

Memorandum 81-7

Subject: Study F-600 - Community Property (Right to Disclosure of Assets and Liabilities)

At the November 1980 meeting the Commission approved the concept that a spouse should be entitled to obtain from the other spouse a statement of the nature and extent of community property under the management and control of the other spouse and of the debts incurred by the other spouse for which community property is liable. A draft of provisions to accomplish this is attached as Exhibit 1. Also included in the draft are a few provisions from existing law that the Commission has not yet considered; these provisions are included only as an example of the numbering and context in which the disclosure right will appear.

How extensive is the disclosure right? Certainly a spouse is entitled to know the general character of the community property managed and controlled by the other spouse and a rough estimate of its value. Suppose the spouse inquires concerning the community property but does not not believe the information given by the other spouse is adequate? How detailed should the accounting be? If the community property is a separately-managed business, should the business manager be required to give inventories and appraisals of individual items of property or list specific accounts and debts?

At the time the Commission approved the disclosure right, the Commission discussed but made no decisions concerning the extent of the right and enforcement of the right. It was assumed that if the disclosure was not made upon request or was not adequate in the opinion of the spouse making the request, the spouses would either work out their problems or see each other in divorce court. It was also assumed that an enforcement remedy could, upon request, be fashioned by the court. See, e.g., *Wilcox v. Wilcox*, 21 Cal. App.3d 457, 98 Cal. Rptr. 319 (1971) (spouse may maintain action against other spouse to enforce rights despite absence of statutory authority to sue); Civil Code § 3523 ("For every wrong there is a remedy").

As drafted by the staff, the disclosure right takes on a somewhat formal character, anticipating court enforcement of the right. The staff

draft assumes that the basic purpose of the disclosure right is information only; if the spouses contemplate mismanagement litigation or proceedings to divide the community property, interrogatories and other litigation-oriented discovery remedies will be available. Consequently the staff draft provides that if a spouse gives the other spouse a general statement of assets and liabilities in the form prescribed under the family law rules for current income, expense, and property declarations, the disclosure duty is satisfied. A copy of these forms is attached as Exhibit 2. However, a spouse may need more detailed information than would be provided in the forms, e.g., for estate planning purposes. In this case the spouse would be able to obtain a court order upon a showing of good cause for the additional information.

The staff believes that this draft would provide a reasonable and workable means of implementing the disclosure right.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

MANAGEMENT AND CONTROL OF COMMUNITY PROPERTY

Right to Disclosure of Property and Debts

The management and control of the community property by either spouse¹ may cause the other spouse to be ignorant of the nature and extent of the community assets and liabilities. A corollary of the right of either spouse to manage and control the community property is the right of each spouse to be informed of the community property under the control of the other spouse and the debts incurred by the other spouse for which the community property is liable.² The proposed law states the right of a spouse to obtain disclosure from the other spouse of the community property and debts. To encourage full and open disclosure by a spouse without fear that any statement made will be used as an admission against the spouse in a subsequent mismanagement or dissolution proceeding, the proposed law makes the disclosure inadmissible as evidence for any purpose other than to determine whether the spouse has complied with the duty to disclose.³

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1. Civil Code §§ 5125 (community personal property) and 5127 (community real property).
 2. The right to manage and control community property entails a fiduciary duty to disclose the community property to the other spouse. The duty to disclose is recognized in cases relating to property division by the spouses. See, e.g., *Vai v. Bank of America*, 56 Cal.2d 329, 15 Cal. Rptr. 71, 364 P.2d 247 (1961); *Jorgensen v. Jorgensen*, 32 Cal.2d 13, 193 P.2d 728 (1948). See also discussion in Bruch, *Management Powers and Duties Under California's Community Property Laws*, at pp. 11-14 (1980). This is a study prepared for the California Law Revision Commission, which is hereinafter cited as "Study." [Citations to the Study in printed form will be substituted when available.]
 3. See also Evidence Code Section 980 (privilege for confidential marital communications).

Civil Code §§ 5125.110- (added)

SEC. ____ Chapter 4 (commencing with Section 5125.110) is added to Title 8 of Part 5 of Division 4 of the Civil Code to read:

CHAPTER 4. MANAGEMENT AND CONTROL

Article 1. General Provisions

§ 5125.110. Either spouse has management and control

5125.110. (a) Except as otherwise provided by statute, either spouse has the management and control of the community property.

(b) This section applies to community real property and community personal property, whether acquired prior to or on or after January 1, 1975.

Comment. Section 5125.110 continues the substance of the first portions of former Sections 5125(a) (personal property) and 5127 (real property). For exceptions to or limitations on the rule of Section 5125.110, see Sections [to be supplied].

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§ 5125.120. Duty of good faith

5125.120. (a) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property.

(b) The duty of good faith includes, but is not limited to, all of the following:

Comment. Subdivision (a) of Section 5125.120 continues the substance of former Section 5125(e).

Note. The remainder of this section has not yet been drafted.

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§ 5125.130. Duty to disclose

5125.130. (a) A spouse shall, upon request of and to the extent requested by the other spouse, make a full and complete inventory of and disclose to the other spouse all of the following:

(1) The nature and extent of the community property under the management and control of the spouse.

(2) The debts incurred by the spouse for which the community property is liable.

(b) Except upon a showing of good cause for other, additional, or more detailed information, an inventory and disclosure in the form prescribed by rule of the Judicial Council for a current income and expense declaration and a current property declaration satisfies the requirements of this section.

(c) The requirements of this section may be enforced by petition in the superior court of the county in which the respondent resides.

(d) An inventory and disclosure made pursuant to this section is inadmissible as evidence of any matter other than satisfaction of or failure to satisfy the requirements of this section.

Comment. Section 5125.130 is new. It is consistent with the fiduciary duty of disclosure by a spouse managing and controlling community property during property division negotiations. See, e.g., *Vai v. Bank of America*, 56 Cal.2d 329, 15 Cal. Rptr. 71, 364 P.2d 247 (1961). The inventory required in subdivision (a) must contain such detail and valuation estimates as may be requested by the spouse, provided that an inventory in the form prescribed by the Judicial Council is sufficient. See Cal. Rules of Court 1285.50 (income and expense declaration) and 1285.55 (property declaration). A spouse may obtain a court order for other or additional information upon a showing of good cause for the information. The disclosure of community property and debts may not be used as an admission of the spouse for purposes of characterizing the property or for any other purpose except compliance or noncompliance with the requirements of this section. See subdivision (d).

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Article 2. Disposition of Community Property

§ 5125.210. Power of disposition of personal property

5125.210. (a) Subject to the limitations provided in this section, a spouse has absolute power of disposition, other than testamentary, of community personal property of which the spouse has management and control, and may convey the property without the consent of the other spouse.

Comment. Subdivision (a) of Section 5125.210 continues the substance of the last portion of former Section 5125(a). See Sections 5107 (power of wife to convey her separate property without consent of husband) and 5108 (power of husband to convey his separate property without consent of wife). For the testamentary power of disposition of community personal property, see Probate Code Section 21.

Note. The remainder of this section has not yet been drafted.

Civil Code § 5125 (repealed)

SEC. ____ . Section 5125 of the Civil Code is repealed.

5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 5113.5 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

(c) A spouse may not sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property.

Comment. The substance of subdivision (a) of former Section 5125 is continued in Sections 5125.110 (either spouse has management and control) and 5125.210 (power of disposition of personal property).

The substance of subdivision (e) is continued in Section 5125.120(a) (duty of good faith).

Note. The remaining provisions of Section 5125 have not yet been disposed of.

EXHIBIT 2

Rule 1285.50

CALIFORNIA RULES OF COURT

Title 4

Rule 1285.50. Form of Income and Expense Declaration

The INCOME AND EXPENSE DECLARATION (FAMILY LAW) shall be in the following form:

[FACE SIDE OF FORM]

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (NAME): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
MARRIAGE OF PETITIONER: RESPONDENT:		
INCOME AND EXPENSE DECLARATION <input type="checkbox"/> PETITIONER <input type="checkbox"/> RESPONDENT		CASE NUMBER:

GROSS MONTHLY INCOME		Petitioner	Respondent	DEDUCTIONS FROM GROSS INCOME		Petitioner	Respondent
1. Salary & wages (include commissions, bonuses and overtime) _____	\$ _____	\$ _____	12. State income taxes _____	\$ _____	\$ _____		
2. Pensions & retirement _____	\$ _____	\$ _____	13. Federal income taxes _____	\$ _____	\$ _____		
3. Social Security _____	\$ _____	\$ _____	14. Social Security _____	\$ _____	\$ _____		
4. Disability and unemployment benefits _____	\$ _____	\$ _____	15. State disability insurance _____	\$ _____	\$ _____		
5. Public assistance (Welfare, AFDC payments, etc.) _____	\$ _____	\$ _____	16. Medical and other insurance _____	\$ _____	\$ _____		
6. Child/spousal support _____	\$ _____	\$ _____	17. Union and other dues _____	\$ _____	\$ _____		
7. Dividends and interest _____	\$ _____	\$ _____	18. Retirement and pension fund _____	\$ _____	\$ _____		
8. Rents (gross receipts, less cash expenses; attach schedule) _____	\$ _____	\$ _____	19. Savings plan _____	\$ _____	\$ _____		
9. Contributions to household expenses from other sources _____	\$ _____	\$ _____	20. Other deductions (Specify) _____	\$ _____	\$ _____		
10. Income from all other sources (gross receipts, less cash expenses; attach schedule) _____	\$ _____	\$ _____	21. TOTAL DEDUCTIONS _____	\$ _____	\$ _____		
11. TOTAL GROSS MONTHLY INCOME _____	\$ _____	\$ _____	21. TOTAL DEDUCTIONS _____	\$ _____	\$ _____		
			22. NET MONTHLY INCOME (line 11 minus line 21) _____	\$ _____	\$ _____		

23. Withholding information a. Number of exemptions claimed: b. Marital status:

24. Certain property under the control of the parties

	Petitioner	Respondent		Petitioner	Respondent
a. Cash & checking accounts	\$ _____	\$ _____	c. Stocks, bonds, life insurance, other liquid assets	\$ _____	\$ _____
b. Savings & credit union accounts	\$ _____	\$ _____	d. TOTAL (24a,b,c)	\$ _____	\$ _____

The declaration under penalty of perjury must be signed in California or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required.

Form Adopted by Rule 1285.56
Judicial Council of California
Revised Effective January 1, 1980

INCOME & EXPENSE DECLARATION (FAMILY LAW)

LC7504

[REVERSE SIDE OF FORM]

25. List the name, age, and relationship of all members of the household whose expenses are included below

MONTHLY EXPENSES		Petitioner	Respondent			Petitioner	Respondent
26. Residence payments				34. Child/spousal support (prior marriage)			
a. Rent or mortgage	\$ _____	\$ _____			\$ _____	\$ _____	
b. Taxes & insurance	\$ _____	\$ _____		35. School	\$ _____	\$ _____	
c. Maintenance	\$ _____	\$ _____		36. Entertainment	\$ _____	\$ _____	
27. Food & household supplies	\$ _____	\$ _____		37. Incidentals	\$ _____	\$ _____	
28. Utilities & telephone	\$ _____	\$ _____		38. Transportation & auto expenses (insurance, gas, oil, repair)	\$ _____	\$ _____	
29. Laundry & cleaning	\$ _____	\$ _____		39. Installment payments (insert total and itemize below at 42)	\$ _____	\$ _____	
30. Clothing	\$ _____	\$ _____					
31. Medical & dental	\$ _____	\$ _____		40. Other: (specify) _____	\$ _____	\$ _____	
32. Insurance (life, health, accident, etc.)	\$ _____	\$ _____					
33. Child care	\$ _____	\$ _____		41. TOTAL MONTHLY EXPENSES	\$ _____	\$ _____	

42. ITEMIZATION OF INSTALLMENT PAYMENTS OR OTHER DEBTS ☐ Continued on attachment 42.

CREDITOR'S NAME	FOR	MONTHLY PAYMENT	BALANCE
		\$	\$

43. ☐ ATTORNEY FEES HAVE BEEN REQUESTED.

a. I have paid my attorney for fees and costs the sum of \$ _____ b. My arrangement for attorney fees and costs is:

(Print or type name of Attorney)

(Signature of Attorney)

I declare under penalty of perjury that the foregoing, including any attachment, is true and correct and that this declaration is executed at (place): _____, California, on (date): _____

(Print or type name of Declarant)

(Signature of Declarant)

[C751]

(Adopted, effective Jan. 1, 1972; amended, effective Jan. 1, 1980.)

Rule 1285.55**CALIFORNIA RULES OF COURT****Title 4****Rule 1285.55. Form of Property Declaration**

The **PROPERTY DECLARATION (FAMILY LAW)** shall be in the following form:

[FACE SIDE OF FORM]

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): ATTORNEY FOR (NAME): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: MARRIAGE OF PETITIONER: RESPONDENT:	TELEPHONE NO.:	FOR COURT USE ONLY
<input type="checkbox"/> PETITIONER'S <input type="checkbox"/> RESPONDENT'S <input type="checkbox"/> COMMUNITY & QUASI-COMMUNITY PROPERTY DECLARATION <input type="checkbox"/> SEPARATE PROPERTY DECLARATION		CASE NUMBER:

INSTRUCTIONS

When this form is attached to Petition or Response, values and your proposal regarding division need not be completed. Do not list community, including quasi-community, property with separate property on the same form. Quasi-community property must be so identified. For additional space, use the form "Continuation of Property Declaration."

ITEM NO.	BRIEF DESCRIPTION	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION AWARD TO	
					PETITIONER	RESPONDENT
1.	REAL ESTATE	\$	\$	\$	\$	\$
2.	HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES					
3.	JEWELRY, ANTIQUES, ART, COIN COLLECTIONS, etc.					
4.	VEHICLES, BOATS, TRAILERS					
5.	SAVINGS, CHECKING, CREDIT UNION, CASH					

(Continued on reverse)

The declaration under penalty of perjury must be signed in California or in a state that authorizes use of a declaration in place of an affidavit; otherwise an affidavit is required.

Form Adopted by Rule 1285.55
Judicial Council of California
Effective January 1, 1990

**PROPERTY DECLARATION
(FAMILY LAW)**

[C752]

[REVERSE SIDE OF FORM]

ITEM NO	BRIEF DESCRIPTION	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION AWARD TO	
		\$	\$	\$	PETITIONER	RESPONDENT
6.	LIFE INSURANCE (CASH VALUE)					
7.	EQUIPMENT, MACHINERY, LIVESTOCK					
8.	STOCKS, BONDS, SECURED NOTES					
9.	RETIREMENT, PENSION, PROFIT-SHARING, ANNUITIES					
10.	ACCOUNTS RECEIVABLE, UNSECURED NOTES, TAX REFUNDS					
11.	PARTNERSHIPS, OTHER BUSINESS INTERESTS					
12.	OTHER ASSETS AND DEBTS					
13.	TOTAL FROM CONTINUATION SHEET					
14.	TOTALS					

15. ☐ A Continuation of Properly Declaration is attached and incorporated by reference.

(Type or print name of attorney)

(Signature of attorney)

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is a true and correct listing of assets and obligations and that the amounts shown are correct; and that this declaration was executed on (date): _____ at (place): _____, California.

(Type or print name)

(Signature)

[C753]

(Adopted, effective Jan. 1, 1980.)