

Memorandum 92-62

Subject: Study F-1001 - Family Code (Property Terms)

The staff reviewed terms used in the Family Code to describe marital property. Exhibit 1 lists the sections where these terms are used. The terms are:

- "Community property," defined in Sections 65 and 760 and used in 37 other sections.

- "Community estate," defined in Sections 901 and 2501 as a drafting convenience to include both community and quasi-community property, and used in 23 other sections.

- "Community assets," not defined, and used in two sections to refer to gross value, not offset by liabilities.

- "Community property assets," not defined, and used in Section 2400 with the same meaning as "community assets."

- "Quasi-community property," defined in Section 125 and used in 20 other sections.

- "Quasi-community assets," not defined, and used in two sections to mean gross value, not offset by liabilities.

- "Separate property," defined in Sections 130 and 770-772 and used in 26 other sections.

- "Separate estate," not defined, and used in two sections.

- "Separate property assets," not defined, and used in Section 2400 to refer to gross value, not offset by liabilities.

- "Quasi-marital property," defined in Section 2251 but not otherwise used in the Family Code.

- "Property subject to division," not defined, and used in one section.

Common law and other miscellaneous property terms are not included in the table in Exhibit 1. See, e.g., Sections 750 (joint tenants, tenants in common), 803 (tenant in common), 915 (separate income), 2035 (real or personal property of the parties), 2580 (tenancy in common, joint tenancy, tenancy by the entirety), 2650 (joint tenants, tenants in common), 2641 (community contributions).

The staff also reviewed the use of the terms "debt," "liability,"

and "obligation." The staff concluded that no revisions in these terms are needed. Exhibit 2 lists the sections where these terms are used, and is included for the convenience of members of the State Bar Family Law Section and others who are reviewing the new code.

Revisions Recommended by Staff

The definitions and uses of the property terms are generally satisfactory. The staff proposes to amend six sections as set out in Exhibit 3.

Sections 914, 915, and 2640 use the term "community estate property" to refer to specific property in the community estate. The staff would revise this term to read "property in the community estate" in these three sections. This should make the sections clearer.

Sections 930 and 4321 use the term "separate estate" which is not defined. The staff would revise these two sections to refer instead to "separate property."

Section 1000 uses the term "community estate property." "Community estate" is a defined term. Section 901. The word "property" seems superfluous in Section 1000. The staff would amend Section 1000 to delete "property" after "community estate" in two places.

Revisions Not Recommended by Staff

"Community estate" is defined in Sections 901 and 2501, and is used in 23 other sections. The definitions apply to all these sections except Sections 1101 and 2337. The staff considered whether the definitions in Sections 901 and 2501 should be repealed and replaced by a single definition at the beginning of the code. A problem with doing this is that the two definitions are slightly different:

901. "Community estate" includes both the community property and the quasi-community property.

2501. "Community estate" includes both the community and quasi-community assets and liabilities of the parties.

The reference in Section 2501 to "assets and liabilities" is needed because it applies to Division 7 which deals with division of assets and liabilities. Thus, for example, the requirement in Section 2550 that the court shall "divide the community estate of the parties equally" means the assets and liabilities shall be divided equally.

See also Sections 2551, 2552, 2556, 2601, 2622.

We could generalize the definition in Section 2501 in preference to the definition in Section 901. This would have the effect of defining "community assets" in the two sections where the term is used but not defined -- Sections 1101 and 2337.

But applying a definition of "community assets" to Section 1101 would turn a minor problem into a more serious problem: Section 1101 refers to a spouse's fiduciary duty with respect to the "community estate." If "community estate" as used (but not defined) in Section 1101 is intended to include both community and quasi-community property, it is wrong, because a spouse's fiduciary duty extends only to community property, not to quasi-community property. See Sections 1100, 1102. However, this was negotiated language and the staff believes it is not politically feasible to change it. If for political reasons we decline to change "community estate" in Section 1101, the staff thinks it is better to leave the term undefined in that section so a court can more easily apply it correctly.

The staff also considered whether a definition is needed for Section 2337. Section 2337 properly refers to dividing the "community estate." A definition of "community estate" seems unnecessary for Section 2337, since the term is really a cross-reference to the substantive rule in Section 2550 requiring division of the "community estate" on dissolution. Since "community estate" is defined in Section 2501 for the purpose of Section 2550, it seems unnecessary to add a definition of "community estate" in Section 2337.

Section 2400 uses the terms "community property assets" and "separate property assets" to refer to gross value without offset for liabilities, while Sections 2501 and 2622 use the shorter term "community assets." It seems better to keep "community property assets" and "separate property assets" in Section 2400, because "community property" and "separate property" are defined terms. See Sections 65, 130, 760, 770-772. It seems unnecessary to change "community and quasi-community assets and liabilities" in Sections 2501 and 2622 to "community and quasi-community property assets and liabilities." It is inaccurate to say "community property liabilities" in this context, because a community liability may not be charged to

community property. See, e.g., Section 2622.

Section 2251 says property of a void or voidable marriage is "quasi-marital property," but the term is not used elsewhere in the Family Code. The staff considered whether this provision should be deleted. It was in the Family Law Act (Civ. Code § 4452), and it seems useful to keep it to encourage consistent use of the term in Comments, lead lines, and treatises. See, e.g., 11 B. Witkin, *Summary of California Law Community Property* § 228, at 648 (9th ed. 1990).

Section 2660 uses the term "property subject to division," referring to real property in another state. This is appropriate usage, since the court may divide jointly held separate property. Section 2650.

A law review article argues for reclassifying quasi-community and quasi-marital property as ordinary community property. Bassett, *Repealing Quasi-Community Property: A Proposal to Adopt a Unitary Marital Property Scheme*, 22 U.S.F.L. Rev. 463 (1988). The article cites considerable academic support for this view, but acknowledges constitutional problems. This would be a significant change in California family law. We can keep this on our list of substantive issues for future consideration. The Commission can decide whether or not to pursue this when it decides which substantive issues to work on.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

EXHIBIT 1

Property Terms in Family Code

Community Property (Real or Personal)	Community Estate (Property & Assets)	Community Assets	Community & Separate Property Assets	Quasi-Community Property	Quasi-Community Assets	Separate Property	Separate Estate	Quasi-Marital Property	Property Subject to Division
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Definitions — Division 1

§ 65	✓								
§ 125	✓			✓					
§ 130						✓			

Attorney's Fees and Costs — Part 5, Division 2

§ 274	✓								
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Rights and Obligations During Marriage, General Provisions — Part 1, Division 4

§ 721	✓								
§ 750	✓								
§ 751	✓								
§ 752						✓			
§ 754						✓			

Characterization of Marital Property — Part 2, Division 4

§ 760	✓								
§ 761	✓								
§ 770						✓			
§ 771						✓			
§ 772						✓			
§ 780	✓								
§ 781	✓					✓			
§ 782	✓					✓			
§ 802	✓								
§ 803	✓					✓			
§ 850	✓					✓			
§ 852	✓					✓			

Community Property (Real or Personal)	Community Estate (Property & Assets)	Community Assets	Community & Separate Property Assets	Quasi-Community Property	Quasi-Community Assets	Separate Property	Separate Estate	Quasi-Marital Property	Property Subject to Division
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Liability of Marital Property — Part 3, Division 4

§ 901	✓	✓			✓				
§ 910		✓							
§ 911		✓							
§ 912	✓				✓				
§ 913		✓				✓			
§ 914		✓				✓			
§ 915		✓							
§ 916	✓				✓	✓			
§ 920	✓				✓				
§ 930		✓					✓		
§ 1000		✓				✓			

Management and Control of Marital Property — Part 4, Division 4

§ 1100	✓								
§ 1101	✓	✓							
§ 1102	✓								
§ 1103	✓								

Dissolution, Nullity, and Legal Separation — Division 6

§ 2011	✓				✓				
§ 2030	✓				✓	✓			
§ 2035	✓				✓	✓			
§ 2074	✓				✓				
§ 2251	✓				✓			✓	
§ 2252	✓				✓				
§ 2337		✓							
§ 2400				✓		✓			

Division of Property — Division 7

§ 2501		✓	✓			✓			
§ 2502					✓		✓		
§ 2550		✓							
§ 2551		✓							
§ 2552		✓							

	Community Property (Real or Personal)	Community Estate (Property & Assets)	Community Assets	Community & Separate Property Assets	Quasi-Community Property	Quasi-Community Assets	Separate Property	Separate Estate	Quasi-Marital Property	Property Subject to Division
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§ 2554	✓	✓			✓					
§ 2555		✓								
§ 2556		✓								
§ 2580	✓						✓			
§ 2600		✓								
§ 2601		✓								
§ 2602		✓								
§ 2603		✓					✓			
§ 2604		✓								
§ 2610	✓									
§ 2620		✓								
§ 2622			✓			✓				
§ 2640		✓					✓			
§ 2641	✓				✓					
§ 2650		✓					✓			
§ 2660	✓				✓					✓

Support — Division 9

§ 3515					✓		✓			
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Child Support — Part 2, Division 9

§ 4005							✓			
§ 4008	✓				✓		✓			

Spousal Support — Part 3, Division 9

§ 4301	✓				✓		✓			
§ 4320							✓			
§ 4321	✓				✓			✓		
§ 4338	✓				✓		✓			

Enforcement of Support Orders — Part 5, Division 9

§ 4620	✓				✓		✓			
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Totals:	39	25	2	1	21	8	120	2	1	1
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EXHIBIT 2

Debt, Liability, and Obligation in Family Code

	Debt	Liability	Obligation
<i>Definitions — Division 1</i>			
§ 150			✓
<i>Marriage — Division 3</i>			
§ 357			✓
<i>Relation of Husband and Wife — Chapter 2, Part 1, Division 4</i>			
§ 720			✓
<i>Damages for Injury to Married Person — Chapter 3, Part 2, Division 4</i>			
§ 782		✓	
<i>Liability of Marital Property — Part 3, Division 4</i>			
§ 902	✓		✓
§ 903	✓		✓
§ 910	✓		
§ 911	✓	✓	
§ 913	✓	✓	
§ 914	✓		
§ 915	✓		✓
§ 916	✓	✓	
§ 920	✓		
§ 930	✓	✓	
§ 931	✓		
§ 1000	✓	✓	
<i>Management and Control of Marital Property — Part 4, Division 4</i>			
§ 1100	✓		✓
§ 1101			✓
<i>Uniform Premarital Agreement Act — Chapter 2, Part 5, Division 4</i>			
§ 1612			✓
§ 1615			✓
<i>Nullity, Dissolution, and Legal Separation — Division 6</i>			
§ 2023			✓
§ 2252	✓	✓	

	Debt	Liability	Obligation
§ 2313			✓
§ 2400			✓
§ 2404			✓
§ 2406			✓

Division of Property — Division 7

§ 2501		✓	
§ 2551		✓	
§ 2552		✓	
§ 2556		✓	
§ 2620	✓		
§ 2621	✓		
§ 2622	✓		
§ 2623	✓		
§ 2624	✓		
§ 2625	✓		
§ 2626	✓		
§ 2627		✓	
§ 2628	✓		✓
§ 2641		✓	

Custody of Children — Division 8

§ 3134		✓	
§ 3190			✓
§ 3402			✓

Support — Division 9

§ 3592			✓
§ 3691			✓
§ 3951			✓
§ 4005			✓
§ 4007			✓
§ 4011	✓		
§ 4013			✓
§ 4051			✓
§ 4059			✓
§ 4102			✓
§ 4104			✓

	Debt	Liability	Obligation
§ 4320			✓
§ 4334			✓
§ 4337			✓
§ 4404			✓
§ 4410			✓
§ 4414			✓
§ 4560			✓
§ 4563			✓
§ 4600			✓
§ 4604			✓
§ 4613			✓
§ 4617		✓	
§ 4701			✓
§ 4729			✓
§ 4830			✓
§ 4851			✓
§ 5206			✓
§ 5236			✓
§ 5238			✓
§ 5241		✓	
§ 5245			✓
§ 5260			✓
§ 5283		✓	✓
<i>Prevention of Domestic Violence — Division 10</i>			
§ 5754			✓
§ 5804		✓	

Minors — Division 11

§ 6711			✓
§ 7050		✓	
§ 7051		✓	
§ 7133		✓	
§ 7135			✓
§ 7141			✓

Parent and Child Relationship — Division 12

§ 7601			✓
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	Debt	Liability	Obligation
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§ 7637			✓
§ 7641			✓
§ 7901		✓	✓
§ 7905			✓

Pilot Projects — Division 20

§ 20000			✓
§ 20006			✓

Totals:	23	22	60
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Fam. Code § 914 (technical amendment). Liability for necessities

914. (a) Notwithstanding Section 913, a married person is personally liable for the following debts incurred by the person's spouse during marriage:

(1) A debt incurred for necessities of life of the person's spouse while the spouses are living together.

(2) Except as provided in Section 4302, a debt incurred for common necessities of life of the person's spouse while the spouses are living separately.

(b) The separate property of a married person may be applied to the satisfaction of a debt for which the person is personally liable pursuant to this section. If separate property is so applied at a time when nonexempt property in the community estate ~~property~~ or separate property of the person's spouse is available but is not applied to the satisfaction of the debt, the married person is entitled to reimbursement to the extent such property was available.

Comment. Subdivision (b) of Section 914 is amended to change "community estate property" to "property in the community estate." This amendment is nonsubstantive, and is for clarity.

Fam. Code § 915 (technical amendment). Liability for support obligation

915. (a) For the purpose of this part, a child or spousal support obligation of a married person that does not arise out of the marriage shall be treated as a debt incurred before marriage, regardless of whether a court order for support is made or modified before or during marriage and regardless of whether any installment payment on the obligation accrues before or during marriage.

(b) If property in the community estate is applied to the satisfaction of a child or spousal support obligation of a married person that does not arise out of the marriage, at a time when nonexempt separate income of the person is available but is not applied to the satisfaction of the obligation, the community estate is entitled to reimbursement from the person in the amount of the separate income, not exceeding the property in the community estate ~~property~~ so applied.

(c) Nothing in this section limits the matters a court may take into consideration in determining or modifying the amount of a support

order, including, but not limited to, the earnings of the spouses of the parties.

Comment. Subdivision (b) of Section 915 is amended to change "community estate property" to "property in the community estate." This amendment is nonsubstantive, and is for clarity.

Fam. Code § 930 (technical amendment). Enforcement of debts

930. Except as otherwise provided by statute, this part governs the liability of separate property and community estate property and the personal liability of a married person for a debt enforced on or after January 1, 1985, regardless of whether the debt was incurred before, on, or after that date.

Comment. Section 930 is amended to add "property" after "separate" to make clear this language does not refer to separate estate property, an undefined term.

Fam. Code § 1000 (technical amendment). Liability for death or injury

1000. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community estate ~~property~~ and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community estate ~~property~~.

(c) This section does not apply to the extent the liability is satisfied out of proceeds of insurance for the liability, whether the proceeds are community estate property or separate property. Notwithstanding Section 920, no right of reimbursement under this section shall be exercised more than seven years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

Comment. Subdivision (b) of Section 1000 is amended to change "community estate property" to "community estate" in the two places where it appears. "Community estate" is a defined term. See Section 901. "Community estate property" is retained in subdivision (c) because there it refers to specific property in the community estate.

Fam. Code § 2640 (technical amendment). Separate property contributions to acquisition of property

2640. (a) "Contributions to the acquisition of the property," as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of property in the community estate ~~property~~ acquired on or after January 1, 1984, by the parties during marriage unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division.

Comment. Subdivision (b) of Section 2640 is amended to change "community estate property" to "property in the community estate." This amendment is nonsubstantive, and is for clarity.

Fam. Code § 4321 (technical amendment). Withholding allowance from separate property of other party

4321. In a judgment of dissolution of marriage or legal separation of the parties, the court may deny support to a party out of the separate property of the other party in any of the following circumstances:

(a) The party has ~~either~~ a separate estate property, or is earning the party's own livelihood, or there is community property or quasi-community property sufficient to give the party proper support.

(b) The custody of the children has been awarded to the other party, who is supporting them.

Comment. Subdivision (a) of Section 4321 is amended to change "separate estate" to "separate property." "Separate estate" is not defined, while "separate property" is defined. See Section 130.