

Memorandum 80-19

Subject: Study D-312 - Creditors' Remedies (Liability of Property of Married Persons--Draft of Basic Liability Rules)

At the January 1980 meeting, the Commission adopted some general approaches to liability of property of married persons for debts. This memorandum presents a draft statute that embodies the basic decisions made by the Commission and raises some of the subsidiary and related issues that need to be resolved. For the draft statute, see Exhibit 1; for the text of relevant provisions of existing law, see Exhibit 2.

Organization of Statute

The initial question confronting the Commission in drafting the rules governing liability of marital property for debts is whether to locate the rules among the procedural provisions governing enforcement of judgments (Code of Civil Procedure) or the substantive provisions governing rights of spouses (Civil Code). The staff believes that location in the Civil Code is preferable because the rules governing liability for debts may have application to matters not involving enforcement of judgments and because the rules are presently located in the Family Law Act and lawyers expect to find them there.

The staff has drafted the provisions governing liability of marital property for inclusion in the Civil Code but has renumbered and reorganized the provisions. The liability provisions are included in a longer title that also involves such matters as property rights and characterization of property as community and separate, management and control of community and separate property, and marriage settlement contracts. The staff believes we would do a service by breaking the longer title down into chapters of related provisions. The staff sees the organization of the title roughly as follows:

Title 8. Husband and Wife

- Chapter 1. General Provisions (§ 5100)
- Chapter 2. Property Rights (§ 5110)
 - (Characterization of community and separate property)
- Chapter 3. Liability of Marital Property
 - Article 1. General Rules of Liability (§ 5120.010)
 - Article 2. Order of Priority (§ 5120.110)
 - Article 3. Reimbursement (§ 5120.210)
 - Article 4. Transition Provisions (§ 5120.310)
- Chapter 4. Management and Control (§ 5130)
- Chapter 5. Marriage Settlement Contracts (§ 5140)

§ 502.010. Liability of community property

The Commission has decided to retain the basic rule that the community property is subject to all debts of either spouse incurred before or after marriage, reserving the questions (1) whether there should be an order of priority in applying different types of property for different types of debt and (2) whether there should be a right of reimbursement between the spouses at the time of death or dissolution of marriage. The following issues should be considered in connection with the staff draft.

Property under management and control of only one spouse. Where only one spouse manages and controls community property, for example, a business operated by one of the spouses or a bank account in the name of one of the spouses, there is an implication in the preamble to one of the equal management and control bills that the community property is not liable for the debt of the spouse not managing and controlling the property. The Commission determined to make clear that the community property is liable regardless who manages and controls it. The staff believes it would be inadvisable to repeal the preamble since it apparently serves other purposes (e.g., establishing legislative policy for purposes of retroactivity). The staff also believes it would be unwise to attempt to specify that the community property remains liable for debts of both spouses in each statute that gives one spouse management and control. The staff's solution is to put express language in Section 5120.010 that community property is liable regardless of management and control. This would have the effect of a partial implied repeal of the offending preamble.

Exemption of earnings. Despite the general liability of community property for debts of either spouse, the earnings of a nondebtor spouse are immune from liability for prenuptial contracts of the other spouse. The Commission has determined to extend this immunity to prenuptial torts. The question arises whether the immunity remains after the earnings have been converted into some other form of community property, (e.g., a piece of land). If so, does the property remain immune if it has been purchased with other community property as well as with the earnings of the nondebtor spouse? The case law is not clear and appears to imply two different rules.

The staff draft adopts the position that the earnings are immune only so long as they remain identifiable as earnings, i.e., they are in the form of cash or its equivalent or are deposited in a bank account. The staff sees two major justifications for this approach: First, the earnings of the spouses are the main source of community property and immunizing earnings through changes in form will remove substantial amounts of marital property from the reach of creditors; and second, permitting tracing of earnings will impose substantial burdens on the judicial system and the parties. The staff draft applies the same rule to earnings of the nondebtor spouse that applies to any other exempt fund--it is exempt as long as it is still identifiable as earnings, the burden of proof is on the person seeking the exemption, and the lowest intermediate balance principle applies to tracing into bank accounts. By this reasoning, we do not exempt community property income derived from earnings (e.g., interest on earnings in a bank account).

The arguments in favor of exempting earnings through changes in form would be: (1) The policy to protect a person's earnings from pre-nuptial debts of the person's spouse applies equally well to community property acquired solely from those earnings; and (2) the judicial burden of tracing earnings can be curbed by protecting property acquired with earnings so long as it was not commingled by acquisition with funds from several sources. The staff is not persuaded by these arguments because we believe that the policy of the law is to protect something peculiarly personal (earnings of the nondebtor spouse) and not to protect general property of the community into which the earnings have been converted.

§ 5120.030. Liability for necessities

Existing law exempts separate property of a spouse from the debts of the other spouse except that the separate property is liable for debts for the necessities of life contracted by either spouse while living together. Professor Reppy's study indicates a number of problems with existing law which the staff draft attempts to cure.

The staff draft eliminates statutory language implying that one of the spouses must have contracted for the necessities in order to hold

the separate property liable. This language has the effect of immunizing the separate property from debts for necessities such as emergency medical care not contracted by one of the spouses.

Cases under the existing statute interpret "necessaries" in such a broad fashion that the separate property of the nondebtor spouse has been held liable for paying for a maid hired by the debtor spouse since a maid was "necessary" for one in the debtor spouse's economic and social position. The staff draft restricts liability for debts made only for the "common" necessities of life, language that has some useful case gloss in California under the exemption statutes.

Under existing case law, the separate property of the nondebtor spouse may not be applied to the judgment unless the nondebtor spouse is made a party to the action and the judgment runs against him or her. Professor Reppy asks whether this rule should be abrogated as a trap to the creditor who sues only the debtor spouse. The staff believes the rule is a good one and should be continued. The nondebtor spouse, for due process reasons, should have the opportunity to contest the validity of the debt before his or her separate property is applied to its satisfaction. To help eliminate the trap aspect, the staff draft codifies the rule for creditors to plainly see.

§ 5120.060. Liability of property after interspousal transfer

One major problem with trying to specify what property of the spouses is liable for debts is that the spouses may change the character of the property by agreement between themselves. Thus the spouses may convert a piece of community real property to joint tenancy property or to separate property of one spouse. The result of such a transmutation (assuming it was not intended to defraud creditors) is that a creditor, instead of being able to reach all of the community property, will be able to reach only the debtor's interest in the joint tenancy or separate property.

The cases are very liberal in permitting transmutation of property by spouses and require few formalities. A transmutation of real property may even be by oral agreement, despite the fact there is no exception for this in the statute of frauds. Needless to say, the rules relating to transmutation have been roundly criticized by the commentators. See, e.g., 7 B. Witkin, Summary of California Law Community Property § 73 (8th ed. 1974).

One possible resolution of the transmutation problem is to preclude a transfer between spouses from affecting the rights of creditors. Why should differing amounts be available to creditors depending upon inter-spousal manipulations of record title? While such manipulations might be binding between the spouses, should they be allowed to affect the rights of third persons? On the other hand, it may be appropriate to permit the spouses to affect the rights of third parties since a creditor (other than a tort creditor) can look to see what property is available before deciding to extend credit.

The staff believes that this dilemma must ultimately be resolved on policy grounds--what is the policy behind permitting a creditor to reach community property, and does this policy preclude voluntary diminution of the community fund by the spouses? One policy is that a debt of a married person is presumptively for the benefit of the community, for which community funds should be liable. This policy would argue against permitting a transmutation to affect creditors.

A conflicting policy is that a creditor is permitted to reach community property only as an administrative convenience to avoid a partition during marriage. Under this policy, the creditor's principal resort is to the property of the debtor; if the creditor does reach community property, the debtor should reimburse the other spouse for the other spouse's interest in the community that was taken. This policy would argue for permitting a transmutation to affect creditors since the spouses will have thereby voluntarily partitioned their property.

A third policy is to permit a creditor to reach assets over which the debtor has management and control since this would be merely compelling what the debtor could do voluntarily. From this policy, arguments can be made both ways. One argument is that since the debtor no longer has management and control, the creditor should not be able to reach the property. Conversely, if the debt was incurred at the time the debtor had management and control, the creditor should be able to reach the property.

A fourth policy relates to extension of credit. Making community property liable encourages a creditor to extend credit to a married person. This is particularly important where one spouse (e.g., a housewife) is not working and would be unable to obtain if community property

were not liable. Permitting transmutation to affect creditors' rights could have the effect of impairing the credit for married persons, or at least precluding a spouse alone from obtaining credit without the signature of the other spouse.

An intermediate solution to the transmutation problem is suggested by Professor Reppy in the sole trader study. His proposal is to permit the transmutation to affect creditors, but to require that the transmutation be accompanied by formalities, such as a written document recorded with the county recorder. This suggestion has a number of virtues. It would eliminate fraud on creditors by spouses suddenly claiming at the time of execution that they had an oral agreement transmuting the character of the property. It would give constructive, and perhaps actual, notice to creditors who extend credit that some property may not be available to satisfy a judgment. And it would substantially reduce litigation over the character of assets sought to be applied to satisfaction of a judgment.

If the Commission's decision on the policy issues is that a transmutation of property should be permitted to affect rights of creditors, then the staff believes that something along the lines suggested by Professor Reppy is necessary. The staff has drafted language in Section 5120.060.

Joint Tenancy Property Acquired With Community Funds

A matter related to but distinct from transmutation of community property into joint tenancy is whether property, the deed to which indicates it is held in joint tenancy, is in fact joint tenancy or is really community property. This problem arises frequently where community funds are used to acquire property by a deed made out to the spouses as "joint tenants." Whether the property is in fact joint tenancy depends upon the intention of the parties.

Professor Reppy suggests a number of approaches that could be taken to supply more certainty to the law: (1) Conclusive presumption that property acquired during marriage with community funds is community unless the instrument contains a statement signed by both spouses that the property is taken as joint tenancy. (2) Recognition of a new category of property--community property with right of survivorship--and

creation of a presumption that property taken as joint tenants is community with right of survivorship unless negated on the face of the title instrument. (3) Recognition of community property with right of survivorship, with no requirements as to the wording of the deed.

The rationale of the last two suggestions is the theory that people take property in joint tenancy primarily for the survivorship benefits; creation of a survivorship right in community property would decrease use of the joint tenancy among spouses. The staff believes there is substantial merit to each of the suggestions. The Commission should decide which approach, if any, it wishes to take.

§ 5120.070. Liability of property after division

Suppose one spouse incurs a debt during marriage but, before the creditor seeks to collect the debt, the spouses are divorced and the property divided. Before the divorce, the creditor could reach the separate property of the debtor spouse and all the community property. After the divorce, there is no community property for the creditor to reach, only separate property. Can the creditor go after property in the hands of the nondebtor spouse on the ground that it was formerly community property and, therefore, remains liable for the debts?

Under existing law, the rights of creditors are not affected by division of community assets and obligations. The cases have held that a creditor can reach former community property awarded to the nondebtor spouse even though the division of property by the court or by agreement of the spouses may require that the debtor spouse pay the debt. In such a situation, if the property awarded to the nondebtor spouse is seized to satisfy the debt, the nondebtor spouse has a cause of action against the debtor spouse for reimbursement.

Professor Reppy has a number of suggestions for legislative clarification of the law relating to the action by the judgment creditor (making nondebtor spouse a party, permitting nondebtor spouse to assert defenses of debtor spouse, specifying what property is subject to execution), as well as to the action between the former spouses for reimbursement (availability of interest, attorney's fees, and litigation expenses for the nondebtor spouse). However, after considering the improvement of the existing system proposed by Professor Reppy, the

staff is of the opinion that the whole scheme is wrong and should be changed.

Why set off a chain reaction, with the creditor going against one former spouse and then that former spouse going against the other? It is a system that breeds litigation. We permit the creditor to reach the community property during marriage because, under one view of the relevant policy, any other system of partitioning the property during an ongoing marriage is disruptive and impractical to administer; after the creditor reaches community assets, the spouses are left to readjust their rights as between each other. But where there has already been a divorce and a partition of community property, it makes sense to permit the creditor to go after only that property that belongs to the debtor. If the spouses have made an equal division of the property, that should be sufficient. If the spouses have made an unequal division to the detriment of the creditor, it is a fraudulent conveyance for which remedies are available.

This is also a result one can reach by taking the view that liability of property for debts should follow management and control. Once the property has been divided, the creditor should reach only property under the debtor's management and control.

The arguments against such a scheme that occur to the staff are that a creditor's vested right to reach community property is affected, that credit will be more difficult for married persons to obtain, and that an interspousal reimbursement action would still be necessary if the debtor spouse is not the person to whom payment was assigned on divorce. These objections do not appear serious to the staff. The creditor's right to reach community property is not really vested since the property can be disposed of by the spouses during marriage to the creditor's detriment; and, in any case, the rule that a creditor can reach only the property of the debtor can be made prospective, thereby divesting only future creditors. The argument that credit will be more difficult the staff believes is false; the availability of former community property after divorce is not one of the factors ordinarily looked to in the extension of credit. An interspousal reimbursement suit against the person who was assigned the debt will be relatively rare

since ordinarily the debtor is assigned the debt; in cases where the person who was assigned the debt fails to pay and the creditor goes after property of the other spouse, a reimbursement suit appears appropriate.

The staff has drafted Section 5120.070 to implement its suggestions.

§ 5120.080. Liability of property after judgment of nullity

Professor Reppy points out that the law relating to creditors' rights against property of former "spouses" whose "marriage" has been annulled as void or voidable is not clear. He recommends that the rights of creditors not be affected by the fact that the marriage was invalid. The parties held themselves out as being married and third persons may have relied to their detriment. Professor Reppy believes that fundamental community property principles demand that there be a community of property formed between the parties even though the marriage is ultimately held invalid. The staff has drafted Section 5120.080 in an attempt to implement Professor Reppy's suggestions.

Marvin Relationships

Professor Reppy recommends enactment of legislation defining creditors' rights in property acquired by parties in a "Marvin" relationship--individuals cohabiting and sharing property pursuant to an express or implied contract. The staff does not believe this would be a profitable undertaking. Such a relationship is difficult to define; the Legislature is currently working, without success, at trying to define it.

Until such a time as there is further useful development in the law, the staff recommends that we do not attempt to prescribe rules. Thus, individuals living together would be treated as individuals for purposes of creditors' remedies, and a creditor would be able to reach only the property of the debtor or the debtor's interest in jointly-held property. Presumably, if there is in fact an express or implied contract, a creditor of one of the parties would be able to reach that party's contract right to the same extent as any other contract right.

Respectfully submitted,

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EXHIBIT 1

CHAPTER 3. LIABILITY OF MARITAL PROPERTY

Article 1. General Rules of Liability§ 5120.010. Liability of community property

5120.010. (a) Except as otherwise expressly provided by statute, the property of the community is liable for the debts of either spouse, whether based on contract, tort, or otherwise, incurred before or after marriage, regardless which spouse has the management and control of the property.

(b) The earnings of a spouse after marriage are exempt from liability for the debts of the other spouse, whether based on contract, tort, or otherwise, incurred before marriage. The earnings remain exempt after they have been paid to the extent they can be traced through deposit accounts and in the form of cash or an equivalent of cash, in the manner prescribed by statute for tracing funds exempt from enforcement of a money judgment.

Comment. Subdivision (a) of Section 5120.010 continues the substance of former Section 5116 (contracts during marriage) and the implication of former Section 5122(b) (torts), and makes clear that the community property (other than earnings of the nondebtor spouse) is liable for the prenuptial contracts of the spouses. Subdivision (a) applies regardless whether the debt was incurred prior to, on, or after January 1, 1975.

The introductory and concluding clauses of subdivision (a) are intended to negate the implication of language found in 1974 Cal. Stats. ch. 1206, § 1, p. 2609, that community property is liable only for the debts of the spouse having management and control. The introductory and concluding clauses make clear that the community property is liable for all debts of either spouse absent an express statutory exemption. Thus community property under the management and control of one spouse pursuant to Section 5125(d) (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) remains liable for the debts of the other spouse. For an express statutory exemption from liability of community property, see subdivision (b). For an exemption from liability of former community property after division, see Section 5120.070.

The first sentence of subdivision (b) continues the substance of a portion of former Section 5120 and extends it to include all debts, not just those based on contract. The second sentence codifies the rule

that, for purposes of the exemption, earnings may not be traced through changes in form. See, e.g., Pfunder v. Goodwin, 83 Cal. App. 551, 257 P. 119 (1927). Earnings may be traced for the purpose of the exemption to the same extent as other funds exempt from enforcement of judgments. See Code Civ. Proc. § 703.030 (tracing).

Note. Liability of community property for debts incurred after separation, whether there should be an order of priority of application of property, and whether there should be a right of reimbursement, are matters reserved for later determination.

9949

§ 5120.020. Liability of separate property

5120.020. (a) The separate property of a spouse is liable for the debts of the spouse, whether based on contract, tort, or otherwise, incurred before or after marriage.

(b) Except as otherwise expressly provided by statute, the separate property of a spouse is exempt from liability for the debts of the other spouse, whether based on contract, tort, or otherwise, incurred before or after marriage.

Comment. Subdivision (a) of Section 5120.020 continues the substance of a portion of former Section 5121 (contracts) and the implication of former Section 5122(b) (torts).

Subdivision (b) continues the substance of former Section 5120 (prenuptial contracts), a portion of former Section 5121 (contracts after marriage), and the implication of former Section 5122(b) (torts). For an exception to the rule of subdivision (b), see Section 5120.030 (necessaries of life).

08352

§ 5120.030. Liability for necessities

5120.030. (a) Subject to subdivision (b), the separate property of a spouse is liable for the debts of the other spouse incurred before or after marriage for the common necessities of life of the other spouse unless the spouses were living separate and apart at the time the debts were incurred.

(b) The separate property of a spouse is not subject to enforcement of a money judgment for the debts of the other spouse pursuant to subdivision (a) unless the spouse is a judgment debtor under the judgment.

Comment. Subdivision (a) of Section 5120.030 continues the substance of a portion of former Section 5121, but eliminates the implication that the necessities must have been contracted for by either spouse. See, e.g., *Credit Bureau of San Diego v. Johnson*, 61 Cal. App.2d Supp. 834, 142 P.2d 963 (1943) (medical care not contracted by either spouse). Subdivision (a) also eliminates the "station in life" test of cases such as *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses), in determining what is a necessary of life; the separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse. Cf. Code Civ. Proc. § 723.051 (common necessities exception to wage exemption).

Subdivision (b) codifies the rule that the separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse has been made a party and is personally liable on the judgment. See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Santa Monica Bay Dist. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

Note. Liability for debts incurred after separation, whether there should be an order of priority of application of property, and whether there should be a right of reimbursement, are matters reserved for later determination.

968/667

§ 5120.060. Liability of property after interspousal transfer

5120.060. A transfer of community or separate property between the spouses:

(a) Does not affect the character or ownership of the property for purposes of the liability of the property for a debt of either spouse incurred before the transfer.

(b) Does not affect the character or ownership of the property for purposes of the liability of the property for a debt of either spouse incurred after the transfer unless both of the following conditions are satisfied:

(1) The transfer is by a written instrument executed and acknowledged or proved by both spouses in the same manner as a grant of real property.

(2) The transfer is recorded in the office of the recorder of the county in which any real property affected by the transfer is located

and of the county in which the spouses reside if any other property is affected by the transfer.

Comment. Section 5120.060 is comparable to Sections 5114-5115 (inventory of separate property) and Sections 5134-5136 (marriage settlement contracts). For presumptions as to the community or separate character of property, title to which is taken in joint tenancy, see Section ____.

968/697

§ 5120.070. Liability of property after division

5120.070. (a) After division of community and quasi-community property pursuant to Section 4800:

(1) The property owned by a spouse and the property received by the spouse in the division are liable for a debt of the spouse incurred before or after marriage, whether or not the debt was assigned for payment by the other spouse in the division.

(2) Except as otherwise provided in paragraph (3), the property owned by a spouse and the property received by the spouse in the division are exempt from liability for the debts of the other spouse incurred before or after marriage, whether or not assigned for payment by the spouse in the division of the property.

(3) The property owned by a spouse and the property received by the spouse in the division are liable for the debts of the other spouse to the same extent as provided in Section 5120.030 for the separate property of a spouse.

(b) If the property owned by a spouse or the property received by the spouse in a division of community and quasi-community property pursuant to Section 4800 is applied to the satisfaction of a money judgment for a debt of the spouse that is assigned for payment by the other spouse in the division, the spouse has a right of reimbursement from the other spouse for the market value of the property, with interest at the legal rate, and may recover reasonable attorney's fees incurred in enforcing the right of reimbursement.

Comment. Section 5120.070 prescribes rules of liability of community and quasi-community property and separate or formerly separate

property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a)(1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. Former law on this point was not clear. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

Subdivision (a)(2) reverses the case law rule that a creditor may seek enforcement of a money judgment against the property of a nondebtor spouse after dissolution of the marriage. See, e.g., *Bank of America N.T. & S.A. v. Mantz*, 4 Cal.2d 322, 49 P.2d 279 (1935). The community property is liable for the debts of either spouse only during marriage. After a property division under the Family Law Act, however, the creditor must look to the property of the debtor, including former community property assigned to the debtor in the division. If the property division called for the nondebtor spouse to pay the debt and the nondebtor spouse fails to pay, the debtor spouse will have a right of reimbursement pursuant to subdivision (b).

Subdivision (a)(3) is an exception to the rule of subdivision (a)(2). It preserves the liability of the nondebtor spouse for necessities of the debtor spouse. Under Section 5120.030, such liability does not exist if the debt was incurred while the spouses were living separate and apart.

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. Former law on this point was not clear.

968/683

§ 5120.080. Liability of property after judgment of nullity

5120.080. After a judgment of nullity of a marriage, whether void or voidable, the property that would have been community property and the property that would have been the separate property of the parties had the marriage been valid is liable for the debts of the parties to the same extent as if the marriage were valid and the judgment of nullity were a judgment of dissolution, regardless whether the parties are declared to have the status of putative spouses and regardless whether the property is quasi-marital property.

Comment. Section 5120.080 is consistent with Section 4451 (judgment of nullity conclusive only as to parties to the proceeding). Former law was not clear.

EXHIBIT 2

Civil Code § 5116 (repealed)

~~5116. The property of the community is liable for the contracts of either spouse which are made after marriage and prior to or on or after January 1, 1975.~~

Comment. The substance of former Section 5116 is continued in Section 5120.010(a).

992/943 N/Z

Civil Code § 5120 (repealed)

~~5120. Neither the separate property of a spouse nor the earnings of the spouse after marriage is liable for the debts of the other spouse contracted before the marriage.~~

Comment. The portion of former Section 5120 exempting separate property of a spouse from liability for the debts of the other spouse contracted before marriage is continued in Section 5120.020(b). The portion exempting earnings after marriage is continued in Section 5120.010(b).

17022 N/Z

Civil Code § 5121 (repealed)

~~5121. The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse, but is not liable for the debts of the other spouse contracted after marriage; provided, that the separate property of the spouse is liable for the payment of debts contracted by either spouse for the necessities of life pursuant to Section 5132.~~

Comment. The substance of former Section 5121 is continued in Section 5120.020.

Civil Code § 5123 (repealed)

5123. (a) The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed of trust or other hypothecation of the community property which is executed prior to January 1, 1975, unless the wife expressly assents in writing to the liability of her separate property for such debt or obligation.

(b) The separate property of a spouse is not liable for any debt or obligation secured by a mortgage, deed of trust, or other hypothecation of the community property which is executed on or after January 1, 1975, unless the spouse expressly assents in writing to the liability of the separate property for the debt or obligation.

Comment. Section 5123 is not continued. It is a form of anti-deficiency judgment that protects some but not all assets of a spouse for obligations secured by any community property, real or personal, residential or otherwise. It is thus inconsistent with general rules governing deficiency judgments.

Civil Code § 5132 (repealed)

5132. A spouse must support the other spouse while they are living together out of the separate property of the spouse when there is no community property or quasi/community property.

For the purposes of this section, the terms "quasi/community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.

Comment. The portion of former Section 5132 that subjected the separate property of a spouse to the support of the other spouse while living together is continued in Section 5120.030. The portion that prescribed an order of priority for property liable for support is
