

#F-1001

sul087
09/04/92

Memorandum 92-61

Subject: Study F-1001 - Family Code (Miscellaneous Technical Revisions)

Attached to this memorandum are a few needed technical corrections that have come the staff's attention during its review of the Family Code. If these revisions are approved, we will include them in the 1993 legislation. We would not send this material out as a tentative recommendation.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

#F-1001
Memo 92-33

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9/4/92

EXHIBIT 1

Miscellaneous Technical Revisions

Staff Note. The draft legislation in this exhibit would make several minor and technical corrections in the new Family Code and its conforming revisions enacted in AB 2641. The sections are set out in the order they would appear in a bill.

Outline

Fam. Code § 2 (amended). Continuation of existing law

Prob. Code § 3072 (technical amendment). Joinder or consent by conservator
Prob. Code § 3073 (technical amendment). Manner of joinder or consent

Fam. Code § 2 (amended). Continuation of existing law

SEC. ____ . Section 2 of the Family Code is amended to read:

2. A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision of this code shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

Comment. The first part of Section 2 is comparable to Civil Code Section 5 and is a standard provision found in many other codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new Family Code provision includes a reference to the former law from which it is drawn. [For example, a statute referring to a minor adjudged to be a dependent child of the court under Section 10200 includes a minor adjudged to be a dependent child of the court under former Welfare and Institutions Code Section 300.] Cf. Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of the Family Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that the Family Code provision "continues" or is "the same as" a former provision, or is "the same as" a provision of a uniform act.

(2) *Continues without substantive change.* A new provision “continues” a former provision “without substantive change” if the substantive law remains the same but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable,” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

Interim Comment. The last clause is added to Section 2 to make clear that a statutory reference to a new Family Code provision includes a reference to the former law from which it is drawn. The bracketed language in the first paragraph of the Comment would be included only if Welfare and Institutions Code Section 300 is repealed. If it is not, another example will be inserted.

Prob. Code § 3072 (technical amendment). Joinder or consent by conservator

SEC. _____. Section 3072 of the Probate Code, as amended by Chapter 163 of the Statutes of 1992, is amended to read:

3072. (a) Except as provided in subdivision (b), a conservator may join in our consent to a transaction under Section 3071 only after authorization by either of the following:

(1) An order of the court obtained in the conservatorship proceeding upon a petition filed pursuant to Section 2403 or under Article 7 (commencing with Section 2540) or 10 (commencing with Section 2580) of Chapter 6 of Part 4.

(2) An order of the court made in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

(b) A conservator may consent without court authorization to a sale, conveyance, or encumbrance of community personal property requiring consent under subdivision (c) of Section 1152 1100 of the Family Code if the conservator could sell or transfer such property under Section 2545 without court authorization if the property were a part of the conservatorship estate.

Comment. Subdivision (b) of Section 3072 is amended to correct a cross-reference.

Interim Comment. This amendment is needed to reflect the revision of the statutes concerning fiduciary duties between spouses that occurred when AB 2650 was before the Legislature.

Prob. Code § 3073 (technical amendment). Manner of joinder or consent

SEC. ____ . Section 3073 of the Probate Code, as amended by Chapter 163 of the Statutes of 1992, is amended to read:

3073. (a) The joinder or consent under Section 3071 of a spouse having legal capacity shall be in a manner that complies with ~~Chapter 2 (commencing with Section 1150) or Chapter 3 (commencing with Section 1200) of Part 4 of Division 4~~ Section 1100 or 1102 of the Family Code or other statute that applies to the transaction.

(b) The joinder or consent under Section 3071 of a conservator shall be in the same manner as a spouse would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent shall be executed by the conservator and shall refer to the court order, if one is required, authorizing the conservator to join in or consent to the transaction.

Comment. Subdivision (a) of Section 3073 is amended to correct cross-references.

Interim Comment. This amendment is needed to reflect the revision of the statutes concerning fiduciary duties between spouses that occurred when AB 2650 was before the Legislature.