substituted for a narrower reference to “order entered pursuant to this part.” The former reference to “this part” referred to the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change. See also Section 3003 (“joint legal custody” defined).

CHAPTER 2. MATTERS TO BE CONSIDERED IN AWARDING CUSTODY

§ 3040. Order of preference in awarding custody

Comment. Section 3040 continues former Civil Code Section 4600(b) and (d) without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes the plural). See also Sections 2253 (determination of custody in nullity proceeding), 3003 (“joint legal custody” defined), 3004 (“joint physical custody” defined), 3022 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3041. Additional requirements for custody award to nonparent

Comment. Section 3041 continues former Civil Code Section 4600(c) without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

§ 3042. Wishes of child

Comment. Section 3042 continues without change the second sentence of the second paragraph of former Civil Code Section 4600(a).

§ 3043. Nomination of guardian by parent

Comment. Section 3043 continues without substantive change the last sentence of the second paragraph of former Civil Code Section 4600(a). Section 3043 makes clear that a nomination under

the Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding. For background on former Civil Code Section 4600, see *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

§ 3044. Parent convicted under Penal Code provisions

Comment. Section 3044 continues former Civil Code Section 4610 without substantive change. See also Section 3100(b) (visitation limited to situations in which third person present).

CHAPTER 3. TEMPORARY CUSTODY ORDER DURING PENDENCY OF PROCEEDING

§ 3060. Petition for temporary custody order

Comment. Section 3060 continues former Civil Code Section 4600.1(a) without substantive change. See also Sections 3131 (action by district attorney where child taken or detained in violation of custody order), 3133 (temporary custody order at request of district attorney). As to jurisdiction of the court, see Sections 3400-3425 (Uniform Child Custody Jurisdiction Act).

§ 3061. Order for temporary custody in accordance with agreement or understanding of parties

Comment. Section 3061 continues former Civil Code Section 4600.1(b) without change.

§ 3062. Ex parte order and order to show cause

Comment. Section 3062 continues former Civil Code Section 4600.1(c)-(d) without substantive change. The reference to "children" has been omitted as surplus. See Section 10 (singular includes the plural). See also Section 3130 (action by district attorney to locate missing party and child and to procure compliance with order to appear).

§ 3063. Order restraining removal of child from state

Comment. Section 3063 continues the first sentence of former Civil Code Section 4600.1(e) without change. See also Section 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3064. Limitation on ex parte order granting or modifying custody order

Comment. Section 3064 continues the last two sentences of former Civil Code Section 4600.1(e) without substantive change. Unlike the former section, this section does not contain a reference to the section defining "domestic violence." This is not a substantive change. See Section 70 ("domestic violence" defined).

CHAPTER 4. JOINT CUSTODY

§ 3080. Presumption for joint custody where parents agree to joint custody

Comment. Section 3080 continues former Civil Code Section 4600.5(a) without substantive change. See Section 3002 ("joint custody" defined). See also Sections 3022 (factors to be considered in determining best interest of child), 3131 (action by district attorney where child taken or detained in violation of custody order).

§ 3081. Award of joint custody absent agreement of parents

Comment. Section 3081 continues former Civil Code Section 4600.5(b) without substantive change. See Section 3002 ("joint custody" defined); see also Section 3131 (action by district attorney where child taken or detained in violation of custody order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3082. Statement by court of reasons for grant or denial of joint custody request

Comment. Section 3082 continues former Civil Code Section 4600.5(c) without substantive change. See also Sections 3002 ("joint custody" defined), 3004 ("joint physical custody" defined), 3022 (factors to be considered in determining best interest of child).

§ 3083. Content and effect of joint legal custody order

Comment. Section 3083 continues former Civil Code Section 4600.5(e) without change. See also Section 3003 (“joint legal custody” defined); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3084. Content of joint physical custody order

Comment. Section 3084 continues former Civil Code Section 4600.5(f) without change. See also Section 3004 (“joint physical custody” defined).

§ 3085. Awarding joint legal custody without joint physical custody

Comment. Section 3085 continues former Civil Code Section 4600.5(g) without change. See also Sections 3003 (“joint legal custody” defined), 3004 (“joint physical custody” defined).

§ 3086. Order may specify one parent as primary caretaker of child

Comment. Section 3086 continues former Civil Code Section 4600.5(h) without change. See also Sections 3003 (“joint legal custody” defined), 3004 (“joint physical custody” defined), 3028 (compensation for failure to assume caretaker responsibility).

§ 3087. Modification or termination of joint custody order

Comment. Section 3087 continues former Civil Code Section 4600.5(i) without substantive change. See also Sections 3002 (“joint custody” defined), 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3088. Modification to make custody order a joint custody order

Comment. Section 3088 continues former Civil Code Section 4600.5(j) without substantive change. See also Section 3002 (“joint custody” defined).

§ 3089. Consultation with conciliation court

Comment. Section 3089 continues former Civil Code Section 4600.5(k) without change.

CHAPTER 5. VISITATION RIGHTS

§ 3100. Visitation rights generally

Comment. Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change.

Subdivision (b) continues former Civil Code Section 4601.5 without substantive change. The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders.

See also Sections 3022 (factors to be considered in determining best interest of child), 3044 (parent convicted under certain Penal Code provisions not allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). For comparable provisions, see Sections 5513 (Domestic Violence Prevention Law), 7604(b) (Uniform Parentage Act).

§ 3101. Determination of visitation rights of stepparent or grandparent in dissolution, legal separation, or nullity proceeding

Comment. Subdivision (a) of Section 3101 restates former Civil Code Section 4351.5(a)-(b) without substantive change. The “notwithstanding” clauses of the former subdivisions have been omitted as surplus. The reference to former Civil Code Section 4601 has been omitted as surplus. References to the “superior” court have been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Civil Code Section 4351.5(k) without substantive change.

Subdivision (c) continues former Civil Code Section 4351.5(j) without substantive change.

Subdivision (d) continues former Civil Code Section 4351.5(f) without substantive change. The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders.

See also Sections 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

§ 3102. Visitation rights where father or mother of unmarried minor child is deceased

Comment. Section 3102 continues former Civil Code Section 197.5 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

CHAPTER 6. CUSTODY INVESTIGATION AND REPORT

§ 3110. Custody investigation and report

Comment. Section 3110 continues the first paragraph of former Civil Code Section 4602 without substantive change. The phrase “a proceeding for dissolution or marriage, nullity of marriage, or legal separation of the parties” has been substituted for the former reference to proceedings “under this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change. See also Section 3081 (investigation concerning whether joint custody award would be appropriate). This chapter supersedes former Code of Civil Procedure Section 263.

§ 3111. Separate meetings where history of domestic violence or domestic violence prevention order

Comment. Section 3111 continues the second paragraph of former Civil Code Section 4602 without substantive change. Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Section 70 (“domestic violence” defined). The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders.

§ 3112. Repayment of county for investigation or visitation work

Comment. Section 3112 continues the third paragraph of former Civil Code Section 4602 without substantive change.

§ 3113. Recommendation for appointment of counsel for minor child

Comment. Section 3113 continues the last paragraph of former Civil Code Section 4602 without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

CHAPTER 7. ACTION FOR EXCLUSIVE CUSTODY

§ 3120. Independent action for exclusive custody

Comment. Section 3120 continues former Civil Code Section 4603 without substantive change. The reference to “decree” has been omitted. This is not intended as a substantive change. See also Section 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

CHAPTER 8. LOCATION OF MISSING PARTY OR CHILD

§ 3130. Action by district attorney to locate missing party and child and to procure compliance with order to appear

Comment. Section 3130 continues former Civil Code Section 4604(a) without substantive change.

§ 3131. Action by district attorney where child taken or detained in violation of custody or visitation order

Comment. Section 3131 continues former Civil Code Section 4604(b) without substantive change. The word “order” has been substituted for “decree.” The phrase “and the child” has been omitted as surplus.

§ 3132. District attorney acts on behalf of court

Comment. Section 3132 continues first sentence of former Civil Code Section 4604(c) without substantive change.

§ 3133. Temporary custody order upon request of district attorney

Comment. Section 3133 continues the last two sentences of former Civil Code Section 4604(c) without substantive change. The phrase “one of the persons” has been substituted for “one of the above person.” This is not a substantive change, since both phrases refer to the person mentioned in the immediately preceding sentence. See also Sections 3007 (“sole physical custody” defined), 3022 (factors to be considered in determining best interest of child).

§ 3134. Payment of district attorney’s expenses

Comment. Section 3134 continues former Civil Code Section 4605 without substantive change.

CHAPTER 9. CHECK TO DETERMINE WHETHER CHILD IS MISSING PERSON

§ 3140. Submission of child’s birth certificate to court if parent has not appeared in proceeding; check to determine if child is missing person

Comment. Section 3140 continues former Civil Code Section 4604.5 without substantive change. See also Sections 3415 (Section 3140 applies to proceedings pursuant to Uniform Child Custody Jurisdiction Act), 7603 (Section 3140 applies to proceedings pursuant to Uniform Parentage Act); Welf. & Inst. Code § 11478.5 (California Parent Locator Service and Central Registry).

CHAPTER 10. APPOINTMENT OF COUNSEL TO REPRESENT CHILD

§ 3150. Appointment of private counsel to represent child in custody or visitation proceeding

Comment. Section 3150 continues former Civil Code Section 4606(a)-(b) without substantive change. The phrase “proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties” has been substituted for the former reference to proceedings “under this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

§ 3151. Rights and duties of appointed counsel

Comment. Section 3151 continues former Civil Code Section 4606(c)-(d) without substantive change. The word “any” has been substituted for “any and all,” since “all” is surplus.

§ 3152. Release to counsel of reports and files of child protective agency

Comment. Section 3152 continues former Civil Code Section 4606(e) without substantive change. The word “reports” has been substituted for “records” in subdivision (c) to conform to subdivisions (a) and (b).

§ 3153. Compensation of appointed counsel

Comment. Section 3153 continues former Civil Code Section 4606(f)-(g) without substantive change.

CHAPTER 11. MEDIATION OF CONTESTED VISITATION OR CUSTODY ISSUES

Article 1. General Provisions

§ 3155. Mediator to be available; qualifications of mediator

Comment. Section 3155 continues without substantive change former Civil Code Section 4607(b) and the last sentence of former Civil Code Section 4351.5(c). See also Section 1816 (continuing instruction programs in domestic violence).

§ 3156. Confidentiality of mediation proceeding

Comment. Section 3156 continues without substantive change former Civil Code Section 4351.5(d) and former Civil Code Section 4607(c). See also Section 1819 (destruction of records of child custody or visitation mediation).

§ 3157. Assessment of needs and interests of child

Comment. Section 3157 continues without substantive change the second sentence of former Civil Code Section 4351.5(e) and the second sentence of former Civil Code Section 4607(d). The reference to "children" has been omitted as surplus. See Section 10 (singular includes the plural).

§ 3158. Exclusion of counsel from mediation proceeding

Comment. Section 3158 continues without substantive change the first sentence of former Civil Code Section 4351.5(e) and first sentence of former Civil Code Section 4607(d).

§ 3159. Recommendations to court

Comment. Section 3159 continues without substantive change the first three sentences of former Civil Code Section 4351.5(f) and the first three sentences of former Civil Code Section 4607(e). The word "submit" has been substituted for "render." This is not a substantive change. The word "child" has been substituted for "children." This is not a substantive change. See Section 10 (the singular includes the plural).

The provision in subdivision (b) that the mediator may recommend to the court that "other action be taken" to assist the parties to effect a resolution of the controversy, and the provision that restraining orders (rather than "mutual" restraining orders) be issued, formerly applied only to mediation in contested custody or visitation proceedings pursuant to former Civil Code Section 4607, now Article 2 (commencing with Section 3170). The last sentence of subdivision (b) recognizes that former Civil Code Section 4607 (providing for mediation of contested visitation or custody) referred to former Civil Code Section 4602, now Chapter 6 (commencing with Section 3110), while former Civil Code Section 4351.5 (providing for mediation of stepparent or grandparent visitation) did not.

§ 3160. Agreement reached by parties as result of mediation

Comment. Section 3160 continues without substantive change the fourth, sixth, and seventh sentences of former Civil Code Section 4351.5(f) and the fourth, sixth, and seventh sentences of former Civil Code Section 4607(e). See also Section 1819 (destruction of records of child custody or visitation mediation).

§ 3161. Uniform standards of practice for mediation

Comment. Section 3161 continues former Civil Code Section 4607.1 without substantive change. The parts of the former section which directed the Judicial Council to adopted uniform standards of practice have been omitted as surplus. See Judicial Council's Uniform Standards of Practice for Court-Connected Mediation of Child Custody and Visitation Disputes (Cal. R. Ct. App. Div. I § 26

(1992)). See also Sections 1819 (destruction of records of child custody or visitation mediation), 1850 (statewide coordination of family mediation and conciliation services), 3022 (factors to be considered in determining best interest of child).

§ 3162. Local court rules

Comment. Section 3162 continues former Civil Code Section 4607(g) without change.

**Article 2. Mediation Where Issuance or Modification
of Custody or Visitation Order Requested**

§ 3170. Mediation required

Comment. Section 3170 continues the first sentence of former Civil Code Section 4607(a) without substantive change. The phrase “including, but not limited to, a proceeding where a temporary custody order is sought” has been substituted for the reference in the former section to cases where the custody or visitation issue or both issues are contested “as provided in Section 4600, 4600.1, or 4601.” This is not intended as a substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes the plural).

§ 3171. Mediation of dispute concerning existing order

Comment. Section 3171 continues the second sentence of former Civil Code Section 4607(a) without substantive change.

§ 3172. Purpose of mediation proceeding

Comment. Section 3172 continues the third and fourth sentences of former Civil Code Section 4607(a) without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

§ 3173. Mediation available even where paternity is at issue

Comment. Section 3173 continues the last sentence of former Civil Code Section 4607(a) without change.

§ 3174. Recommendations that counsel be appointed for minor child

Comment. Section 3174 continues former Civil Code Section 4607(f) without substantive change. The reference to “children” has been omitted as surplus. See Section 10 (singular includes the plural). See also Section 3022 (factors to be considered in determining best interest of child).

§ 3175. Agreements reached by parties as result of mediation

Comment. Section 3175 continues the fifth and last sentences of former Civil Code Section 4607(e) without substantive change. Broader references to Family Code sections have been substituted for the references to former Civil Code Sections 4600, 4600.5 and 4601. This is not intended as a substantive change.

§ 3176. Separate mediation permitted where history of domestic violence

Comment. Section 3176 continues the last sentence of former Civil Code Section 4607(d) without substantive change. Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Section 70 (“domestic violence” defined).

§ 3177. Separate mediation where domestic violence prevention order

Comment. Section 3177 continues former Civil Code Section 4607.2 without substantive change. Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Section 70 (“domestic violence” defined). The phrase “domestic violence prevention order” has been substituted for the references to orders under

specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders.

Article 3. Mediation of Stepparent or Grandparent Visitation

§ 3180. Mediation where visitation order requested under Section 3101 or 3102

Comment. Subdivision (a) of Section 3180 continues the first two sentences of former Civil Code Section 4351.5(c) without substantive change. A reference to Sections 3101 and 3102 has been substituted for the reference to former Civil Code Section 4351.5. This makes mediation available in the situations described in former Civil Code Section 197.5, now Family Code Section 3102. See also Section 3022 (factors to be considered in determining best interest of child).

Subdivision (b) continues former Civil Code Section 4351.5(g) without substantive change.

§ 3181. Agreement reached by parties as result of mediation

Comment. Section 3181 continues the fifth and last sentences of former Civil Code Section 4351.5(f) without substantive change. A reference to Section 3102 has been added to conform with Section 3180 (mediation where visitation order requested under Section 3101 or 3102).

§ 3182. Hearing on visitation rights

Comment. Section 3182 continues former Civil Code Section 4351.5(h) without change.

§ 3183. Notice of mediation or hearing

Comment. Section 3183 continues former Civil Code Section 4351.5(i) without substantive change.

CHAPTER 12. COUNSELING OF PARENTS AND CHILD

§ 3190. Order requiring counseling

Comment. Section 3190 continues the first paragraph of former Civil Code Section 4608.1(a) without substantive change. The phrase “proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties” has been substituted for the former reference to proceedings “under this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change. See Section 3022 (factors to be considered in determining best interest of child).

§ 3191. Purpose of counseling

Comment. Section 3191 continues the last paragraph of former Civil Code Section 4608.1(a) without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

§ 3192. Separate counseling where protective order against domestic violence

Comment. Section 3192 continues former Civil Code Section 4608.1(b) without substantive change. Unlike the former section, this section does not contain a reference to the section defining “domestic violence.” This is not a substantive change. See Section 70 (“domestic violence” defined). The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders.

PART 3. UNIFORM CHILD CUSTODY JURISDICTION ACT

§ 3400. Short title

Comment. Section 3400 continues former Civil Code Section 5174 without substantive change. See also Sections 3 (construction of provision drawn from uniform act), 13 (severability of provisions).

§ 3401. Purposes of act

Comment. Section 3401 continues former Civil Code Section 5150 without substantive change. Former Civil Code Section 5150(i) is omitted as surplus. See Section 3 (construction of provision drawn from uniform act).

§ 3402. Definitions

Comment. Section 3402 continues former Civil Code Section 5151 without substantive change.

§ 3403. Jurisdictional requirements

Comment. Section 3403 continues former Civil Code Section 5152 without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

§ 3404. Notice and opportunity to be heard

Comment. Section 3404 continues former Civil Code Section 5153 without substantive change.

§ 3405. Notice to person outside this state; submission to jurisdiction

Comment. Section 3405 continues former Civil Code Section 5154 without change.

§ 3406. Simultaneous proceedings in other states

Comment. Section 3406 continues former Civil Code Section 5155 without substantive change.

§ 3407. Inconvenient forum

Comment. Section 3407 continues former Civil Code Section 5156 without substantive change.

§ 3408. Jurisdiction declined by reason of conduct

Comment. Section 3408 continues former Civil Code Section 5157 without substantive change.

§ 3409. Information to be provided to court

Comment. Section 3409 continues former Civil Code Section 5158 without substantive change. See also Section 3060 (temporary custody order).

§ 3410. Additional parties

Comment. Section 3410 continues former Civil Code Section 5159 without substantive change.

§ 3411. Appearance of parties and child

Comment. Section 3411 continues former Civil Code Section 5160 without substantive change.

§ 3412. Binding force and res judicata effect of custody decree

Comment. Section 3412 continues former Civil Code Section 5161 without substantive change.

§ 3413. Recognition of out-of-state custody decree

Comment. Section 3413 continues former Civil Code Section 5162 without substantive change.

§ 3414. Modification of custody decree of another state

Comment. Section 3414 continues former Civil Code Section 5163 without substantive change.

§ 3415. Submission of child's birth certificate to court; check to determine if child is missing person

Comment. Section 3415 continues former Civil Code Section 5163.5 without substantive change. For a comparable provision, see Section 7603 (Uniform Parentage Act).

§ 3416. Filing and enforcement of custody decree of another state

Comment. Section 3416 continues former Civil Code Section 5164 without change.

§ 3417. Registry of out-of-state custody decrees and proceedings

Comment. Section 3417 continues former Civil Code Section 5165 without substantive change.

§ 3418. Certified copy of custody decree

Comment. Section 3418 continues former Civil Code Section 5166 without change.

§ 3419. Taking testimony in another state

Comment. Section 3419 continues former Civil Code Section 5167 without change.

§ 3420. Hearings and studies in another state; orders to appear

Comment. Section 3420 continues former Civil Code Section 5168 without change.

§ 3421. Assistance to courts of other states

Comment. Section 3421 continues former Civil Code Section 5169 without substantive change.

§ 3422. Preservation of records; forwarding to another state

Comment. Section 3422 continues former Civil Code Section 5170 without change.

§ 3423. Request for court records of another state

Comment. Section 3423 continues former Civil Code Section 5171 without substantive change.

§ 3424. International application

Comment. Section 3424 continues former Civil Code Section 5172 without substantive change.

§ 3425. Calendar priority

Comment. Section 3425 continues former Civil Code Section 5173 without substantive change.

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

PART 1. DEFINITIONS

§ 5500. Application of definitions

Comment. Section 5500 continues the introductory clause of former Code of Civil Procedure Section 542 without substantive change. For additional definitions of words and phrases used in this division, see, e.g., Sections 55 (“abuse”), 60 (“cohabitant” and “former cohabitant”), 70 (“domestic violence”), 75 (“domestic violence prevention order”).

§ 5501. Additional definitions

Comment. Section 5501 is new and is included for cross-reference purposes.

§ 5505. “Protective order”

Comment. Section 5505 continues former Code of Civil Procedure Section 542(d) without substantive change. A reference to Section 70 has been substituted for the former reference to “the persons described in this chapter,” meaning the former Domestic Violence Prevention Act, now the Domestic Violence Prevention Law. This is not a substantive change, since the relevant part of the Domestic Violence Prevention Law is continued in Section 70. See also Section 5510 (short title of this division).

PART 2. GENERAL PROVISIONS

§ 5510. Short title

Comment. Section 5510 continues former Code of Civil Procedure Section 541 without substantive change.

§ 5511. Purposes of this division

Comment. Section 5511 continues former Code of Civil Procedure Section 540 without substantive change. See also Sections 55 (“abuse” defined), 57 (“affinity” defined), 60 (“cohabitant” and “former cohabitant” defined), 70 (“domestic violence” defined).

§ 5512. Fees

Comment. Section 5512 continues former Code of Civil Procedure Section 546.5 without substantive change. In subdivisions (b) and (d), references to this division have been substituted for the former reference to “this section.” The former reference was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders issued under the Domestic Violence Prevention Law, now this division of the Family Code. See also Section 5505 (“protective order” defined).

§ 5513. Order limiting visitation to situations in which third person is present

Comment. Section 5513 continues former Code of Civil Procedure Section 547.5 without substantive change. The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines “domestic violence prevention order” to include these orders. See also Sections 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). For comparable provisions, see Sections 3100(b) (visitation generally), 7604(b) (visitation under the Uniform Parentage Act).

§ 5514. Conditions for issuance of mutual restraining order

Comment. Section 5514 continues former Code of Civil Procedure Section 545.5 without substantive change. The word “telephoning” has been added. This is not a substantive change. See Section 5505 (“protective order” defined); Cal. R. Ct. 1285.05 (mandatory Judicial Council temporary restraining order form). A reference to “other named persons described in subdivision (a) of Section 70” has been substituted for the former reference to “other named family and household members.” This is not a substantive change, since former Civil Procedure Section 542 was amended in 1990 to eliminate the definition of “family and household member” and to replace it with the listing of the persons described in Section 70(a). See 1990 Cal. Stat. ch. 752, § 2. Unlike the former section, this section does not contain references to the sections defining “abuse” or “domestic violence.” This is not a substantive change. See Sections 55 (“abuse” defined), 70 (“domestic violence” defined). For comparable provisions, see Sections 2036 (dissolution, nullity, or legal separation proceeding), 7711 (Uniform Parentage Act).

§ 5515. Required statement and notice in order

Comment. Section 5515 continues former Code of Civil Procedure Section 552 without substantive change.

§ 5516. Court to provide information to parties concerning terms and effect of order

Comment. Section 5516 continues former Code of Civil Procedure Section 550(f) without substantive change. The language describing the orders at issue in this section has been revised to conform to Section 5804(a). This is not a substantive change.

§ 5517. Explicit statement of address not required

Comment. Section 5517 continues the last sentence of former Code of Civil Procedure Section 545 without substantive change.

§ 5518. Remedies in addition to other remedies

Comment. Section 5518 continues former Code of Civil Procedure Section 549 without substantive change. The word “petitioner” has been substituted for “plaintiff” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752.

§ 5519. Support person for victim of domestic violence

Comment. Section 5519 continues former Civil Code Section 4351.6 without substantive change. The phrase “domestic violence prevention order” has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. Section 75 defines “domestic violence prevention order” to include the orders formerly referred to, except Code of Civil Procedure 527.6, which provides for similar orders in situations not covered by Section 75. This is not a substantive change, since, insofar as former Civil Code Section 4351.6 applied to Code of Civil Procedure Section 527.6, the former section is continued in new subdivision (f) of Code of Civil Procedure Section 527.6. See Code Civ. Proc. § 527.6 (civil harassment orders) & Comment. See also Section 70 (“domestic violence” defined).

In subdivision (d), a reference to “action or proceeding under this code” has been substituted for the former reference to “action or proceeding under this part,” meaning the former Family Law Act (former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change.

Former Civil Code Section 4351.6(e) has been omitted. This is not a substantive change, since the former subdivision duplicated a provision that is continued in Section 5519(b).

§ 5520. Judicial Council forms and instructions

Comment. Section 5520 continues without substantive change former Code of Civil Procedure Section 543 and the first sentence of the third paragraph of subdivision (b) and the first sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

PART 3. TEMPORARY RESTRAINING ORDERS**CHAPTER 1. GENERAL PROVISIONS****§ 5530. Issuance upon affidavit which shows reasonable proof of past act or acts of abuse**

Comment. Section 5530 continues the first and fourth sentences of former Code of Civil Procedure Section 545 without substantive change. A reference to Part 4 (commencing with Section 240) of Division 2 has been substituted for the former reference to Code of Civil Procedure Section 527 found in both former sections. This is not a substantive change, since Part 4 (commencing with Section 240) of the Family Code continues the applicable parts of Code of Civil Procedure Section 527. See also Sections 55 (“abuse” defined), 70 (“domestic violence” defined).

§ 5531. Persons who may be granted temporary restraining order

Comment. Section 5531 continues the second and third sentences of former Code of Civil Procedure Section 545 without substantive change. A reference to Section 70 has been substituted for the reference to former Code of Civil Procedure Section 542. This is not a substantive change, since the relevant part of the former section is continued in Section 70. See also Section 55 (“abuse” defined).

CHAPTER 2. ORDERS ISSUABLE EX PARTE**§ 5550. Types of orders that may be issued ex parte**

Comment. Section 5550 restates without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(a). The words “petitioner” and “respondent” have been substituted for “plaintiff” and “defendant” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. See also Sections 55 (“abuse” defined), 70 (“domestic violence” defined), 5551 (requirement for issuance of ex parte order excluding party from dwelling), 5750-5755 (orders issuable after notice and hearing).

§ 5551. Requirement for issuance of order excluding party from residence or dwelling

Comment. Section 5551 continues the last paragraph of former Code of Civil Procedure Section 546(a) without substantive change. The word “petitioner” has been substituted for “plaintiff” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to Section 2035(c) has been added. This is not intended as a substantive change. See also Section 5751 (showing required for issuance of order excluding party from dwelling upon notice and hearing). For comparable provisions, see Sections 2035(c) (dissolution, nullity, or legal separation proceeding), 7710(b) (Uniform Parentage Act).

PART 4. EMERGENCY PROTECTIVE ORDERS**CHAPTER 1. GENERAL PROVISIONS****§ 5600. Application of provisions of this chapter**

Comment. Section 5600 is new and is included for drafting convenience. See also Section 5505 (“protective order” defined).

§ 5601. Designation of judge or court officer to orally issue ex parte emergency protective order

Comment. Section 5601 continues without change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(b).

§ 5602. Reducing order to writing and signing order

Comment. Section 5602 continues without substantive change the second sentence of the second paragraph of subdivision (b) and the second sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

§ 5603. Expiration of order

Comment. Section 5603 continues without substantive change the sixth paragraph of subdivision (b) and the third sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

§ 5604. Officer to carry copies of order

Comment. Section 5604 continues without substantive change the fourth paragraph of subdivision (b) and the fifth paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

§ 5605. Service, filing, and delivery of copy of order

Comment. Section 5605 continues without substantive change the fifth paragraph of subdivision (b) and the sixth paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

§ 5606. Enforcement of order

Comment. Section 5606 continues without substantive change the last paragraph of subdivision (b) and the last paragraph of subdivision (c) of former Code of Civil Procedure Section 546.

CHAPTER 2. EMERGENCY PROTECTIVE ORDER WHERE DANGER OF DOMESTIC VIOLENCE

§ 5650. Issuance of ex parte emergency protective order where danger of domestic violence

Comment. Section 5650 continues without substantive change the last three sentences of the first paragraph of former Code of Civil Procedure Section 546(b). The phrase "by the person against whom the order is sought" has been added. This is not intended as a substantive change. See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined), 5505 ("protective order" defined).

§ 5651. Finding required to issue order

Comment. Section 5651 continues without substantive change the first sentence of the second paragraph and the seventh paragraph of former Code of Civil Procedure Section 546(b). See also Sections 70 ("domestic violence" defined), 5505 ("protective order" defined).

§ 5652. Contents of order

Comment. Section 5652 continues without substantive change two parts of former Code of Civil Procedure Section 546(b): (1) the third sentence of the second paragraph to the end of that paragraph and (2) the last sentence of the third paragraph.

CHAPTER 3. EMERGENCY PROTECTIVE ORDER WHERE CHILD IN DANGER OF ABUSE

§ 5700. Issuance of ex parte order where child in danger of abuse

Comment. Subdivision (a) of Section 5700 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(c). See also Section 55 ("abuse" defined). Subdivision (b) continues without substantive change the second sentence of the first paragraph of former Code of Civil Procedure Section 546(c). Subdivision (c) continues without substantive change the last sentence of the first paragraph of former Code of Civil Procedure Section 546(c).

§ 5701. Finding required to issue order

Comment. Section 5701 continues without substantive change the first sentence of the second paragraph and the seventh paragraph of former Code of Civil Procedure Section 546(c). See also Section 55 (“abuse” defined).

§ 5702. Contents of order

Comment. Section 5702 continues without substantive change two parts of former Code of Civil Procedure Section 546(c): (1) the third sentence of the second paragraph to the end of that paragraph and (2) the last sentence of the fourth paragraph.

§ 5703. Application for more permanent restraining order

Comment. Section 5703 continues the third paragraph of former Code of Civil Procedure Section 546(c) without substantive change.

PART 5. ORDERS ISSUABLE AFTER NOTICE AND HEARING**§ 5750. Order issuable under Section 2035**

Comment. Section 5750 continues without substantive change the first sentence of subdivision (a)(1) and the first sentence of subdivision (a)(2) of former Code of Civil Procedure 547. Subdivision (a) of Section 5750 makes clear that the court may issue an order set forth in Section 2035(d) after notice and a hearing. See also Section 5751 (showing required for issuance of order excluding party from dwelling upon notice and hearing).

§ 5751. Order excluding party from dwelling

Comment. Section 5751 continues without substantive change the last sentence of subdivision (a)(1) and the last sentence of subdivision (a)(2) of former Code of Civil Procedure Section 547. See also Section 5551 (showing required for issuance of ex parte order excluding party from dwelling.)

§ 5752. Order that presumed natural father pay child support

Comment. Section 5752 continues former Code of Civil Procedure Section 547(b) without substantive change.

§ 5753. Order for restitution for loss of earnings and out-of-pocket expenses

Comment. Section 5753 continues former Code of Civil Procedure Section 547(c) without substantive change. See also Section 55 (“abuse” defined).

§ 5754. Order to participate in counseling

Comment. Section 5754 continues former Code of Civil Procedure Section 547(d) without substantive change. See also Section 70 (“domestic violence” defined), 5505 (“protective order” defined).

§ 5755. Order for payment of attorney’s fees and costs

Comment. Section 5755 continues former Code of Civil Procedure Section 547(e) without substantive change. See also Sections 270-275 (general provisions for attorney’s fees and costs).

§ 5756. Duration of restraining order granted after notice and hearing

Comment. Section 5756 continues former Code of Civil Procedure Section 548 without substantive change.

PART 6. REGISTRATION AND ENFORCEMENT OF ORDERS**§ 5800. Transmittal to local law enforcement agency**

Comment. Section 5800 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 550(a). See also Section 70 (“domestic

violence” defined). For comparable provisions, see Sections 2038 (dissolution, nullity, or legal separation proceeding), 7740 (Uniform Parentage Act).

§ 5801. Law enforcement agency to make information concerning order available to law enforcement officers

Comment. Section 5801 continues without substantive change the first sentence of the second paragraph of former Code of Civil Procedure Section 550(a). See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 2039 (dissolution, nullity, or legal separation proceeding), 7741 (Uniform Parentage Act).

§ 5802. Service of restraining order against domestic violence by law enforcement officer

Comment. Subdivisions (a) and (b) of Section 5802 continue without substantive change the last two sentences of the second paragraph of former Code of Civil Procedure Section 550(a). Subdivision (c) continues former Code of Civil Procedure Section 550(h) without change. See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 2041 (dissolution, nullity, or legal separation proceeding), 7742 (Uniform Parentage Act).

§ 5803. When personal service not required

Comment. Subdivision (a) of Section 5803 continues former Code of Civil Procedure Section 550(e) without substantive change. In subdivision (a), a reference to this division has been substituted for the former reference to “this section.” The former reference was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders issued under the Domestic Violence Prevention Law, now this division of the Family Code. Subdivision (b) of Section 5803 continues former Code of Civil Procedure Section 550(g) without change.

§ 5804. Notice to Department of Justice

Comment. Section 5804 continues former Code of Civil Procedure Section 550(b)-(d) without substantive change. The word “petitioner” has been substituted for “plaintiff” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. See also Section 5516 (court to provide information to parties concerning terms and effect of order); Penal Code § 12021(g) (criminal penalty for person who acquires firearm knowing that he or she is subject to restraining order against domestic violence).

§ 5805. Appointment of counsel to represent petitioner in enforcement proceeding; order that respondent pay petitioner’s attorney’s fees and costs

Comment. Section 5805 restates former Code of Civil Procedure Section 553 without substantive change. In subdivision (a), the language describing the order has been revised to conform to subdivision (a) of Section 5804. This is not a substantive change. The words “petitioner” and “respondent” have been substituted for “plaintiff” and “defendant” to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. See also Sections 270-275 (general provisions for attorney’s fees and costs).

§ 5806. Clerk to provide petitioner with copies of order

Comment. Section 5806 continues without substantive change the last sentence of the first paragraph of former Code of Civil Procedure Section 550(a).

§ 5807. Criminal penalty for violation of order

Comment. Section 5807 restates former Code of Civil Procedure Section 551 without substantive change. The language describing the order has been revised to conform to Section 5804(a). This is not a substantive change. For comparable provisions, see Sections 2042 (dissolution, nullity, or legal separation proceeding), 7743 (Uniform Parentage Act).

DIVISION 11. MINORS

PART 1. AGE OF MAJORITY

§ 6500. Minor

Comment. The first sentence of Section 6500 restates former Civil Code Section 25 without substantive change. The second sentence continues former Civil Code Section 26 without substantive change. The word “individual” has been substituted for “persons.” This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered an adult).

§ 6501. Adult

Comment. Section 6501 restates former Civil Code Section 27 without substantive change. The word “individual” has been substituted for “persons.” This is not a substantive change. See also Sections 7002 (conditions for emancipation), 7050 (emancipated minor considered an adult).

§ 6502. Transitional provision

Comment. Section 6502 continues former Civil Code Section 25.1 without substantive change. The word “individual” has been substituted for “persons.” This is not a substantive change.

PART 2. RIGHTS AND LIABILITIES; CIVIL ACTIONS AND PROCEEDINGS

§ 6600. Civil liability of minor

Comment. Section 6600 continues without substantive change the part of former Civil Code Section 41 that related to minors. The part of the former section that related to persons of unsound mind is continued in new Civil Code Section 41.

§ 6601. Enforcement of minor’s rights by civil proceeding

Comment. Section 6601 continues former Civil Code Section 42 without substantive change. See Code Civ. Proc. §§ 372 (minor must appear either by a guardian of the estate or by a guardian ad litem), 373 (appointment of guardian ad litem to represent interest of minor); Lab. Code §§ 5307.5 & 5408 (appointment of trustee or guardian ad litem to represent minor in workers’ compensation proceeding); Prob. Code §§ 1003 (appointment of guardian ad litem to represent interest of minor in proceeding under Probate Code), 2462 (representation by guardian of estate in actions and proceedings), 2500-2507 (compromise of claims, actions, and proceedings by guardian), 3500 & 3600-3603 (compromise by parent of minor’s disputed claim). For provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(4) (emancipated minor may sue in own name), 7050(e)(5) (emancipated minor may compromise claim).

§ 6602. Minor’s attorney’s fees

Comment. Section 6602 continues former Probate Code Section 3302 without substantive change. For provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may enter binding contract), 7050(e)(4) (emancipated minor may sue in own name), 7050(e)(5) (emancipated minor may compromise claim).

PART 3. CONTRACTS

CHAPTER 1. CAPACITY TO CONTRACT

§ 6700 Contractual capacity of minor

Comment. Section 6700 restates former Civil Code Section 34 without substantive change. The former reference to the title on master and servant has been omitted as obsolete, since the title was

repealed. For provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6701. Limitation on authority of minor

Comment. Section 6701 continues former Civil Code Section 33 without substantive change. For provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(2) (emancipated minor may make binding contract or delegation), 7050(e)(3) (emancipated minor may convey real or personal property).

CHAPTER 2. DISAFFIRMANCE OF CONTRACTS

§ 6710. Right of disaffirmance

Comment. Section 6710 continues former Civil Code Section 35 without substantive change. "Except as otherwise provided by statute" has been substituted for the specific sections referred to in the introductory clause of the former section. For exceptions to the right of disaffirmance, see Sections 6711 (contract made under express statutory authority), 6712 (contracts for necessities), 6713 (protection of good faith purchaser), 6751 (contract in arts, entertainment, or professional sports approved by court), 6921 (consent given by minor to medical or dental care). For provisions concerning emancipated minors, Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6711. Contract made under express statutory authority

Comment. Section 6711 continues former Civil Code Section 37 without substantive change.

§ 6712. Contracts for necessities

Comment. Section 6712 continues former Civil Code Section 36(a)(1) without substantive change. For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6713. Protection of good faith purchaser

Comment. Section 6713 continues former Civil Code Section 35a without substantive change. For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

CHAPTER 3. CONTRACTS IN ART, ENTERTAINMENT, AND PROFESSIONAL SPORTS

§ 6750. Types of contracts governed by this chapter

Comment. Section 6750 continues without substantive change the first part of subdivision (a)(2)(A), subdivision (a)(2)(B) and the first part of subdivision (a)(3) of former Civil Code Section 36. References to "agreement" have been omitted as surplus. See Civ. Code § 1549 ("contract" defined). See also Lab. Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency).

§ 6751. Contract not subject to disaffirmance if approved by court

Comment. Section 6751 continues without substantive change the introductory part of subdivision (a), the last part of subdivision (a)(2)(A), the last part of subdivision (a)(3), and subdivision (b) of former Civil Code Section 36. References to "agreement" have been omitted as surplus. See Civ. Code § 1549 ("contract" defined). See also Lab. Code § 1700.37 (limitation on minor's right to disaffirm contract with licensed talent agency). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(2) (emancipated minor may enter binding contract).

§ 6752. Court order setting aside net earnings for benefit of minor

Comment. Section 6752 restates former Civil Code Section 36.1 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

§ 6753. Modification or termination of order

Comment. Section 6753 continues former Civil Code Section 36.2 without substantive change. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

PART 4. MEDICAL TREATMENT**CHAPTER 1. DEFINITIONS****§ 6900. “Dental care”**

Comment. Section 6900 continues without substantive change and generalizes the last part of former Civil Code Section 25.8 and the last part of the first sentence of the first paragraph of former Civil Code Section 34.6.

§ 6901. “Medical care”

Comment. Section 6901 continues without substantive change and generalizes the second part of former Civil Code Section 25.8 and part of the first sentence of the first paragraph of former Civil Code Section 34.6.

§ 6902. “Parent or guardian”

Comment. Section 6902 continues without substantive change and generalizes the first part of former Civil Code Section 25.8. The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) (“guardian” defined).

CHAPTER 2. CONSENT BY PERSON HAVING CARE OF MINOR OR BY COURT**§ 6910. Parent or guardian may authorize care provider to consent**

Comment. Section 6910 restates former Civil Code Section 25.8 without substantive change. See Sections 6900 (“dental care” defined), 6901 (“medical care” defined), 6902 (“parent or guardian” defined). See also Prob. Code § 2353 (guardian’s right to consent to medical treatment same as parent with legal custody); Health & Safety Code § 1530.6 (foster care licensees authorized to give consent to ordinary medical and dental treatment for child). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6911. Court consent

Comment. Section 6911 restates without substantive change former Probate Code Section 3301, insofar as that section related to consent to medical care. The reference to “dental care” has been added. The reference to “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Sections 6900 (“dental care” defined), 6901 (“medical care” defined), 6902 (“parent or guardian” defined). Section 6911 does not apply if the minor is under the age of 16 years, but in such a case a temporary guardian may be appointed to give consent to medical care or dental care. See Probate Code §§ 2252(b)(1) & 2353. For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

CHAPTER 3. CONSENT BY MINOR

§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian

Comment. Section 6920 generalizes provisions found in former Civil Code Sections 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10. References to "parent" have been omitted as surplus. See Section 10 (plural includes the singular). References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) ("guardian" defined). See also Section 6902 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

Former Civil Code Section 25.5, which authorized a minor to consent to the donation of blood subject to certain limitations, has not been continued in this chapter, because it was surplus. See Health & Safety Code § 1607.5 (minor's right to consent to donation of blood). Where a minor consents to the donation of blood pursuant to Health and Safety Code Section 1607.5, this consent is not subject to disaffirmance. See Section 6711 (obligation entered into under express statutory authority not subject to disaffirmance).

§ 6921. Minor's consent not subject to disaffirmance

Comment. Section 6921 generalizes provisions found in former Civil Code Sections 25.9, 34.5, 34.6, 34.7, 34.8, 34.9, and 34.10.

§ 6922. Consent by minor 15 or older living separately

Comment. Section 6922 restates former Civil Code Section 34.6 without substantive change. See Sections 6900 ("dental care" defined), 6901 ("medical care" defined), 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). References to "parents" have been omitted as surplus. See Section 10 (singular includes the plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) ("guardian" defined). See also 6902 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6924. Consent by minor to mental health treatment or counseling

Comment. Section 6924 restates former Civil Code Section 25.9 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). References to "parents" have been omitted as surplus. See Section 10 (singular includes the plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) ("guardian" defined). See also Section 6902 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (minor may consent to medical, dental, or psychiatric care).

§ 6925. Consent by minor to pregnancy treatment

Comment. Section 6925 restates former Civil Code Section 34.5 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The reference to an "unemancipated" minor has been omitted. This is not a substantive change. The term "medical care" has been substituted for "the furnishing of hospital, medical and surgical care." This is not a substantive change. See Section 6901 ("medical care" defined). See also Section 6902 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions of emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6926. Consent by minor to treatment for communicable disease

Comment. Section 6926 restates former Civil Code Section 34.7 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The term “medical care” has been substituted for “the furnishing of hospital, medical and surgical care.” This is not a substantive change. See Sections 6901 (“medical care” defined). A reference to “parent” has been omitted as surplus. See Section 10 (plural includes the singular). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) (“guardian” defined). See also Section 6902 (“parent or guardian” defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6927. Consent by rape victim to treatment

Comment. Section 6927 restates former Civil Code Section 34.8 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The term “medical care” has been substituted for “the furnishing of hospital, medical, and surgical care.” This is not a substantive change. See Section 6901 (“medical care” defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6928. Consent by assault victim to treatment

Comment. Section 6928 restates former Civil Code Section 34.9 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). The term “medical care” has been substituted for “the furnishing of hospital, medical, and surgical care.” This is not a substantive change. See Section 6901 (“medical care” defined). A reference to “parent” has been omitted as surplus. See Section 10 (plural includes the singular). The reference to the “legal” guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) (“guardian” defined). See also Section 6902 (“parent or guardian” defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

§ 6929. Consent by minor to drug or alcohol treatment

Comment. Section 6929 restates former Civil Code Section 34.10 without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). See also Sections 6901 (“medical care” defined), 6902 (“parent or guardian” defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (emancipated minor may consent to medical, dental, or psychiatric care).

PART 5. ENLISTMENT IN ARMED FORCES**§ 6950. Court consent**

Comment. Section 6950 restates without substantive change former Probate Code Section 3301, insofar as that section related to consent to enlist in the armed forces. The reference to “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The phrase “armed forces of the United States” has been substituted for “armed services” to conform to Section 7002(b). For provisions concerning emancipated minors, see Sections 7002(b) (person on active duty in armed forces meets condition for emancipation), 7050 (effects of emancipation).

PART 6. EMANCIPATION OF MINORS LAW

CHAPTER 1. GENERAL PROVISIONS

§ 7000. Short title

Comment. Section 7000 continues former Civil Code Section 60 without substantive change.

§ 7001. Purpose and intent

Comment. Section 7001 continues the last two sentences of former Civil Code Section 61 without substantive change. The part of the last sentence of former Civil Code Section 61 that referred to “minors who are now emancipated” under the 1978 case law has been omitted as obsolete.

Section 7001 omits the first sentence of former Civil Code Section 61. This sentence was an obsolete provision describing the need for the enactment of the former Emancipation of Minors Act.

§ 7002. Emancipation

Comment. Section 7002 restates former Civil Code Section 62 without substantive change. The second sentence of subdivision (a) is new. This conforms with Probate Code Section 1515 (no guardian of person for married minor). A reference to Section 7122 has been substituted for the broader reference to former Civil Code Section 64. This is not a substantive change, since the relevant part of the former section is continued in Section 7122. See also Section 722 (methods of dissolution).

Sections 7002 and 7050(e)(1) supersede former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

CHAPTER 2. EFFECT OF EMANCIPATION

§ 7050. Emancipated minor considered an adult

Comment. Section 7050 continues former Civil Code Section 63 without substantive change. A reference to “adult” has been substituted for “over the age of majority.” This is not a substantive change. See Section 6501 (“adult” defined). In subdivisions (b) and (e)(16), the former references to “guardian” have been omitted. In subdivision (e)(2), the phrase “or give a delegation of power” is new. This makes clear that Section 6701(a) (limitation on authority of minor) does not limit the powers of an emancipated minor. In subdivision (d), the reference to “imputed” liability is new and is added, to conform with statutory provisions imposing “imputed” parental liability. See, e.g., Code Civ. Proc. §§ 1714.1 (liability of parents and guardian for willful misconduct or minor), 1714.3 (liability of parent or guardian for injury to person or property caused by discharge of firearm by minor).

Sections 7002 and 7050(e)(1) supersede former Civil Code Sections 25.6 (furnishing hospital, medical, and surgical care to married minor) and 25.7 (furnishing hospital, medical, and surgical care to minor on active duty with armed services).

§ 7051. Insurance contracts

Comment. Section 7051 continues former Civil Code Section 63.1 without substantive change.

§ 7052. Stock, memberships, and property

Comment. Section 7052 continues former Civil Code Section 63.2 without substantive change.

CHAPTER 3. COURT DECLARATION OF EMANCIPATION

Article 1. General Provisions

§ 7110. Legislative intent

Comment. Section 7110 continues former Civil Code Section 70 without substantive change. A reference to this part has been substituted for references to the former sections providing for

proceedings to declare a minor emancipated and to rescind a declaration of emancipation. This expands the scope of this section to apply to a proceeding to void a declaration of emancipation obtained by fraud or withholding material information.

§ 7111. Effect of declaration on benefits

Comment. Section 7111 continues former Civil Code Section 67 without substantive change.

Article 2. Procedure for Declaration

§ 7120. Petition

Comment. Section 7120 continues former Civil Code Section 64(a) without substantive change. References to the "legal" guardian have been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b) & 2400(b) ("guardian" defined). The requirement that the petition be verified has been omitted as surplus. See Section 212 (pleadings to be verified).

§ 7121. Notice

Comment. Section 7121 continues former Civil Code Section 64(b) without substantive change.

§ 7122. Issuance of declaration of emancipation

Comment. Section 7122 continues without substantive change subdivision (c), the first sentence of subdivision (d), and subdivision (g) of former Civil Code Section 64.

§ 7123. Writ of mandate

Comment. Section 7123 continues former Civil Code Section 64(e)-(f) without substantive change.

Article 3. Voiding or Rescinding Declaration

§ 7130. Grounds for voiding or rescinding

Comment. Section 7130 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 69 and former Civil Code Section 65(c).

§ 7131. Petition to void declaration

Comment. The first sentence of Section 7131 restates the first sentence of the second paragraph of former Civil Code Section 69 without substantive change. The second sentence is new.

§ 7132. Petition to rescind declaration

Comment. Section 7132 restates former Civil Code Section 65(a) without substantive change and adds the provision specifying the ground on which the petition is based, drawn from former Civil Code Section 65(c). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The second sentence of Section 7132 also makes clear that a petition filed by the conservator may be filed either in the county where the minor resides or in the county where the conservator resides.

§ 7133. Notice

Comment. Section 7133 continues without substantive change former Civil Code Section 65(b) and part of the last sentence of the last paragraph of former Civil Code Section 69.

§ 7134. Court order

Comment. Section 7134 continues the first sentence of former Civil Code Section 65(d) and part of the last sentence of the last paragraph of former Civil Code Section 69.

§ 7135. Effect of voiding or rescission on contract and property rights

Comment. Section 7135 continues without substantive change former Civil Code Section 65(e) and the last sentence of the first paragraph of former Civil Code Section 69.

Article 4. Identification Cards and Information

§ 7140. Department of Motor Vehicles records system and identification cards

Comment. Section 7140 continues the last sentence of former Civil Code Section 64(d) without substantive change.

§ 7141. Good faith reliance on identification card

Comment. Section 7141 continues former Civil Code Section 66 without substantive change.

§ 7142. Protection of public entities and public employees

Comment. Section 7142 continues former Civil Code Section 68 without substantive change.

§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded

Comment. Section 7143 continues without substantive change the last two sentences of former Civil Code Section 65(d) and part of the last sentence of the last paragraph of former Civil Code Section 69.

DIVISION 12. PARENT AND CHILD RELATIONSHIP

PART 1. ISSUE OF WIFE COHABITING WITH HER HUSBAND

§ 7500. Conclusive presumption concerning child of marriage

Comment. Section 7500 continues former Evidence Code Section 621(a) without substantive change.

§ 7501. Use of blood tests to determine paternity

Comment. Section 7501 restates former Evidence Code Section 621(b)-(h) without substantive change. The last sentence of former Evidence Code Section 621(f), which stated that what is now subdivision (d) was not applicable to a case pending before the court on September 30, 1980, has been omitted as obsolete.

PART 2. BLOOD TESTS TO DETERMINE PATERNITY

§ 7550. Short title

Comment. Section 7550 continues former Evidence Code Section 890 without substantive change. This section is similar to Section 9 of the Uniform Act on Blood Tests to Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

§ 7551. Order for blood tests in civil proceeding involving paternity

Comment. Section 7551 continues former Evidence Code Section 892 without substantive change. This section is similar to Section 1 of the Uniform Act on Blood Tests to Determine Paternity (1952). In the first sentence, the reference to "proceeding" has been added. This is not a substantive change. See Evid. Code § 120 ("civil action" defined to include civil proceeding).

§ 7552. Tests made by experts

Comment. Section 7552 continues former Evidence Code Section 893 without substantive change. This section is the same as Section 2 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7553. Compensation of experts

Comment. Section 7553 continues former Evidence Code Section 894 without substantive change. This section is similar to the first three sentences of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7554. Effect of test results

Comment. Section 7554 continues former Evidence Code Section 895 without change. This section is similar to Section 4 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7555. Rebuttable presumption of paternity; paternity index of 100 or more

Comment. Section 7555 continues former Evidence Code Section 895.5 without change.

§ 7556. Limitation on application in criminal matters

Comment. Section 7556 continues former Evidence Code Section 896 without substantive change. This section is similar to Section 6 of the Uniform Act on Blood Tests to Determine Paternity (1952).

§ 7557. Right to produce other expert evidence

Comment. Section 7557 continues former Evidence Code Section 897 without substantive change. The last part of this section is similar to the last sentence of Section 3 of the Uniform Act on Blood Tests to Determine Paternity (1952).

PART 3. UNIFORM PARENTAGE ACT

CHAPTER 1. GENERAL PROVISIONS

§ 7600. Short title

Comment. Section 7600 continues former Civil Code Section 7000 without substantive change. This section is similar to Section 27 of the Uniform Parentage Act (1973). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

§ 7601. "Parent and child relationship" defined

Comment. Section 7601 continues former Civil Code Section 7001 without substantive change. This section is the same in substance as Section 1 of the Uniform Parentage Act (1973).

§ 7602. Relationship not dependent on marriage

Comment. Section 7602 continues former Civil Code Section 7002 without change. This section is the same as Section 2 of the Uniform Parentage Act (1973).

§ 7603. Check to determine if child is missing person

Comment. Section 7603 continues former Civil Code Section 7017.6 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7604. Pendente lite relief of custody or grant of visitation rights

Comment. Section 7604 continues former Civil Code Section 7004.5 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

In subdivision (a), a reference to Part 2 (commencing with Section 3020) of Division 8 has been substituted for narrower references to former Civil Code Sections 4600 and 4601. This is not intended as a substantive change.

In subdivision (b), the phrase "domestic violence prevention order" has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines "domestic violence prevention order" to include these orders. For provisions in this code that are comparable to subdivision (b), see Sections 3100(b) (visitation rights generally), 5513 (Domestic Violence Prevention Law).

See also Sections 75 ("domestic violence prevention order" defined), 3022 (factors to be considered in determining best interest of child), 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3155-3183 (mediation of custody or visitation issues); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

CHAPTER 2. ESTABLISHING PARENT AND CHILD RELATIONSHIP

§ 7610. Methods of establishing

Comment. Section 7610 continues former Civil Code Section 7003 without change. This section is the same in substance as Section 3 of the Uniform Parentage Act (1973), except that Section 7610 omits the Uniform Parentage Act reference to the Revised Uniform Adoption Act.

§ 7611. Presumption of paternity

Comment. Section 7611 continues former Civil Code Section 7004(a) without substantive change. This section is the same in substance as Section 4(a) of the Uniform Parentage Act (1973). In subdivision (a), "judgment" has been substituted for "decree." See also Section 7612 (nature of paternity presumptions).

§ 7612. Nature of paternity presumptions

Comment. Section 7612 continues former Civil Code Section 7004(b) without substantive change. This section is similar to Section 4(b) of the Uniform Parentage Act (1973). In subdivision (c), “judgment” has been substituted for “decree.”

§ 7613. Artificial insemination

Comment. Section 7613 continues former Civil Code Section 7005 without substantive change. This section is similar to Section 5 of the Uniform Parentage Act (1973). The phrase “physician and surgeon” has been substituted for “physician.” See Section 580 Comment.

§ 7614. Promise to furnish support

Comment. Section 7614 continues former Civil Code Section 7016 without substantive change. This section is the same in substance as Section 22 of the Uniform Parentage Act (1973). A reference to Section 7632 has been substituted for the reference to former Civil Code Section 7006(d). This corrects an error in former Civil Code Section 7016, which should have referred to former Civil Code Section 7006(e), now Family Code Section 7632.

CHAPTER 3. JURISDICTION AND VENUE

§ 7620. Jurisdiction; venue

Comment. Section 7620 continues former Civil Code Section 7007(b)-(c) without substantive change. This section is the same in substance as parts of Section 8 of the Uniform Parentage Act (1973). Former Civil Code Section 7007(a), which stated that the superior court has jurisdiction of an action under the Uniform Parentage Act, has been omitted as surplus. See Section 200 (jurisdiction in superior court).

CHAPTER 4. DETERMINATION OF PARENT AND CHILD RELATIONSHIP

Article 1. Determination of Father and Child Relationship

§ 7630. Persons who may bring action; when action may be brought

Comment. Section 7630 continues former Civil Code Section 7006(a)-(c) without substantive change. This section is similar to Section 6(a)-(c) of the Uniform Parentage Act (1973). In subdivision (c), a reference to the filing of a proceeding under Chapter 5 (commencing with Section 7660) has been substituted for a narrower reference to former Civil Code Section 7017 in former law. This is not intended as a substantive change.

§ 7631. Action by man not a presumed father to establish that he is natural father of child

Comment. Section 7631 continues former Civil Code Section 7006(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7632. Agreement between alleged father or mother or child does not bar action

Comment. Section 7632 continues former Civil Code Section 7006(e) without substantive change. This section is similar to Section 6(d) of the Uniform Parentage Act (1973).

§ 7633. Action before birth of child

Comment. Section 7633 continues former Civil Code Section 7006(f) without substantive change. This section is a substitute for Section 6(e) of the Uniform Parentage Act (1973).

§ 7634. Action by district attorney

Comment. Section 7634 continues former Civil Code Section 7006(g) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7635. Parties

Comment. Section 7635 continues former Civil Code Section 7008 without substantive change. This section is similar to Section 9 of the Uniform Parentage Act (1973).

§ 7636. Effect of judgment determining existence or nonexistence of parent and child relationship

Comment. Section 7636 continues former Civil Code Section 7010(a) without change. This section is similar to Section 15(a) of the Uniform Parentage Act (1973).

§ 7637. Other provisions of judgment

Comment. Subdivision (a) of Section 7637 continues former Civil Code Section 7010(c)(1) without change. This subdivision is the same as Section 15(c) of the Uniform Parentage Act (1973). Subdivision (b) restates former Civil Code Section 7010(c)(2)-(3) without substantive change. Subdivision (c) continues former Civil Code Section 7010(d) without change.

The "sunset provision" found in former Civil Code Section 7010(e) has not been continued. The "sunset provision" provided that the material set out in subdivisions (b) and (c)(1)-(5) is deleted as of January 1, 1993, unless a later statute, enacted before January 1, 1993, deletes or extends the expiration date.

§ 7638. Change of name of child

Comment. Section 7638 restates former Civil Code Section 7007(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). The reference to Section 7636 has been substituted for the broader reference to former Civil Code Section 7010. This is not a substantive change, since the relevant part of former Civil Code Section 7010 is continued in Section 7636. The reference to jurisdiction in the superior court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 7639 (issuance of new birth certificate).

§ 7639. Issuance of new birth certificate

Comment. Section 7639 continues former Civil Code Section 7010(b) without change. This section is similar to Section 15(b) of the Uniform Parentage Act (1973). See also Section 7638 (change of name of child).

§ 7640. Award of attorney's fees and other costs

Comment. Section 7640 continues former Civil Code Section 7011 without change. This section is the same as the first sentence of Section 16 of the Uniform Parentage Act (1973). For general provisions relating to award of attorney's fees and costs, see Sections 270-275.

§ 7641. Enforcement of judgment

Comment. Section 7641 continues former Civil Code Section 7012 without substantive change. This section is the same in substance as Section 17 of the Uniform Parentage Act (1973).

§ 7642. Modification of judgment

Comment. Section 7642 continues former Civil Code Section 7013 without substantive change. This section is similar to Section 18 of the Uniform Parentage Act (1973). A reference to "order of adoption" has been substituted for the former reference to "decree of adoption." This is not intended as a substantive change.

§ 7643. Confidentiality of hearings and records

Comment. Section 7643 continues former Civil Code Section 7014 without substantive change. This section is similar to Section 20 of the Uniform Parentage Act (1973).

Article 2. Determination of Mother and Child Relationship

§ 7650. Action to determine mother and child relationship

Comment. Section 7650 continues former Civil Code Section 7015 without change. This section is the same in substance as Section 21 of the Uniform Parentage Act (1973).

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS

§ 7660. Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child

Comment. Section 7660 continues former Civil Code Section 7017(a)(1) without substantive change. This section is similar to Section 24 of the Uniform Parentage Act (1973). In clause (b), the reference to "prior" law has been omitted.

§ 7661. Relinquishment or consent by father; notice to and rights of mother

Comment. Section 7661 continues former Civil Code Section 7017(a)(2) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7662. Proceeding to terminate parental rights of father

Comment. Section 7662 continues former Civil Code Section 7017(b) without substantive change. This section replaces Section 25(a) of the Uniform Parentage Act (1973). The reference to filing the petition in the superior court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In the introductory part of this section, the reference to "prior" law has been omitted.

§ 7663. Effort to identify natural father

Comment. Section 7663 continues former Civil Code Section 7017(c) without substantive change. This section is similar to Section 25(b) of the Uniform Parentage Act (1973).

§ 7664. Notice to man identified as possible natural father; determination and order concerning his parental rights

Comment. Section 7664 continues former Civil Code Section 7017(d) without substantive change. This section replaces Section 25(c) of the Uniform Parentage Act (1973). In subdivision (b), a reference to Section 3041 has been substituted for the broader reference to former Civil Code Section 4600. This is not a substantive change, since the relevant part of the former section is continued in Section 3041.

§ 7665. Order terminating parental rights of unknown natural father

Comment. Section 7665 continues former Civil Code Section 7017(e) without change. This section is the same as the first sentence of Section 25(d) of the Uniform Parentage Act (1973).

§ 7666. Manner of giving notice; order dispensing with notice

Comment. Section 7666 continues former Civil Code Section 7017(f) without substantive change. This section is similar to Section 25(e) of the Uniform Parentage Act (1973).

§ 7667. Setting for hearing; preference for trial

Comment. Section 7667 continues without substantive change subdivision (a) and the first sentence of subdivision (b) of former Civil Code Section 7017.2. There is no comparable provision in the Uniform Parentage Act (1973). In subdivision (a), a reference to this part has been substituted for the narrower reference to former Civil Code Section 7017. This is not intended as a substantive change. In subdivision (b), a reference to Part 4 (commencing with Section 7800) has been substituted for the narrower reference to former Civil Code Section 232. This is not intended as a substantive change.

§ 7668. Continuance of hearing

Comment. Section 7668 continues without substantive change the last sentence of subdivision (b) and subdivision (c) of former Civil Code Section 7017.2. There is no comparable provision in the Uniform Parentage Act (1973).

§ 7669. Appeal from order requiring or dispensing with father's consent

Comment. Section 7669 continues former Civil Code Section 7017(g) without substantive change. This section replaces the second sentence of Section 25(d) of the Uniform Parentage Act (1973). For other provisions relating to appeals, see Section 210 Comment.

§ 7670. No filing fee

Comment. Section 7670 continues former Civil Code Section 7017.1 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

CHAPTER 6. PROTECTIVE AND TEMPORARY CUSTODY ORDERS

Article 1. Orders in Summons

§ 7700. Temporary restraining order in summons

Comment. Section 7700 continues without substantive change the first sentence and the last part of the last sentence of the first paragraph of former Code of Civil Procedure Section 412.21(b). For general provisions governing restraining orders in summons, see Sections 231-235.

Article 2. Ex Parte Orders

§ 7710. Ex parte protective and temporary custody orders

Comment. Section 7710 continues the first sentence of former Civil Code Section 7020(a) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). In the introductory part, the reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The reference to Part 4 (commencing with Section 240) of Division 2 has been substituted for the former reference to Code of Civil Procedure Section 527. This is not a substantive change, since the referenced part of the Family Code continues the applicable parts of Code of Civil Procedure Section 527. See also Section 242 (continuing the last two sentences of former Civil Code Section 7120(a) concerning return on the order and orders shortening time for service). In subdivision (a), the word "telephoning" has been added. This is not a substantive change. See Section 5505 ("protective order" defined); Cal. R. Ct. 1285.05 (mandatory Judicial Council temporary restraining order form). See also Section 7721 (showing required for order excluding one party from dwelling following notice and hearing). For comparable provisions, see Sections 2035 (dissolution, nullity, or legal separation proceeding), 5550, 5650, 5700 (Domestic Violence Prevention Law).

§ 7711. Limitation on issuance of mutual restraining order

Comment. Section 7711 continues former Civil Code Section 7020(f) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined). For comparable provisions, see Sections 2036 (dissolution, nullity, or legal separation proceeding), 5514 (Domestic Violence Prevention Law).

Article 3. Orders Issuable After Notice and Hearing

§ 7720. Protective, temporary custody, and restitution orders

Comment. Section 7720 continues the first and the last two sentences of former Civil Code Section 7020(b). There is no comparable provision in the Uniform Parentage Act (1973). See also

Section 55 ("abuse" defined). For a comparable provision, see Section 5753 (Domestic Violence Prevention Law).

§ 7721. Order excluding party from dwelling upon a showing only that physical or emotional harm would otherwise result

Comment. Section 7721 continues the second sentence of former Civil Code Section 7020(b) without change. There is no comparable provision in the Uniform Parentage Act (1973). For comparable provisions in this code, see Sections 2036.5 (dissolution, nullity, or legal separation proceeding), 5751 (Domestic Violence Prevention Law).

§ 7722. Duration of restraining order granted after notice and hearing

Comment. Section 7722 continues the third sentence of former Civil Code Section 7020(b) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). For a comparable provision in this code, see Section 5756 (Domestic Violence Prevention Law).

Article 4. Required Statements in Order

§ 7730. Statement of date of expiration

Comment. Section 7730 continues former Civil Code Section 7020(c) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). A reference to this chapter has been substituted for the references to the subdivisions of former Civil Code Section 7020 that made this rule applicable to ex parte orders and orders after notice and hearing. The reference to this chapter includes orders in a summons pursuant to Section 7700. This is consistent with the Judicial Council form setting forth the Standard Restraining Order for use in a Uniform Parentage Act summons. See Cal. R. Ct. 1296.61. For comparable provisions, see Sections 2037 (dissolution, nullity, or legal separation proceeding), 5515, 5652, 5702 (Domestic Violence Prevention Law).

§ 7731. Notice to defendant in temporary restraining order

Comment. Section 7731 continues former Civil Code Section 7020(d) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). For a comparable provision in this code, see Section 2037(c) (dissolution, nullity, or legal separation proceeding).

Article 5. Registration and Enforcement of Orders

§ 7740. Transmittal to local law enforcement agency

Comment. Section 7740 continues the first sentence of former Civil Code Section 7020(e) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). A reference to this chapter has been substituted for the references to the subdivisions of former Civil Code Section 7020 that made this rule applicable to ex parte orders and orders after notice and hearing. The reference to this chapter includes orders in a summons pursuant to Section 7700. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 2038 (dissolution, nullity, or legal separation proceeding), 5800 (Domestic Violence Prevention Law).

§ 7741. Law enforcement agency to make information concerning order available to law enforcement officers

Comment. Section 7741 continues the last sentence of former Civil Code Section 7020(e) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). A reference to this chapter has been substituted for the references to the subdivisions of former Civil Code Section 7020 that made this rule applicable to ex parte orders and orders after notice and hearing. The reference to this chapter includes orders in a summons pursuant to Section 7700. See also Section 70 ("domestic violence" defined). For comparable provisions, see Sections 2039 (dissolution, nullity, or legal separation proceeding), 5801 (Domestic Violence Prevention Law).

§ 7742. Service of restraining order against domestic violence by law enforcement officer

Comment. Section 7742 continues former Civil Code Section 7020(g) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). To conform to the terminology used in the remainder of this chapter, the word “plaintiff” has been substituted for “moving party” and the word “defendant” has been substituted for “responding party.” See also Section 70 (“domestic violence” defined). For comparable provisions, see Sections 2041 (dissolution, nullity, or legal separation proceeding), 5802 (Domestic Violence Prevention Law).

§ 7743. Criminal penalty for violation of order

Comment. Section 7743 continues former Civil Code Section 7020(h) without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). A reference to this chapter has been substituted for the references to the subdivisions of former Civil Code Section 7020 that made this rule applicable to ex parte orders and orders after notice and hearing. The reference to this chapter includes orders in a summons pursuant to Section 7700. For comparable provisions in this code, see Sections 2042 (dissolution, nullity, or legal separation proceeding), 5807 (Domestic Violence Prevention Law).

Article 6. Protective Orders Included in Judgment**§ 7750. Protective orders included in judgment entered under this part**

Comment. Section 7750 continues former Civil Code Section 7021 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973). In subdivision (c), the reference to Section 7740 has been substituted for the reference to former Civil Code Section 7006(d). This corrects an error in the former section, since the reference should have been to former Civil Code Section 7006(e), now Family Code Section 7740. For a comparable provision, see Section 2045 (dissolution, nullity, or legal separation proceeding).

PART 4. FREEDOM FROM PARENTAL CUSTODY AND CONTROL**CHAPTER 1. GENERAL PROVISIONS****§ 7800. Purpose of part**

Comment. Section 7800 continues the first sentence of former Civil Code Section 232.6 without substantive change.

§ 7801. Liberal construction

Comment. Section 7801 continues the first sentence of former Civil Code Section 232.5 without substantive change.

§ 7802. Proceeding to declare minor free from parental custody and control

Comment. Section 7802 continues without substantive change the first part of the first sentence of former Civil Code Section 232(a). A reference to “proceeding” has been substituted for the former reference to “action.” This is not intended as a substantive change. A reference to “minor” child has been substituted for “child under the age of 18 years.” This is not a substantive change. See Section 6500 (minor is individual under 18). See also Sections 7820-7829 (circumstances where proceeding may be brought).

As noted in the Comments that follow, references to “child” have been substituted for the former references to a “minor” or “minor person.” Formerly, the word “child” and “minor” were used interchangeably. Nevertheless, as provided in this section, only a minor child (one under 18 years of age) can be declared free from the custody and control of either or both of the child’s parents. See also Section 7820 (proceeding to declare minor free from parental custody and control).

§ 7803. Effect of declaration

Comment. Section 7803 continues the second sentence of former Civil Code Section 232.6 without substantive change.

§ 7804. Appointment of person to act on child's behalf; further notice

Comment. Section 7804 restates former Civil Code Section 237 without substantive change. The reference to "child" has been substituted for the former reference to "minor." This is not a substantive change. See Section 7802 Comment.

§ 7805. Persons entitled to inspect petitions, reports, and records

Comment. Subdivisions (a) and (b) of Section 7805 continue former Civil Code Section 233.5 without substantive change. In subdivision (a), a reference to "child" has been substituted for the former reference to "minor." This is not a substantive change. See Section 7802 Comment. Subdivision (c) continues former Civil Code Section 233.6 without substantive change. The references to the "superior" court have been omitted as surplus. See Section 200 (jurisdiction in superior court). For other provisions relating to appeals, see Section 210 Comment.

§ 7806. No filing fee

Comment. Section 7806 continues the second sentence of the first paragraph of former Civil Code Section 233 without substantive change. A reference to "proceeding" has been substituted for the former reference to "action." This is not intended as a substantive change.

§ 7807. Nonapplication of certain other statutory provisions in proceeding under this part

Comment. Section 7807 continues former Civil Code Section 232(d) without substantive change.

§ 7808. Child adjudged to be dependent child after January 1, 1989

Comment. Section 7808 continues former Civil Code Section 232(e) without substantive change. A reference to Chapter 5 (commencing with Section 7660) of Part 3 has been substituted for a narrower reference to former Civil Code Section 7017. This is not intended as a substantive change.

CHAPTER 2. CIRCUMSTANCES WHERE PROCEEDING MAY BE BROUGHT**§ 7820. Proceeding to declare minor free from parental custody and control**

Comment. Section 7820 continues the introductory part of former Civil Code Section 232(a) without substantive change. A reference to "proceeding" has been substituted for the former reference to "action." This is not intended as a substantive change.

§ 7821. Clear and convincing evidence

Comment. Section 7821 continues former Civil Code Section 232(c) without substantive change.

§ 7822. Abandoned child

Comment. Section 7822 continues former Civil Code Section 232(a)(1) without substantive change.

§ 7823. Neglected or cruelly treated child

Comment. Section 7823 continues former Civil Code Section 232(a)(2) without substantive change.

§ 7824. Child whose parents under disability because of use of alcohol or controlled substance or being morally depraved

Comment. Section 7824 continues former Civil Code Section 232(a)(3) without substantive change.

§ 7825. Child whose parent convicted of felony

Comment. Section 7825 continues former Civil Code Section 232(a)(4) without substantive change.

§ 7826. Child whose parent declared to be developmentally disabled or mentally ill

Comment. Section 7826 continues former Civil Code Section 232(a)(5) without substantive change.

§ 7827. Child whose parent is mentally disabled

Comment. Section 7827 continues former Civil Code Section 232(a)(6) without substantive change.

§ 7828. Child in supervised out-of-home placement for one year period

Comment. Section 7828 continues former Civil Code Section 232(a)(7) without substantive change. In subdivisions (b), (c), and (e), references to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment.

§ 7829. Child found to be dependent child and reunification services not to be provided

Comment. Section 7829 continues former Civil Code Section 232(a)(8) without substantive change. References to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment.

CHAPTER 3. PROCEDURE

Article 1. Authorized Petitioners

§ 7840. Petition by private or public adoption agency or state or county agency

Comment. Section 7840 restates former Civil Code Section 232.9 without substantive change. In subdivision (c), the reference to a "verified" petition has been omitted as surplus. See Section 212 (pleadings to be verified). In subdivision (d), references to "proceeding" have been substituted for the former references to "action." This is not intended as a substantive change. See also Sections 7841 (any interested person may file petition), 7845 (venue).

§ 7841. Right of interested person to file petition

Comment. Section 7841 restates without substantive change the first and last parts of the first sentence of the first paragraph of former Civil Code Section 233. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 7845 (venue).

Article 2. Venue

§ 7845. Venue

Comment. Section 7845 restates without substantive change the first half of the first sentence of the first paragraph of former Civil Code Section 233. See also Section 200 (jurisdiction in superior court).

Article 3. Investigation and Report

§ 7850. Investigation of circumstances of child

Comment. Section 7850 continues without substantive change the third sentence of the first paragraph of former Civil Code Section 233. References to "child" have been substituted for the former references to "minor." This is not a substantive change. See Section 7802 Comment. Section 7850 does not require the notice and investigation if the petition is filed under Section 7840 (petition by licensed private or public adoption agency or state or county agency).

§ 7851. Report and recommendations to court

Comment. Section 7851 continues former Civil Code Section 233 from the last sentence of the first paragraph to the end of the former section. In subdivisions (a) and (b)(1), references to

“proceeding” have been substituted for the former references to “action.” This is not intended as a substantive change. Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

Article 4. Appointment of Counsel

§ 7860. Procedure for appointment of counsel

Comment. Section 7860 continues without substantive change the introductory part, the last sentence of subdivision (b), and the first sentence of subdivision (c) of former Civil Code Section 237.5. The reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment. See also Sections 7827(e) (mandatory appointment of counsel for mentally disabled parent), 7895 (appointment of counsel for indigent appellant).

§ 7861. Appointment to protect interests of child

Comment. Section 7861 continues former Civil Code Section 237.5(a) without substantive change. References to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment. This section has been reworded to make it more concise.

§ 7862. Appointment of counsel for parent

Comment. Section 7862 continues the first sentence of former Civil Code Section 237.5(b) without substantive change.

§ 7863. Compensation and expenses of private appointed counsel

Comment. Section 7863 continues the last three sentences of former Civil Code Section 237.5(c) without substantive change. The reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7864. Continuance

Comment. Section 7864 continues former Civil Code Section 237.5(d) without substantive change. For a general provision on continuances, see Section 7871.

Article 5. Time for Hearing; Continuance

§ 7870. Time for hearing; precedence over other matters; continuance

Comment. Section 7870 continues former Civil Code Section 232.3(a)-(b) without substantive change. In subdivision (c), a reference to Section 7871 has been added.

§ 7871. Continuance of hearing

Comment. Section 7871 restates former Civil Code Section 232.3(c) without substantive change. See also Section 7864 (continuance for up to 30 days as necessary to appoint counsel and to enable counsel to become acquainted with case).

Article 6. Notice of Proceeding and Attendance at Hearing

§ 7880. Citation requiring attendance at hearing

Comment. Section 7880 continues the first paragraph of former Civil Code Section 234 without substantive change. The requirement that service “be made in the manner prescribed by law for service of civil process” is new and is drawn from the first paragraph of former Civil Code Section 232.3(b), now Family Code Section 7870(b). Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7881. Service of citation on parents or relatives

Comment. Section 7881 continues former Civil Code Section 235(a) without substantive change. In subdivision (a), references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7882. Service on parent who cannot be found or whose residence is unknown

Comment. Section 7882 continues former Civil Code Section 235(b) without substantive change. In subdivisions (a) and (d), references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment. In subdivision (b), a reference to Government Code Section 6064 has been substituted for the requirement that the notice be published once a week for four successive weeks. This is not a substantive change.

§ 7883. Failure to comply with citation as contempt

Comment. Section 7883 continues former Civil Code Section 236 without substantive change. A reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment. A reference to Section 7880 has been added to make clear that this section applies only when attendance by the person is required by the citation. A person served with a citation under Section 7881 may, but is not required to, attend the hearing.

§ 7884. Admission of public to proceeding

Comment. Section 7884 continues former Civil Code Section 235.5 without substantive change. In subdivision (a), a reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment.

Article 7. Hearing and Subsequent Proceedings

§ 7890. Wishes and best interest of child

Comment. Section 7890 restates without substantive change the last sentence of former Civil Code Section 232.5 and the first paragraph of former Civil Code Section 232(b).

§ 7891. Hearing in chambers to determine wishes of child

Comment. Section 7891 continues without substantive change the second paragraph and subdivisions (a)-(c) of former Civil Code Section 234. Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment. The references to specific Family Code sections have been substituted for the reference to former Civil Code Section 4600. This is not intended as a substantive change. See also Section 7954 (minor’s right to make statement in connection with priorities for foster care placement).

§ 7892. Testimony of child in chambers

Comment. Subdivisions (a), (b), and (d) of Section 7892 continue without substantive change former Civil Code Section 232(b) from the second paragraph to the end of the former subdivision. Subdivision (c) continues former Civil Code Section 232(c) without substantive change. Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7893. Appointment of guardian or referral for adoption

Comment. Section 7893 continues former Civil Code Section 239 without substantive change. Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

§ 7894. Conclusiveness of order or judgment

Comment. Section 7894 continues former Civil Code Section 238 without substantive change. In subdivision (a), references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control). For other provisions dealing with appeals, see Section 210 Comment.

§ 7895. Appointment of counsel for indigent appellant; free copy of transcripts

Comment. Section 7895 continues former Civil Code Section 237.7 without substantive change. In subdivision (a), a reference to “child” has been substituted for the former reference to “minor.” This is not a substantive change. See Section 7802 Comment. See also Code Civ. Proc. § 45 (precedence for appeal from judgment freeing dependent child from parental custody and control). For other provisions dealing with appeals, see Section 210 Comment.

PART 5. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN**§ 7900. Adoption of compact**

Comment. Section 7900 continues former Civil Code Section 264 without substantive change.

§ 7901. Provisions of compact

Comment. Section 7901 continues former Civil Code Section 265 without substantive change.

§ 7902. Financial responsibility for child placed pursuant to compact

Comment. Section 7902 continues former Civil Code Section 266 without change.

§ 7903. “Appropriate public authorities” defined

Comment. Section 7903 continues former Civil Code Section 267 without substantive change.

§ 7904. “Appropriate authority in receiving state” defined

Comment. Section 7904 continues former Civil Code Section 268 without substantive change.

§ 7905. Agreements with party states; approval of financial obligations

Comment. Section 7905 continues former Civil Code Section 269 without substantive change.

§ 7906. Requirements for visitation, inspection, or supervision in another state

Comment. Section 7906 continues former Civil Code Section 270 without change.

§ 7907. Application of law restricting out-of-state placements

Comment. Section 7907 continues former Civil Code Section 271 without change.

§ 7908. Placement of delinquent children in institution in another state

Comment. Section 7908 continues former Civil Code Section 272 without substantive change.

§ 7909. Appointment of compact administrator

Comment. Section 7909 continues former Civil Code Section 273 without substantive change.

§ 7910. Refusal to grant approval of placement in violation of state law

Comment. Section 7910 continues former Civil Code Section 274 without substantive change.

PART 6. PRIORITIES FOR FOSTER CARE PLACEMENT**§ 7950. Order of placement preference**

Comment. Section 7950 continues former Civil Code Section 275 without substantive change.

§ 7951. Considerations constituting good cause not to follow rules

Comment. Section 7951 continues former Civil Code Section 275.1 without substantive change.

§ 7952. Records showing diligent search conducted

Comment. Section 7952 continues former Civil Code Section 275.2 without substantive change.

§ 7953. Placing child for period not intended to exceed 30 days

Comment. Section 7953 continues former Civil Code Section 275.3 without substantive change.

§ 7954. Minor's right to make statement

Comment. Section 7954 continues former Civil Code Section 275.4 without substantive change.