

## Memorandum 93-2

Subject: F-1010 — Preliminary Provisions and Definitions (Definition of “Community Estate”)

At the October 1992 meeting, the Commission approved the proposal to define “community estate” for purposes of the entire Family Code. (See Memorandum 92-77.) The Commission directed the staff to solicit comment on this proposal. The staff distributed a draft to interested persons who have been involved in this type of issue. (A copy of this material is attached as Exhibit 1.)

We have received a suggestion from Dorothy Jonas and Bonnie K. Sloane, Co-Chairs of the Los Angeles Women’s Leadership Network. (See Exhibit 2.) Ms. Jonas and Ms. Sloane are concerned with the fiduciary standards for management and control of community property in Family Code Section 1100(e). They write: “To preserve legislative intent, it is vital that the fiduciary standard be interpreted as applying without question to all community property, wherever situated, including assets and liabilities....” [Emphasis in original.] They suggest altering the proposed definition of “community estate” to refer to assets and liabilities and then replacing “community property” in Section 1100(e) with “community estate.”

The staff would deal with their concern directly by referring to assets and liabilities in Section 1100(e), as follows:

(e) Each spouse shall act with respect to the other spouse in the management and control of the community ~~property~~ assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the ~~property has~~ assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.

**Comment.** Section 1100 continues former Civil Code Section 5125 without change, except that section references have been adjusted. In subdivision (e) references to community “property” have been replaced by more specific references to community “assets and liabilities.” These changes are technical and nonsubstantive. See also Section 700 (personal property does not include a leasehold interest in real property); Prob. Code §§ 3057 (protection of rights of spouse who lacks legal capacity), 5100-5407 (multiple-party account held by financial institution).

It is undesirable to add “assets and liabilities” to the general definition of community estate, because the reference to “liabilities” makes no sense when used in connection with creditor claims against the community. The general definition is simply provided for convenience in drafting so that the phrase “community and quasi-community property” does not have to be repeated. The detail concerning assets and liabilities is relevant to division of property under Family Code Section 2500 *et seq.*, but is dealt with directly in those sections by referring to assets and liabilities where relevant to the provision. This is the same approach suggested with regard to Section 1100(e) as set out above.

If the Commission approves the amendments in Exhibit 1 and the above proposal to deal with the concern expressed by Ms. Jonas and Ms. Sloane, the staff will add this material to the 1993 Family Code bill.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

#F-1010  
Memo 93-2

1/21/93

## EXHIBIT 1

### Community Estate Definitions

Note. The following material was circulated to interested persons concerning the proposed general definition of "community estate":

The Commission staff is circulating the attached draft amendments to the Family Code for review and comment. If you have any comment on the staff draft, please write before the Commission's next meeting which will be held in Los Angeles on January 28-29.

The proposal defines "community estate" for the purpose of the entire Family Code. The purpose of the amendment is to eliminate the confusion and inconvenience that arise from having two differing definitions in Family Code Sections 901 and 2501. The new definition would be located in Division 1 of the Family Code with the rest of the general definitions, including the related terms "community property" and "quasi-community property."

As discussed in Memorandum 92-77 (considered by the Commission at its October 1992 Meeting), one concern with generalizing the definition was the effect it might have on the use of "community estate" in Section 1101(a) (remedies for breach of fiduciary duty between spouses). The conclusion is that extension of the definition would not affect the substantive remedies incorporated by Section 1101(a), and therefore generalization would not cause any harm. This intent is noted in the Comment to draft Section 63 attached.

Our intention is to include these proposed revisions in the 1993 omnibus Family Code bill (in preparation), subject to Commission review of any comments received.

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#### **Fam. Code § 63 (added). "Community estate"**

SEC. \_\_\_\_\_. Section 63 is added to the Family Code, to read:

63. "Community estate" includes both community property and quasi-community property.

**Comment.** Section 63 generalizes definitions in former Civil Code Sections 4800(a) (property division) and 5120.020 (liability for debts). Former Civil Code Section 5120.020 provided a special definition of community property, whereas this section defines community estate. This is not a substantive change. Generalization of the definition of community estate to apply to the entire code is not intended to make any substantive changes. Thus, while generalization of this definition makes it newly applicable to Section 1101 (remedies for breach of fiduciary duty between spouses), no substantive change results since the fiduciary duties between spouses to which the remedies apply are provided in Sections 1100 and 1102.

This section omits the language in former Civil Code Section 4800(a) concerning assets and liabilities as surplus. This is not a substantive change. See, e.g., Sections 2551 (characterization of liabilities), 2552 (valuation date), 2556 (continuing jurisdiction).

This section omits the language found in former Civil Code Section 5120.020(a) stating that community property includes real property situated in another state that would be community property if situated in this state. This language is no longer necessary, since Section 760 provides that community property includes real property, wherever situated, acquired by a married person during marriage while domiciled in this state. See Section 760 Comment. When enacted in 1984 (as former Civil Code Section 5120.020), the inclusion of quasi-community property within the formerly used term “community property” was intended to help implement the policy of Section 912 that quasi-community property is treated as community property rather than separate property for purposes of liability. For background on former Civil Code Section 5120.020, see *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm’n Reports 1 (1984).

See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined).

**Fam. Code § 901 (repealed). “Community estate”**

SEC. \_\_\_\_\_. Section 901 of the Family Code is repealed.

~~901. “Community estate” includes both the community property and the quasi-community property.~~

**Interim Comment.** This section is generalized in proposed Section 63 (“community estate” defined).

**Fam. Code § 2501 (repealed). “Community estate”**

SEC. \_\_\_\_\_. Section 2501 of the Family Code is repealed.

~~2501. “Community estate” includes both the community and quasi-community assets and liabilities of the parties.~~

**Interim Comment.** The part of this section concerning inclusion of community and quasi-community property in the term “community estate” is generalized in proposed Section 63. The part of Section 2501 concerning assets and liabilities is not continued since it is surplus. See, e.g., Sections 2551 (characterization of liabilities), 2552 (valuation date), 2556 (continuing jurisdiction).

Memo 93-2

EXHIBIT 2

Study F-1010

**Dorothy Jonas**  
**2447 Century Hill**  
**Los Angeles, CA 90067**

Law Revision Commission  
 RECEIVED

File: \_\_\_\_\_  
 January 19 Key 1993 \_\_\_\_\_

Mr. Stan Ulrich  
 California Law Revision Commission  
 4000 Middlefield Road #D-2  
 Palo Alto, CA 94303

RE: Your Letter of January 5, 1993: Definition of "Community Estate"

Dear Mr. Ulrich:

After consulting with experts in family law, we are concerned that the proposed new Family Code Section 63 (defining the term "community estate") might not be interpreted in the future as applicable to Family Code Section 1100(e), a most important subsection establishing fiduciary standards for marital management and control over community property.

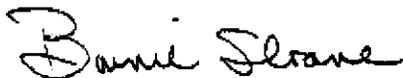
To preserve legislative intent, it is vital that the fiduciary standard be interpreted as applying without question to all community property, wherever situated, including assets and liabilities as included in the term "community estate." The wording of Section 1100(e) should therefore be changed from "community property" to "community estate," ensuring conformity between Section 1100(e) and Section 63 and eliminating any ambiguity. This would be a technical, nonsubstantive change.

Please let us know as soon as this change has been made, and thank you so much for keeping us informed.

Sincerely,



Dorothy Jonas, Co-Chair  
 Los Angeles Women's  
 Leadership Network



Bonnie K. Sloane, Co-Chair  
 Los Angeles Women's  
 Leadership Network

cc: Judge Betty Barry-Deal  
 Senate President Pro Tem David Roberti  
 Marilyn Kizziah, Chair, Coalition for Family Equity  
 Fran Teller and Joyce Morrissey, Steering Committee,  
 Coalition for Family Equity  
 Sheila Kuehl, Esq., Managing Director, California Women's Law Center  
 Joanne Schulman, Esq., San Francisco Women Lawyers Alliance  
 Barbara E. McCallum, Esq., Women, Family and Work Coalition