

## Memorandum 81-18

Subject: Study F-600 - Community Property (Problems in Management and Control)

Attached to this memorandum is a draft of community property management and control provisions in conformity with the Commission's decisions at the March 1981 meeting. This memorandum presents additional material concerning management and control problems dealt with in the draft, as well as other problems raised in Professor Bruch's background study on management and control. Included are views expressed by the Standing Committee on Property of the Family Law Section of the State Bar. See Exhibits 1 (North) and 2 (South).

Duty of Good Faith

The Commission decided to note in the Comment to the section prescribing a duty of good faith between spouses in managing and controlling community property that the duty preserves earlier cases establishing a fiduciary obligation not to act fraudulently or take unfair advantage of the other. The staff has done this in the Comment to Section 5125.120, also pointing out that the fiduciary duty does not impose the prudent person investment standard applicable to trustees. See *Williams v. Williams*, 14 Cal. App.3d 560, 92 Cal. Rptr. 385 (1971).

Professor Reppy, in his book *Community Property in California* (1980) wonders whether there is any vitality at all in the older case law likening the husband (then the only manager) to a trustee, in light of codification of the duty of good faith and the observations in Williams that a manager spouse certainly does not have to make prudent investments of community funds or keep detailed records and file accountings. "Would the change to equal management itself destroy the trustee analogy because the 'beneficiary' in the older cases, the wife, can now take care of herself when it comes to protecting community property?"

One major problem with the duty of good faith is the problem of specifying remedies for violation of the duty. Professor Bruch has suggested that we defer discussion of interspousal mismanagement litigation until we are considering division of property at dissolution. The staff believes this approach makes sense.

### Duty to Inform

The staff has revised the duty of a spouse to inform the other spouse of community property and debts in accordance with the Commission's decisions at the March 1981 meeting. As drafted, the duty is to make available to the other spouse, upon request, sufficient information to enable the other spouse to determine the nature and extent of the community property and the debts incurred during marriage. If the information is given in response to a written request, the information is inadmissible for any purpose. The spouses may invoke the jurisdiction of the family conciliation court to resolve any dispute concerning the duty to inform. The Comment points out that the family conciliation court remedy is not exclusive.

At the March meeting the Commission felt that a spouse should not be required to divulge business debts. We have not included an express provision on this point since as drafted the duty is limited to divulging information that will enable the other spouse to determine the nature and extent of the debts; thus the duty of the spouse in the case of a business would be limited to allowing the other spouse to inspect the books.

Also at the March meeting the Commission assumed that in family conciliation court all the parties have to do is listen, and there are no other obligations involved. An examination of the Family Conciliation Court Law, however, reveals that the family conciliation court may "make such orders in respect to the conduct of the spouses or parents and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than 30 days from the hearing of the petition." Code Civ. Proc. § 1769. A copy of the complete Family Conciliation Court Law, Code Civ. Proc. §§ 1730-1772, is attached to this memorandum as Exhibit 3.

The Commission should be aware that beginning this year, every county must provide mandatory mediation services in child custody and visitation disputes. See Civil Code Section 4607, a copy of which is attached as Exhibit 4. Mediation services may be better for our purposes than conciliation court because: (1) Every county must provide the services. (2) The proceedings are more informal than conciliation

court. (3) There are no orders made in mediation proceedings. The mediation provisions would, however, require substantial adaptation in order to be usable for our purposes.

Both the North and South State Bar Committees oppose creation of statutory remedies for enforcement of the disclosure right.

#### Sale or Disposition of Household Goods

Civil Code Section 5125(c) precludes the sale or other disposition of household goods by a spouse without the written consent of the other spouse:

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 property, without the written consent of the other spouse.

The Commission discussed, but came to no conclusions concerning, this provision at the March 1981 meeting.

Professor Bruch points out that in an era of garage sales, the requirement of written consent is unrealistic; it is unlikely that written consent will be sought for a sale of used furniture or clothing. A statute that requires written consent, therefore, will in practice permit one spouse in almost all cases to seek relief from such transfers of community property. Professor Reppy, in *Community Property in California* 197 (1980) also indicates the adverse effects of the written consent requirement, particularly since case law declares a transaction in violation of Section 5125(c) void and not merely voidable:

[W]hen H sells a community-owned couch only on W's oral consent, it would seem H as well as W can reclaim the furniture from the buyer; that, apparently, at least W in doing so, need not make restitution to the buyer; and that even after dissolution of the marriage the transfer won't vest a half interest in the buyer. Isn't this unreasonably harsh on second-hand stores and pawnshops?

Witkin states that broadly applied, this rule would make it dangerous for a buyer to purchase any furniture or wearing apparel in a warehouse or shop, without inquiring into marital status and authority. B. Witkin, *Summary, Community Property* § 68 (8th ed. 1974).

Professor Bruch recommends that the California statute be amended to recognize sales made with the express or implied consent of the other spouse, as well as with the written consent. Such an amendment would

enable a court to reach a sensible conclusion on the facts in a given case, and avoids the need to litigate on the basis of equitable arguments. The following amendment would accomplish this:

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

While the staff agrees that this would be an improvement in the law, the staff suggests that the Commission consider going further and eliminating the consent requirement altogether. All the arguments against written consent also apply to oral consent and implied consent. The law assumes that the spouses are capable of fending for themselves in other matters, so why should it be overprotective about household goods and clothing? If anything, the spouses should be most capable of protecting their interests with regard to the very items they probably are most familiar with. The general duty of good faith should be sufficient here. No other community property jurisdiction has such a consent requirement. On the other hand, the protection given household furnishings and personal effects is consistent with the special consideration given by California law generally to exempt these items from enforcement of a judgment and to set them apart to the survivors in probate. See discussion in *Dynan v. Gallinatto*, 87 Cal. App.2d 553, 197 P.2d 391 (1948).

#### Disposition of Community Property Business

At the March 1981 meeting the Commission discussed, but made no decisions concerning, Professor Bruch's recommendation that both spouses should be required to join in the purchase or sale of a community property business. At the meeting concern was expressed that a joinder requirement might impair business dealings and hinder commerce. It was suggested that if one spouse is unreasonable in refusing to join, a court could authorize the acquisition or sale without joinder. It was felt that if a joinder requirement is adopted, it should apply only to acquisition of a going business and to disposition of a business of which the community owns a controlling interest, and should not apply to a partnership.

Possible alternatives are to enable a spouse to put his or her name on title to the community property business, and to require consent rather than joinder.

The Commission requested information about the operation of the joinder requirement in the community property jurisdictions that have such a requirement. These jurisdictions are Louisiana, Nevada, and Washington.

The Louisiana statute (La. Civ. Code Ann. art. 2347) provides that the concurrence of both spouses is required for the alienation, encumbrance, or lease of "all or substantially all of a community enterprise." This provision became effective at the beginning of 1980, so there is little experience under it. The statute does not apply to a corporation or partnership. Professor Bruch spoke to a person from Louisiana who is familiar with the Louisiana statute, and that person was not aware of any problems under it.

The Washington statute (Wash. Rev. Code § 26.16.030(6)) provides:

Neither spouse shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses participate in its management without the consent of the other: Provided, That where only one spouse participates in such management the participating spouse may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse.

This provision was enacted in 1972. Professor Bruch spoke to two family law practitioners and a corporate accountant in active practice in the Seattle area concerning this provision. Their experience was that this provision does not cause operating problems or hinder deals except when the spouses are engaged in divorce litigation, at which time court admonishments and orders are sufficient to protect the interests of the parties. There appears to have developed a practice of ignoring the consent requirement outside of divorce except when real property is involved in the transaction.

The Nevada statute (Nev. Rev. Stat. § 123.230(6)), enacted in 1975, is a near verbatim copy of the Washington statute.

Both the North and South State Bar Committees oppose a joinder requirement for disposition of a community business. They believe that the non-managing spouse will not necessarily have the expertise to make

an informed judgment, that the effect of such a requirement will be either to hinder legitimate business dealings or to estop the joining spouse from later seeking mismanagement remedies, and that it is proper that the managing spouse make the business decisions--the protection for the non-managing spouse lies in the managing spouse's self-interest in the community property share.

#### Disposition of Community Real Property

Civil Code Section 5127 provides that both spouses must join in a sale, mortgage, or lease for longer than a year of community real property. The staff has redrafted and recodified this provision as Section 5125.220, but we believe the provision raises a number of issues the Commission should consider.

Bona fide purchasers. The basic policy of the section the staff believes is sound. Major community assets such as real property should be subject to joint control at disposition. There is a good system of public records applicable to real property, so reasonable restraints on disposition can be imposed.

Problems arise, however, when the public records do not reveal the community character of real property. A bona fide purchaser may take property standing in the name of only one person in the innocent belief that the person is the only one having an interest in the property. In similar situations involving non-community property the recording laws would protect the bona fide purchaser absolutely, but under the community property laws the bona fide purchaser is given only limited protection. The community property laws provide that an action to rescind by the non-joining spouse must be brought within one year after the transaction is recorded, and there is a presumption in favor of the validity of the transaction unless the non-joining spouse can show ignorance of the transaction.

The conflict here is between two innocent parties--the non-joining spouse and the bona fide purchaser. Current law works out a compromise that favors the non-joining spouse; perhaps underlying this compromise is the knowledge that in most cases title insurance will be available as solace for the bona fide purchaser.

The staff believes that in this situation the equities favor the bona fide purchaser. The non-joining spouse had a very simple means

available to prevent the problem--add his or her name to the deed or record a notice of an interest in the property. The staff recommends that the right of a spouse to add his or her name to the title be expressly stated in the statute, and the rights of the bona fide purchaser be governed by the same laws that apply to bona fide purchasers generally. This is analogous to a declaration of homestead by the spouse.

What is Community Real Property? Although the rule can be stated fairly simply that joinder is required for disposition of community real property, there may be some difficulty in ascertaining just what is community real property. Suppose a wife brings to a marriage a piece of real property that is her separate property. During the course of the marriage a payment is made on the mortgage out of community funds, or a tax installment is made from community funds. Does this make the property "community real property," thereby requiring the husband's joinder in any disposition (including a lease)? If so, is this proper?

The staff does not have any answers for these questions. A number of possibilities suggest themselves:

(1) If title is in the name of only one spouse, that spouse has full management and control powers. In this case the other spouse would have to add his or her name to the title in order to control disposition, as suggested above.

(2) Permit a spouse to dispose of the spouse's separate, as opposed to community, interest in the property. But since the separate and community interests will be undivided, this will probably ultimately require a partition of the property. And how would a lease be handled?

(3) Eliminate the joinder requirement and provide for reimbursement of the community. But the community may be the main owner of the property. And we have assumed that joint control is desirable in any case.

(4) Require signatures of both spouses in all cases. This is the practical result that ordinarily occurs. But its effect is to defeat the ability of the owner of the separate property to dispose of the property freely, even where there is no community interest, because of the possibility of a community interest.

Suppose we do nothing about the problem. Then the general rules will apply that if any element of the real property is community joinder is required, but a bona fide purchaser is protected to some extent.

While this helps solve title problems, it does not solve the practical problem that a person's ability to deal with his or her own property is impaired by the fact that there is a community element commingled. People will have to learn not to commingle community and separate property if they wish to maintain sole control over the separate property. And even if they learn, they will have to get their spouse's signature just in case the property is later found to have a community element.

The Mitchell Case. In *Mitchell v. American Reserve Ins. Co.*, 110 Cal. App.3d 220 (1980), the husband gave a security interest in the family residence, which was community real property, without the joinder of the wife. At some time later the wife sought to quiet title against the encumbrancer on the basis that the security interest given by the husband was invalid, the wife's joinder not having been obtained. The court held that the encumbrance could not affect the wife's half-interest in the property but did bind the husband's half-interest.

The Mitchell case is plainly erroneous. The court based its decision on earlier cases such as *Gantner v. Johnson*, 274 Cal. App.2d 869, 79 Cal. Rptr. 381 (1969), which held that a conveyance of community property by the husband without the wife's joinder is effective to convey the husband's half-interest in the community property. However, these cases all involve a situation where, after the conveyance, the marriage was dissolved by death or divorce so that there was a severance of the community property. None of the earlier cases have held that a spouse can by a unilateral act sever the community property and have the severance be effective during marriage, as Mitchell has held.

The Mitchell case calls into question the basic nature of community property tenure. A major distinguishing feature of community property as opposed to joint tenancy and tenancy in common is that the community property is indivisible except at dissolution of the marriage by death or divorce or except upon mutual agreement of the spouses. Thus community property is not subject to partition, a creditor cannot levy on only the interest of one spouse, and both spouses must join in any disposition. The concept is that the property is common property held for common purposes, and therefor is not subject to division and dissipation by either spouse alone.



Practitioners have pointed out to the Commission that one effect of Mitchell is that every time a dissolution proceeding is commenced, a lis pendens must immediately be filed to protect the real property from disposition. The Mitchell case should be legislatively overruled. This could be done by adding to the requirement that both spouses join in a disposition of community real property the following language:

Both spouses must join in any transaction affecting community real property or the interest of either spouse in community real property, other than a transaction between the spouses.

#### Tenancy in Common Property

If community property is not divided between the spouses at dissolution of marriage, it becomes tenancy in common property by operation of law. See, e.g., De Godey v. De Godey, 39 Cal. 157 (1870). The tenancy in common property is thereafter subject to division by the court. See discussion in Comment, Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action, 10 Pac. L.J. 825 (1979).

At the March 1981 meeting the Commission considered the question whether there should be special management obligations and duties on a spouse holding tenancy in common property. The Commission requested further information about the character of property of this sort.

There are several significant differences between community property and tenancy in common property. Community real property may not be conveyed without the joinder of both spouses whereas any tenant in common may convey that tenant's undivided interest. Community real property may be subject to a declaration of homestead whereas a homestead may not be declared by an unmarried tenant in common on the interest of the other. A spouse has a right of succession in community real property, but there is no right of succession between unrelated tenants in common. Community property is not subject to partition; tenancy in common property is subject to partition.

An examination of the cases reveals that former community property that has become tenancy in common property by operation of law is true tenancy in common property, i.e., it has all the characteristics of tenancy in common, as opposed to community, property. Thus a spouse may

convey the spouse's one-half tenancy in common interest. See, e.g., Huer v. Huer, 33 Cal.2d 268, 201 P.2d 385 (1945); Buller v. Buller, 62 Cal. App.2d 687, 145 P.2d 649 (2944). A homestead declaration is no longer applicable to the property. Lang v. Lang, 182 Cal. 765, 190 Pac. 181 (1920); California Bank v. Schlesinger, 159 Cal. App.2d Supp. 854, 324 P.2d 119 (1958). The property is treated as tenancy in common property for purposes of succession and testamentary disposition. See, e.g., Tarien v. Katz, 216 Cal. 554, 15 P.2d 493 (1932); see also Estate of Williams, 36 Cal.2d 289, 223 P.2d 248 (1950). The property is subject to partition just as any other tenancy in common property. See, e.g., Biggi v. Biggi, 98 Cal. 35, 32 Pac. 803 (1893); Lang v. Lang, supra.

The general rules governing the management obligations and duties of tenants in common apply to former spouses who become tenants in common by operation of law. Thus, for example, neither may exclude the other from possession of the property. Brown v. Brown, 170 Cal. 1, 147 Pac. 1168 (1915). In one case a former spouse sued the other to recover rent for the other's occupancy of, and profits derived by means of the other's labor from, real and personal property. The spouse having possession of the property defended on the basis that the law governing tenancy in common does not impose such liability. The court pointed out that ordinary tenancy in common principles did not apply in that particular case because the spouse having possession of the property had obtained possession by fraud:

It is the contention of appellants that if the parties became tenants in common of their former community property on and after the date of the Texas decree and being tenants in common of such common property, Lorraine was left in possession thereof without objection by his cotenant, the tenant out of possession cannot recover rent for the cotenant's occupancy of the property nor for profits derived from the property by means of the occupant's own labor, either in law or in equity, citing in support thereof Pico v. Columbet, 12 Cal. 414 [73 A. Dec. 550], Howard v. Throckmorton, 59 Cal. 79, and McWhorter v. McWhorter, 99 Cal. App.293, [278 Pac. 454]. It will be noted, however, that these cases involved the right of tenants out of possession to recover rents, issues and profits realized from the use and cultivation of real property. Neither was the possession of the property there involved obtained by fraud, whereas we again recall that Lorraine as one of the tenants in common obtained possession and control of the plaintiff's

right to the property in question by fraudulent means. Lorraine v. Lorraine, 8 Cal. App.2d 687, 700, 48 P.2d 48, \_\_\_\_ (1935).

Once the marriage terminates, the former spouses no longer maintain a fiduciary relationship and they deal with each other as any other tenants in common. The only problem with this situation the staff sees is that the tenancy in common interest of a former spouse may not be a matter of public record. If the spouse holding record title purports to convey the whole property to a bona fide purchaser for value, this may divest the former spouse of the unrecorded tenancy in common interest by operation of the recording statutes. The former spouse can protect the interest from disposition by recording a notice of the interest or by recording a lis pendens if the property is not divided at dissolution. Perhaps a provision should be added to the statute making clear the right of a spouse or former spouse to record notice of a community property or tenancy in common interest. If nothing is recorded and a transfer is made to a bona fide purchaser, the former spouse would still have a right of recovery against the other spouse for the value of the interest.

The staff believes that the general principles of law are adequate and no further provisions need to be added to the statute. This is also the view of the North and South State Bar Committees. The North Committee states, "there is no reason why co-tenants, merely because they were once married, should have any greater duty towards each other than other co-owners. The circumstances requiring special protection differ from case to case, and they will need to be dealt with on a case by case basis."

#### Joinder for Exercise of Options under Pension or Annuity Plans

Consistent with her basic position that the law should require joint decisionmaking by the spouses in matters of fundamental importance, Professor Bruch recommends that California adopt a rule that the selection of a settlement plan or payment option upon retirement requires the written consent of both spouses. No community property jurisdiction has such a requirement, but a Wisconsin bill to adopt a community property system includes such a requirement.

The South State Bar Committee agrees that some potential for abuse exists in the exercise of options by the employed spouse to the detriment

of the non-employed spouse with an interest in a pension plan. However, both North and South Committees are concerned about the workability of such a proposal and about tax complications it might cause. The South Committee suggests that the consequences of such a proposal be explored in some depth with knowledgeable people.

Existing law appears to be that the employee spouse alone may exercise options, notwithstanding general statutory language giving either spouse management and control. The Supreme Court has stated in dictum that, "Judicial recognition of the nonemployee spouse's interest in vested pension rights has not limited the employee's freedom to change or terminate his employment, to agree to a modification of the terms of his employment (including retirement benefits), or to elect between alternative retirement programs. We do not conceive that judicial recognition of spousal rights in nonvested pensions will change the law in this respect. The employee retains the right to decide, and by his decision define, the nature of the retirement benefits owned by the community." *In re Marriage of Brown*, 15 Cal.3d 838, 849-850, 126 Cal. Rptr. 633, 544 P.2d 561 (1976) (footnote omitted). However, this language has been construed not to give a spouse unfettered power over selection of retirement options--one spouse cannot, by invoking a condition wholly within the spouse's control, defeat the community interest of the other spouse after dissolution of marriage. See, e.g., *In re Marriage of Stenquist*, 21 Cal.3d 779, 148 Cal. Rptr. 9, 582 P.2d 96 (1978); *In re Marriage of Lionberger*, 97 Cal. App.3rd 56, 158 Cal. Rptr. 535 (1979).

Professor Reppy points out that ERISA does not control whether one or both spouses must exercise retirement options. Treasury Regulation § 1.401(a)-11(c)(1)(B)(1977) provides that, "A plan will not fail to meet the requirements of this section merely because the plan requires the participant to obtain the written approval of his spouse in order for the participant to make this election or if the plan provides that such approval is not required." Professor Reppy construes this to be an invitation to the states to impose a written consent requirement such as that found in Civil Code Section 5125(b). Reppy, *Community and Separate Interests in Pensions and Social Security Benefits after Marriage of Brown and ERISA*, 25 UCLA L. Rev. 417, 523 (1978).

### Joinder Requirement for Life Insurance Beneficiary Designations

Professor Bruch suggests that the Commission consider requiring the written consent of a spouse to the designation of a beneficiary under a life insurance policy.

The North State Bar Committee points out that a spouse is already protected with respect to the spouse's community property interest in proceeds of a life insurance policy under present California law. The Committee believes it is unreasonable to preclude a spouse from obtaining insurance on his or her own life for the benefit of the spouse's mother, child, other relative, or even business associate, without the joinder of the other spouse.

The South Committee believes that a written consent requirement might protect a spouse from a beneficiary absconding with the spouse's community share of life insurance benefits. However, the Committee is concerned about the possible effects of such a requirement on estate planning and on administrative costs of insurance companies. The Committee foresees opposition from the insurance industry.

What is the situation under existing law on beneficiary designations? Professor Reppy reads existing law as requiring an insurance company to honor the change of beneficiary designations submitted by either spouse with respect to that spouse's share of the community property, regardless of the wording of the insurance policy. "Section 5125(e) can be interpreted to mean that an act by one spouse may not be permitted to cut off the other spouse's equal management rights without good reason." Professor Reppy speculates that the insurance company might validly restrict beneficiary designations to one of the spouses if the life insurance policy was taken out for business reasons. See discussion in Reppy, Retroactivity of the 1975 California Community Property Reforms, 48 S. Cal. L. Rev. 977 (1975).

### Joinder for Contracts of Surety, Guaranty, or Indemnity

Professor Bruch recommends that both spouses should be required to participate in agreements to insure, guaranty, or indemnify third persons. She points out that community assets are especially vulnerable if placed at risk under a contract in which ultimate liability depends upon the behaviour of a person other than the spouses. Two other community property jurisdictions--Arizona and New Mexico--have such requirements.

Both the North and South State Bar Committees express concern over the possibility that one spouse alone might endanger the community assets through indemnity agreements. However, both oppose a joinder requirement as a remedy. Both were concerned that such a requirement would restrict the conduct of business. The North Committee also felt it would be unfair if a married person could not sign an indemnification agreement for a \$1,000 bail bond for a friend arrested for drunk driving.

#### Post-Separation Earnings as Separate or Community Property

Although earnings during marriage are ordinarily community property, Section 5118 provides that, "The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while separate and apart from the other spouse, are the separate property of the spouse." This rule has significant implications for the spouses at the time of dissolution and division of the community property and for creditors seeking to reach community assets.

Professor Bruch criticizes this rule in her study for the Commission and in her article, *The Legal Import of Informal Marital Separations: A Survey of California Law and a Call for Change*, 65 Cal. L. Rev. 1015 (1977). She believes the rule conflicts with the normal expectations of spouses, who do not contemplate that their marital property rights will be altered by an informal separation but only by contractual or legal action on their part. Professor Bruch recommends that earnings retain their community character until an agreement or court order terminates the community; this would remove a common litigation point over the extent to which post-separation earnings must be divided and whether reimbursement is proper when community obligations are satisfied out of post-separation earnings.

Of the other community property jurisdictions, apparently Washington and Idaho have rules similar to California's, while Texas, Louisiana, New Mexico, and Nevada do not. In Arizona conduct of the spouses at the time of or after separation may imply a transmutation of the post-separation community earnings into separate property.

The South State Bar Committee opposes amendment of Section 5118 to provide that earnings remain community property after separation. The Committee disagrees with Professor Bruch's basic premise that spouses do

not expect their financial relations to change on separation. "It is reasonable to assume, and in our experience most people do assume, that when spouses physically separate in a deteriorating marriage that their financial relations will be very different." Before Section 5118 was amended to provide that post-separation earnings are separate property (1971), spouses were discouraged from working after separation since their earnings were community property. The problem caused by 5118 in calculating reimbursement for application of post-separation earnings to community debts is simple compared with some of the other tracing and reimbursement problems that can arise under the community property law.

Professor Bruch states that the State Bar Family Law Section supported legislation in the 1977-78 session to amend Section 5118 to make post-separation earnings community. The staff does not know the reasons for the apparent shift in the position of the State Bar of, for that matter, the reasons the proposed legislation failed enactment.

#### Liability of Marital Property for Debts

The Commission has previously prepared and distributed a tentative recommendation relating to liability of marital property for debts. The Commission reviewed the comments received from the State Bar Committee and others, as well as the points raised by Professor Bruch in her study relating to the tentative recommendation. The Commission made a number of changes in the tentative recommendation but deferred preparation of a final recommendation on liability of marital property because a number of the proposals may be affected by the Commission's decisions concerning reimbursement rights and division of property at dissolution, which will be covered in the second portion of Professor Bruch's study. The staff recommends that final disposition of the liability of marital property for debts problems continue to be deferred until after the Commission has received Professor Bruch's study and made decisions about reimbursement rights and division of property.

Respectfully submitted,

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March 26, 1981

California Law Revision  
Commission  
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Dear Sirs:

Enclosed is a partial Report concerning Professor Bruchs' study on Management Powers and Duties under California's Community Property Laws, (F-600) of the Standing Committee on Property (North), of the Family Law Section of the State Bar of California. The opinions expressed in the Report are the opinions of the majority of the members of the Committee; and are meant to assist the Law Revision Commission in the consideration of Professor Bruchs' study.

This Report deals with Professor Bruchs' recommendations numbers one through fourteen. We will be soon submitting a further report commenting on the balance of Professor Bruchs' fifty-one recommendations.

Very truly yours,

Barry D. Russ  
State Bar Family Law Section  
Standing Committee on Property (North)



REPORT

By

THE STATE BAR FAMILY LAW SECTION  
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March 26, 1981

REPORT OF THE STATE BAR FAMILY LAW SECTION  
ON PROFESSOR BAUCHS' STUDY ON  
MANAGEMENT POWERS AND DUTIES (F-600)

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The Committee recognizes and commends Professor Bruch for her insightful recognition of the many problems existing within the institution of marriage, vis a vis the management of property. While the Committee supports certain of Professor Bruch's recommendations, opposes others, and agrees that certain matters should be deferred for further study, the Committee has certain fundamental concerns with respect to the practical impact upon the courts and upon society that might well follow from some of the legislation that Professor Bruch recommends.

A major concern of the Committee is that intramarital litigation over management and control of property will have an adverse affect on the liability of the marital relationship. The Committee is concerned that many marriages (and families with children) which might have prevailed with a relatively successful degree of happiness and satisfaction for the family members, may well be destroyed by the legislature attempting to legislate new norms and new functional relationships within those families. These families may be destroyed in two ways: (1) the commencement of intramarital litigation is very likely to lead immediately to dissolution of marriage proceedings; and (2) many marriages may remain intact (for various reasons such as "for the sake of the children", etc.) but may be permeated with great bitterness and conflict.

The Committee is not convinced that many of the proposals will function to save marriages by creating new norms and constraints which Counsellors may use to save marriages, without litigation. The Committee believes that many of the recommendations will afford attorneys specializing in domestic relations to "set the other party up" for the commencement of the dissolution of marriage proceedings. The Committee believes that the availability of intramarital litigation will bring about a proliferation of litigation which will have significant financial impact upon the State and the tax payers by significantly adding to the case loads of the already over burdened courts and by creating new bureaucracies.

The Committee is also concerned about the ability of business people to conduct business in the State of California if spouses have through joint management in contrast to equal management of community property. The Committee is already concerned about the spouse who may or may not be well educated, but is not sophisticated in the "business dealings" of the entrepreneur spouse, on being able to render the entrepreneur spouse disfunctional in business matters. It is the understanding of the Chairman of the Committee that Professor Bruch does not intend this to happen. Nevertheless, the Committee feels that it is important that Professor Bruch's recommendations be scrutinized carefully with respect to this potential problem.

The Committee strongly supports many of Professor Bruch's recommendations in that portion of her report submitted to the California Law Revision Commission on September 18, 1980, and eagerly awaits the concluding portion of her study regarding the characterization and division of marital property with the anticipation that she will redress many inequities in present California law.

The balance of this Report will take the format of stating the recommendation of Professor Bruch and referring to it by the number she used in her report on pages i and ii, and then giving the Committee's comments on that recommendation:

(1) Enact right to disclosure of assets

- A. The Committee is opposed to enacting legislation which would codify and streamline a judicially enforceable right to disclosure of a spouse's assets. The Committee feels that this is something that should be achieved between the parties within the context of their relationship, and if necessary through counselling. Present law already provide that spouses have a fiduciary type relationship with respect to each other. The Committee sees the proposal as creating more problems within families than it will solve. The Committee sees this as creating a proliferation of litigation. The Committee sees such proposed litigation as a tool for an attorney to commence divorce tactical maneuvering and discovery before filing an action for dissolution of marriage.
- B. The Committee is very concerned with the financial impact that such litigation would have upon the overburdened courts and by creating new bureaucracies.
- C. Should the recommendation of Professor Bruch be enacted in the legislation, the Committee is most concerned that the following limitations and constraints be included in such a statute:
  - 1. That business assets be exempt from the disclosure requirements, except for a general description of the business; and
  - 2. That disclosure require only a listing of non-business assets and not require the spouse to set forth evaluations with respect to any assets except for cash or the equivalent thereof.

(2) Amend Civil Code Section 5125(e) defining good faith obligation

- A. We are opposed to this recommendation.
- B. The proposed amendment language is contained in the Bruch study, page 16, footnote 30. The language is as follows:

Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property, (a)\* in accord with the general rules which control the actions of persons occupying confidential relations with each other, as defined by Title 8 (commencing with the Section 2215) of Part 4 of Division 3. (b)\* This duty shall extend to former community property that is converted into common property by operation of law upon dissolution of the marriage until the property has been divided by the parties or by a court of law.

\* indicates (a) and (b), added by the Committee for identification purposes.

- C. The additional language designated by (a) regarding a confidential relationship already exists in Title 8 commencing with Civil Code Section 2215. Likewise, the protection already exists. There is no need for additional language. Additional language and amendments suggest additional meanings. The language in the law regarding confidential relationships already exists and we feel that there is no need for additional language.
  - D. With regard to that portion of the language which we have identified as (b), we are opposed to extending the fiduciary duty past separation. There is no reason why co-tenants, merely because they were once married, should have any greater duty towards each other than other co-owners. The circumstances requiring special protection differ from case to case, and they will need to be dealt with on a case by case basis. We already have safeguards available to protect former spouses, in particular special circumstances on a case by case basis.
- (3) Defer consideration of amendments to Civil Code Sections 4800(b)(2), 5125, and 5127 concerning remedies at divorce for mismanagement of community property
- A. The Committee agrees that consideration of this recommendation be deferred.
- (4) Amend Civil Code Section 5125 to remove requirement of written consent to usual or moderate gifts
- A. The Committee was in agreement with this recommendation. The Committee stressed that the gifts that should come within this exemption for written consent should be gifts that are commensurate with the financial circumstances of the parties to the marriage.

(5) Amend Civil Code Section 5125 to impose joinder requirements for purchase or sale of community property business

- A. The Committee is opposed to this proposal.
- B. On page 20 and 21 of Professor Bruch's paper, she indicates that the statute of limitations should cut off claims as to bona fide purchasers without knowledge of the marriage relationship, much as currently exists as to transfers of real property under Section 5127 (Civil Code). The negative pregnant is that business transactions could be set aside, even as to bona fide purchasers, within a period of time.
- C. Professor Bruch, at page 20, indicates that this provision would apply to the divestiture of community's ownership interest in, or substantially all of the assets of a business. The Committee recognizes that many business people are involved and have substantial ownership interests in many businesses, and that it is in the ordinary course of business that they divest themselves of their ownership interest in an entire business.
- D. The Committee submits that such a law would have an overwhelmingly negative effect on business in California. Out-of-state investors would not tolerate the additional complexities of negotiating and consummating business transactions. Even intrastate business transactions would frequently become mired in domestic complexities beyond the life of the particular offer or opportunity. If the non-business spouse (who is unsophisticated in the particular business) were to simply accept the advice of the business spouse, the non-business spouse would be rubber-stamping a transaction without truly understanding. It is questionable as to whether a non-business spouse could understand even after hours of explanation the complexity of the tax and financial aspects of many transactions, as well as the proper balance of risk versus profit potential.

Should the non-business spouse rubber-stamp such a transaction, under such a statute, a disservice would have been done to that spouse, as that spouse might be in a more difficult position on the basis of estoppel, and other theories with respect to a later claim of misappropriation or breach of fiduciary obligations.

A further concern, is the set-aside provisions and the advice needed by the non-business spouse to intelligently participate in an arms-length transaction in such a circumstance. Would transactions be set aside on the same ground that antenuptial and marital settlement agreements are set aside? If so, would the non-business spouse have to have counsel. If so, when counsel for the non-business spouse enters the picture and meets with tax counsel and corporate counsel for the business spouse, would counsel for the non-business spouse then have to bring in independent C.P.A.'s, tax attorneys, corporate counsel and other experts, and engage in full discovery, not only with respect to the business transactions, but with respect to the nature and

extent of community and separate property of the spouse.

The Committee feels that these ramifications and concerns would practically disable Californians from conducting business at many levels; or, in the alternative, would negatively affect the non-business spouse' potential for later claiming a misappropriation or breach of fiduciary obligations.

(6) Amend Civil Code Section 5127 to impose joinder requirement for the purchase of real property, including a family mobile home

- A. The Committee is opposed to this proposal for the same reasons as the opposition to item number (5).
- B. The Committee feels the proposed law would create more problems than it would solve.
- C. The Committee believes that the bureaucratic effects would be detrimental to commerce on a daily basis.

(7) Amend Civil Code Section 5125 to require joinder for exercise of options under pension or annuity plan

- A. The Committee points out that pensions are frequently tax planning devices for business and professional persons. These pensions are revised and manipulated from year to year within sound tax planning concepts.
- B. The proposal would add bureaucratic obstacles similar to the obstacles concerning which the Committee discussed with respect to proposal (5).
- C. This proposal would artificially burden third parties participating in professional practice and business pensions.

(8) Consider imposition of joinder requirement as to life insurance beneficiary designations

- A. The Committee is opposed to this recommendation. A spouse is already protected with respect to her community property interest in the proceeds of a life insurance policy under present California law. See *Biltoft v. Wootten* (1979) 91 Cal. App. 3rd 58. Furthermore, it seems unreasonable to the Committee that a spouse could not obtain insurance on her or his own life for the benefit of the spouse's mother, child, other relative or even business associate, without the joinder of the other spouse.

(9) Amend Civil Code § 5125 to require joinder for contracts of surety, guaranty or indemnity of third parties

- A. The Committee is opposed to this proposal.
- B. The Committee recognized that in many businesses and even incorporated businesses, the shareholders frequently are required to personally

guarantee loans upon which the businesses operate. Credit is often extended on the basis of personal financial statements. This provision would, like some of those above, inhibit business and the flow of commerce in the State of California.

- C. It would seem unfair that a married person could not sign an indemnification agreement for a \$1000 bail bond for a friend arrested for drunk driving.
- D. The Committee is concerned about spouses' abusing the security of community assets in various ways including by way of entering its contracts for surety, guarantee or indemnity, but in conclusion, the Committee stands opposed to this recommendation.

(10) Amend Civil Code § 5122 to provide that insurance funds may be used to satisfy indebtedness without regard to policy's ownership.

- A. The Committee was in agreement with this proposal of Professor Bruch.

(11) Defer consideration of amendment to Civil Code § 5122 to include order of priority as to quasi-community property

- A. The Committee agrees that the consideration of this matter should be deferred.

(12) Study danger for a long-term impoverishment of family through one spouse's "separate" tort

- A. The Committee agrees that this matter should be studied.

(13) Retain Civil Code § 5122 pending final decisions concerning general utility of orders of priority

- A. The group agrees that Civil Code § 5122 should be retained pending further studies concerning debt priorities.

(14) Study possibility of permitting intervention by defendant's spouse in tort cases to obtain bifurcated hearing on question of appropriate priority for enforcement of damages judgement

- A. The Committee does not object to the study of such a proposal, but has serious reservations. The Committee will also study this matter further and report further.

The Standing Committee on Property (North) has reviewed, studied, discussed and reached tentative conclusions with regard to all fifty-one of Professor Bruch's recommendations. However, it was not possible to draft our entire report prior to the Law Revision Commission Meeting of March 27, 1981. The balance of our report will be drafted as soon as possible and submitted to the Law Revision Commission after proper procedures have been complied with within the Family Law Section.

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JEROME DIAMOND**REPORT OF PROPERTY DIVISION COMMITTEE - SOUTH ON  
MEMORANDUM 80-90, STUDY F-600 - CAROL BRUCH'S  
STUDY OF MANAGEMENT POWERS AND DUTIES**

The Committee has previously discussed the entire report at some length at its meetings of December 13, 1980 and January 17, 1981 and submitted its report discussing the general philosophy of the proposals. A copy of that report dated December 15, 1980 is attached.

At its regular meeting on February 21, 1981, the Committee took up the specific proposals in detail. Recommendations which are numbered 1 through 10 on Professor Bruch's Summary of Recommendations were discussed and will be reported on. The balance of the recommendations will be discussed and reported on in a further meeting, probably on March 14, 1981. Only those recommendations which propose a change in existing law are reported on. Committee members Michael Leight and Sam Block studied particular sections of the report and opened the discussion in those areas. The following is a summary of the Committee's findings and recommendations.

Each recommendation is numbered and titled to correspond to the Summary of Recommendations on page i of the report.

(1) Enact right to disclosure of assets. We are not satisfied that a great enough need exists to justify enacting the proposals. We have been presented with no objective data to support the proposition that a need exists. The only references in the report are some letters to the Commission on the status of women which we feel are not an accurate sample as they represent a built-in philosophical view. Not only is such a need, if it exists, unclear, it is felt by such a small segment of society that it would not justify changing the law.

Furthermore, we are not satisfied that present law is inadequate. The duty of good faith management implies a duty of disclosure and such a petition could probably be successfully filed with a little creativity under present law.



(6) Amend Civil Code Section 5127 to impose joinder requirement for the purchase of real property, including a family mobile home. The Committee is opposed to the recommendation. As to real property, it is required in actual practice under existing law.

(7) Amend Civil Code Section 5125 to require joinder for exercise of options under pension or annuity plan. The Committee is opposed to the recommendation at this time pending further study. We agree that some potential for abuse exists in the exercise of options by the employed spouse to the detriment of the non-employed spouse with an interest in a pension plan. However, because of the nature of pension plans, the tax consequences of the proposal must be thoroughly explored before it is enacted. Furthermore, the input of persons and organizations who administer pension plans should be sought so that any proposed legislation is workable from their point of view.

(8) Consider imposition of joinder requirement as to life insurance beneficiary designations. The Committee agrees that the proposal might protect a spouse from a beneficiary absconding with a spouse's community share of life insurance benefits but the proposal should be studied further as to its effects on estate planning and administrative costs to insurance companies. This proposal could engender considerable opposition from the insurance industry.

(9) Amend Civil Code Section 5125 to require joinder for contracts of surety, guaranty or indemnity of third parties. We feel there has not been enough study on the possible effects of this recommendation. We foresee possible family situations where community property could be put at risk to guaranty the debts of a profligate in-law. The proposal would offer some protection there. However, it is also possible that the conduct of business could be unduly restricted by the proposal.

(10) Amend Civil Code Section 5122 to provide that insurance funds may be used to satisfy indebtedness without regard to policy's ownership. We are not satisfied that any need has been shown for this change. There is a very remote possibility of the issue ever coming up. If the recommendation were proposed in the legislature, discussed and not enacted, many problems could result if the insurance industry then decided it had to examine the

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SECOND PART OF REPORT OF PROPERTY DIVISION  
COMMITTEE - SOUTH ON MEMORANDUM 80-90,  
STUDY F-600 - CAROL BRUCH'S STUDY  
OF MANAGEMENT POWERS AND DUTIES

The Committee held a special meeting on March 14, 1981 to discuss the balance of the recommendations contained in the Bruch Report. Recommendations 11 through 51 were discussed and reported on. A few recommendations were not covered since the Committee members assigned to report on them did not attend the meeting or submit written reports.

Each recommendation is numbered and titled to correspond to the Summary of Recommendations on page i of the report.

(11) Defer consideration of amendment to Civil Code Section 5122 to include order of priority as to quasi-community property. Not discussed since recommendation is to defer consideration.

(12) Study danger for a long-term impoverishment of family through one spouse's "separate" tort. Not discussed.

(13) Retain Civil Code Section 5122 pending final decisions concerning general utility of orders of priority. Not discussed since recommendation is to retain the Section.

(14) Study possibility of permitting intervention by defendant's spouse in tort cases to obtain bifurcated hearing on question of appropriate priority for enforcement of damages judgment. Not discussed.

(15) Amend Civil Code Section 5120 to clarify that prenuptial debts of all kinds are subject to the Section and that current support obligations do not fall within the Section. Approve in principle although we are not convinced that there is a great need for the change. A more precise approach might be to amend Section 5122 to exempt earnings of the non-debtor spouse from prenuptial torts.

(16) Defer consideration of amendment to Civil Code Section 5120 to impose an order of priority for payment of prenuptial debts. Not discussed since recommendation is to defer consideration.

(17) Consider liability from nondebtor spouse's earnings for prenuptial obligations if no other funds are available for creditor. Oppose. A creditor should not get a windfall simply because a debtor happens to marry. A creditor does not have a reasonable expectation of this additional source of repayment when extending credit. Furthermore, great unfairness to the nondebtor spouse is possible.

(18) Amend Civil Code Section 5118 (and related reference in Section 4805) to provide that earnings remain community property after separation in the absence of contrary agreement or court order. Oppose. There is no demonstrated need for this Section. The present Section 5118 of the Civil Code is workable and acceptable and interfaces with other code sections which were enacted in contemplation of the present law. Under the law prior to the amendments to Section 5118, spouses were discouraged from working after separation since their earnings were community property. The basic premise on which the recommendation is based is faulty - that spouses do not expect their financial relations to change on separation. It is reasonable to assume, and in our experience most people do assume, that when spouses physically separate in a deteriorating marriage that their financial relations will be very different. Calculation of reimbursement for community debts paid by post-separation earnings under the Epstein case is a fairly simple procedure and does not even begin to compare with tracing and reimbursement problems which can extend back to the beginning of the marriage.

(19) Defer decision as to how to overrule the "lender's intent" test until consideration of final study. Not discussed since recommendation is to defer decision.

(20) Defer consideration of an imposition of an order of priority as to nontortious obligations. Not discussed since recommendation is to defer consideration.

(21) Amend Civil Code Section 4800 to permit unequal division of debt. Oppose. Existing law is perfectly adequate to empower the court to do equity where something other than an equal division is required. The recommendation would require and empower the court to consider such factors as the circumstances surrounding the incurring of the debt and the ability to pay. We are confident that in actual practice the ability to pay would override all other circumstances if an unequal division were allowed with ability to pay as one

acceptable criterion for an unequal division of debt. The present regime of equal division of assets and liabilities already has such safeguards as the right of the court to exclude separate debts or debts which were incurred in violation of a spouse's duty of good faith. The attempt to erode the concept of debts as a credit against property being divided ignores the sound business principles which support present law.

(22) Defer consideration of orders of priority as to support obligations. Not discussed since the recommendation is to defer consideration.

(23) Repeal Civil Code Section 199 concerning restricted creditor access by children of former marriages. Approve. Professor Bruch's reasoning and the Attorney General's reasoning is sound.

(24) Extend rule of Section 4807 to include spousal support obligations. Oppose. The recommendation would not simply codify existing law since existing law only goes to the reimbursement of the community for spousal support payments made to a previous spouse. The proposal would change the law to allow a new spouse's earnings to be reached for spousal support from a previous marriage. In any event, it is not necessarily good practice nor is it consistent with common law principles to codify the result of every case that comes down.

(25) Repeal Civil Code Sections 5127.5 and 5127.6 concerning child support. and

(26) Reenact Civil Code Section 209 concerning stepparent support. Approve. The law prior to the enactment of Sections 5127.5 and 5127.6 and repeal of Section 209 was fair, equitable and workable. The current law creates many problems and ambiguities and penalizes parties who choose to get married. According to the report, the changes were enacted as a welfare reform measure. If that is the case, prior law should be restored and appropriate amendment made to the law governing AFDC, drafted with sufficient precision that general stepparent liability will not be reenacted.

(27) Defer consideration of amendment to Civil Code Section 5113 to include quasi-community property in the order of priority. Not discussed since the recommendation is to defer consideration.

(28) Amend Civil Code Section 5126 to make separate property damage recoveries subject to reimbursement requirement.

(29) Amend Civil Code Section 5113 to clarify damages computation for interspousal torts.

(30) Retain current rule that recognizes informal dealings between spouses. Not discussed and not reported.

(31) Enact provision overruling gift presumptions. Approve. Professor Bruch's reasoning is sound and concurred in by the Committee. The gift presumptions as set out in the Lucas case are unrealistic in that they refer to presumed intent which is rarely in line with the parties' actual intent. The Lucas case is a paragon of exaltation of form over substance and can work a severe hardship on unsuspecting parties. Furthermore, the Lucas case creates in some cases a windfall for the spouse who did not contribute separate property to an asset taken in joint names. To repeal the gift presumptions of the Lucas case would never work a hardship or severe inequity to either party. Finally, the party who is asserting the change of character of the property from separate to community should have the burden of showing an affirmative knowing act on the part of the party whose separate property he is asking to forfeit. The realities of the conduct of business transactions by laymen do not support the presumption of intent which the Lucas court fallaciously supports.

(32) Defer consideration of reimbursement and apportionment issues pending completion of study. Although the recommendation is to defer consideration, the Committee is opposed to the general expression of principles in the Report. We favor a return to the Aufmuth rule of prorata apportionment of separate and community interests rather than straight reimbursement. That rule is approved by the Supreme Court in the Lucas case when an agreement is found.

(33) Enact rule specifying burden of proof for removal from commingled funds. Oppose. Codification of the rule of a case which came down several years ago can cause confusion as to the effect of subsequent cases which cite it. Furthermore, there is no demonstrated need to codify the rule.

(34) Amend Civil Code Section 3440 concerning fraudulent conveyances to remove interspousal transfers from conclusive presumption. Oppose. The recommendation may have some merit but it is not clear exactly what is being proposed and the matter should be studied further. We could not ascertain from the Report whether the repeal of the Section or a change of the conclusion presumption to a rebuttable presumption is being recommended. Also, we are not satisfied that a need for the change has been demonstrated.

(35) Retain current rule that recognizes informal dealings in relation to third parties. Approve.

(36) Amend Civil Code Sections 5121 and 5132 to impose support obligation between spouses now codified as to children. Oppose. The proposed rule which would make a spouse liable for support of the other spouse in an ongoing marriage

from separate property where there is community property may discourage marriage by wealthy people and goes against the proposition that both partners should contribute to the support of both of them. The rule would also be impractical in an ongoing marriage and seriously undermine the concept of separate property.

(37) Amend Civil Code Section 5131 and proposed Section 5120.030 to retain normal support rights during informal separations. Oppose. This proposal was reported on by our Committee on September 19, 1980. A copy of our report is attached.

(38) Consider whether sole management and control of personal injury recoveries should be restored. Oppose. As a practical matter, the parties will almost always handle the matter informally. If sole management of the award is given to the injured spouse, the marriage is later terminated and the court would have divided the fund equally under the escape clause, the funds could have been dissipated by the injured party having sole management and control over the funds.

(39) Enact mechanism for dispensing with consent on specified grounds. For the reasons stated in Part One of our Report, the Committee is opposed to the requirement of consent but agrees that if a consent requirement is enacted, there should be a fast simple method of dispensing with it.

(40) Enact authorization for sole management and control of entire community under court decree on specified grounds. Oppose. Invoking this Section, if enacted, would be practically guaranteed to end the marriage. If the "wronged" spouse cannot make a strong enough showing to get a conservator appointed, the other spouse should be left alone. If a spouse manages to take over the wages of a working spouse, the incentive to work would no longer exist.

(41) Enact authorization for petition for separate property marriage on specified grounds. Oppose. We feel this suggestion would be extremely impractical in an ongoing marriage. If the parties have such severe problems that this action would be contemplated, they can simply obtain a decree of Legal Separation and live together. Although the consent of both parties is necessary to obtain a decree of Legal Separation, as a practical matter, it should be no more difficult to obtain that consent on the part of the Respondent than to discourage the Respondent from filing a proceeding for Dissolution in response to an action brought under the proposed Section.

(42) Enact provision permitting partition of property

and debt on specified grounds and amend Code of Civil Procedure Section 872.210(b). Oppose. Same reasons as No. 41.

(43) Enact authorization for right of access to property. Oppose. A halfway cause of action will not solve the problems of spouses who have such a severe inability to agree on financial matters. We feel that the proposal is not workable and will cause more problems than it will solve.

(44) Enact authorization for correction of title to property. Oppose enacting additional legislation but agree with the concept. A civil action is already available if a married person takes title as an unmarried person. If title is taken jointly, then both parties must consent to sell it.

(45) Defer consideration of provisions for marshalling on behalf of the debtor or the debtor's spouse. Not discussed since recommendation is to defer consideration.

(46) Enact provision clarifying availability of partial set-aside as remedy for wrongful transfer. Approve in principle but the matter needs further study. It is probably acceptable as between spouses but serious problems could be created in dealing with third parties which need to be explored further.

(47) Enact provision clarifying damage measures for wrongful transfers. Agree that the problem needs to be explored further.

(48) Enact reimbursement provisions that reflect decisions made in light of then available funds. Approve in principle but we are not convinced that there has been a demonstrated need for such legislation.

(49) Enact provision clarifying computation of interspousal damage recoveries. Oppose. The concept is acceptable but logic and arithmetic already dictate the result and no need has been demonstrated for such an enactment.

(50) Enact provision clarifying from which source recovery may be had in cases of interspousal damage actions. Not discussed.

(51) Enact provision clarifying the statute of limitations for actions arising under Family Law Act. Approve. A spouse who chooses not to take legal action during a marriage should not be penalized at the time of the Dissolution for subordinating economic problems to higher considerations.

Respectfully submitted,

  
JAN C. GABRIELSON, Chairman

## EXHIBIT 3

## CODE OF CIVIL PROCEDURE §§ 1730-1772

## Title 11a

### CONCILIATION PROCEEDINGS

#### CHAPTER 1. CONCILIATION COURT LAW

Article	Section
1. General Provisions .....	1730
2. Family Conciliation Courts .....	1740
3. Proceedings for Conciliation .....	1760

#### ARTICLE 1. GENERAL PROVISIONS

Sec.	
1730. Purposes.	
1731. Short title.	
1732. Construction of words.	
1733. Applicability of chapter; determination by superior court.	
1734 to 1739. Repealed.	

##### § 1730. Purposes

The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(Added by Stats.1939, c. 737, § 1.)

Former § 1730 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1142.

##### Cross References

Family Law Act, see Civil Code § 4000 et seq.

##### § 1731. Short title

This chapter may be cited as the Family Conciliation Court Law.

(Added by Stats.1939, c. 737, § 1. Amended by Stats.1955, c. 1230, § 2; Stats.1980, c. 48, § 1.)

Former § 1731 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1146.

##### Cross References

Legislative act, single subject to be expressed in title, see Const. Art. 4, § 9.

Superior court, original jurisdiction, see Const. Art. 6, § 10.

##### § 1732. Construction of words

As used in this chapter "shall" is mandatory and "may" is permissive.

(Added by Stats.1939, c. 737, § 1. Amended by Stats.1955, c. 1230, § 3.)

Former § 1732 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1142.

##### § 1733. Applicability of chapter; determination by superior court

The provisions of this chapter shall be applicable only in counties in which the superior court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January by the judge of the superior court in counties having only one such judge, and by a majority of the judges of the superior court in counties having more than one such judge.

(Added by Stats.1945, c. 1296, § 1.)

##### Cross References

Judicial power of state, see Const. Art. 6, § 1.

§§ 1734 to 1739. Repealed by Stats.1907, c. 383, § 2; Stats.1931, c. 281, § 1700

See, now, Prob.C. §§ 1142, 1147, 1148, 1150, 1153.

#### ARTICLE 2. FAMILY CONCILIATION COURTS

##### Sec.

1740. Jurisdiction; designation of court.
1741. Assignment of judges; number of sessions.
1742. Transfer of cases; reasons; duties of transferee judge.
1743. Substitute judge; appointment; powers and authority.
1744. Supervising counselor; secretary; powers and duties; other assistants; classification; compensation.
1744.1 to 1744.4. Repealed.
1745. Supervising and associate counselors; qualifications.
1746. Probation officers; duties.
1747. Privacy of hearings; conferences; confidential nature of communications; closed files; inspection of papers.
1748. Destruction of records, papers or documents in office of counselor; exception; microfilming.
1749. Counties; joint family conciliation court services; provisions.
1750 to 1759. Repealed.

##### § 1740. Jurisdiction; designation of court

Each superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "family conciliation court."

(Added by Stats.1980, c. 48, § 2.)

Former § 1740 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1740 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1154.



#### Cross References

Family law act, see Civil Code § 4009 et seq.  
Judicial power of state; courts, see Const. Art. 6, § 1.  
Jurisdiction, no children involved, see § 1772.  
Superior court, original jurisdiction, see Const. Art. 6, § 10.

#### § 1741. Assignment of judges; number of sessions

In counties having more than one judge of the superior court, the presiding judge of such court shall annually, in the month of January, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the family conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(Added by Stats.1980, c. 48, § 2.)

Former § 1741 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1741 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1149.

#### Cross References

Number of judges, superior court, see Const. Art. 6, § 4; Government Code § 69590 et seq.  
Sessions of superior court, see Government Code §§ 69740 et seq., 69790 et seq.

#### § 1742. Transfer of cases; reasons; duties of transferee judge

The judge of the family conciliation court may transfer any case before the family conciliation court pursuant to this chapter to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family conciliation court such transfer is necessary to expedite the business of the family conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the family conciliation court in the matter.

(Added by Stats.1980, c. 48, § 2.)

Former § 1742 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1742 was repealed by Stats.1931, c. 281, § 1700. See, Gov.C. § 24057.

#### Cross References

Extra sessions, see Government Code § 69790 et seq.  
Judicial council, see Const. Art. 6, § 6.  
Presiding judge, duties, see Government Code § 69508.

#### § 1743. Substitute judge; appointment; powers and authority

The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the family conciliation court to act as judge of the family conciliation court during any period

when the judge of the family conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the family conciliation court in cases under this chapter.

(Added by Stats.1980, c. 48, § 2.)

Former § 1743 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1743 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1142.

#### Cross References

Assignment of judges, see Const. Art. 6, § 6; Government Code § 68540 et seq.  
Judicial council, see Const. Art. 6, § 6.

#### § 1744. Supervising counselor; secretary; powers and duties; other assistants; classification; compensation

In each county in which a family conciliation court is established, or in which counties have by contract established joint family conciliation court services, the superior court, or the superior courts in contracting counties jointly may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions.

The supervising counselor of conciliation so appointed shall have the power to:

(a) Hold conciliation conferences with parties to, and hearings in proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the family conciliation court.

(b) Provide such supervision in connection with the exercise of his jurisdiction as the judge of the family conciliation court may direct.

(c) Cause such reports to be made, such statistics to be compiled and such records to be kept as the judge of the family conciliation court may direct.

(d) Hold such hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make such investigations as may be required by the court to carry out the intent of this chapter.

(e) Make recommendations relating to preage marriages.

(f) Make investigations, reports and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in such code.

(g) Act as domestic relations cases investigator.

(h) Conduct mediation of child custody and visitation disputes.

The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, such associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. Such associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and shall have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

The classification and salaries of persons appointed under this section shall be determined by the board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service, or by the board of supervisors of the county in which a noncontracting family conciliation court operates.

(Added by Stats.1980, c. 48, § 2.)

Former § 1744 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1744 was repealed by Stats.1981, c. 281, § 1700. See, now, Prob.C. § 1155.

#### Cross References

Commissioners, see § 259; Const. Art. 6, § 22; Government Code § 69894.1.

Population of counties, see Government Code § 28020.

Superior court officers, attachés and employees, see Government Code § 69890 et seq.

#### §§ 1744.1 to 1744.4. Repealed by Stats.1980, c. 48, § 1.5

See, now, § 1744.

#### § 1745. Supervising and associate counselors; qualifications

(a) Any person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have the following minimum qualifications:

(1) A masters degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years' experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community to which clients can be referred for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) The provisions of this section shall be met by all counselors of conciliation not later than January 1, 1984, provided that this section shall not apply to any supervising counselor of conciliation who is in office on the effective date of this section.

(Added by Stats.1980, c. 48, § 2.)

Former § 1745 was repealed by Stats.1980, c. 48, § 1.5. See, now, § 1744.

#### § 1746. Probation officers; duties

The probation officer in every county shall give such assistance to the family conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(Added by Stats.1980, c. 48, § 2.)

Former § 1746 was repealed by Stats.1980, c. 48, § 1.5.

#### Cross References

Powers and duties of probation officers, see §§ 131.3, 131.4; Penal Code §§ 1203, 1203.5, 1203.10 to 1203.13, 1203c; Welfare and Institutions Code § 270.

#### § 1747. Privacy of hearings; conferences; confidential nature of communications; closed files; inspection of papers

Notwithstanding the provisions of Section 124, all superior court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge, commissioner or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge,

commissioner or counselor in a proceeding under this chapter shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the family conciliation court.

(Added by Stats.1980, c. 48, § 2.)

Former § 1747 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1747 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 1405, 1440 to 1442.

#### Cross References

Family law act, see Civil Code § 4000 et seq.

Privilege for official information, see Evidence Code § 1040.

Publicity of court proceedings, see § 124 et seq.

Sessions of superior court, see Government Code §§ 69740 et seq., 69790 et seq.

#### § 1748. Destruction of records, papers or documents in office of counselor; exception; microfilming

Upon order of the judge of the family conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old, except records of child custody or visitation mediation, which may be destroyed when the minor or minors involved are 18 years of age. In his discretion the judge of the family conciliation court may order the microfilming of any such record, paper, or document.

(Added by Stats.1980, c. 48, § 2.)

Former § 1748 was repealed by Stats.1980, c. 48, § 1.5.

Former § 1748 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1406.

#### § 1749. Counties; joint family conciliation court services; provisions

(a) Any county may contract with any other county or counties to provide joint family conciliation court services.

(b) Any agreement between two or more counties for the operation of a joint family conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of such joint services, and that the treasurer may make payments from such moneys upon audit of the appropriate auditing officer or body of the county for which he is treasurer.

(c) Any agreement between two or more counties for the operation of a joint family conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the family conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the family conciliation court including the supervising counselor, but excluding the judges of the family conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For such other matters as are necessary or proper to effectuate the purposes of the Family Conciliation Court Law.

(d) The provisions of this chapter relating to family conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint family conciliation court services.

(Added by Stats.1980, c. 48, § 2.)

#### §§ 1750 to 1759. Repealed by Stats.1931, c. 281, § 1700

See, now, Prob.C. § 1450 et seq.

### ARTICLE 3. PROCEEDINGS FOR CONCILIATION

#### Sec.

1760. Jurisdiction.

1761. Petition; right to file; purpose.

1762. Petition. caption.

1763. Petition. contents.

1764. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction.

1764a. Repealed.

1765. Fees.

1766. Hearing; time; place; notice; citation; witnesses.

1767. Time and place of holding court; hearings in chambers or otherwise.

1768. Informal hearings; conferences; purpose; aid of specialists or experts.

1769. Orders, duration; reconciliation agreement; temporary support.

1770. Dissolution, legal separation or judgment of nullity; stay of right to file; effect of pendency of action upon conciliation proceedings.

1771. Dissolution, legal separation or judgment of nullity; minor child involved; transfer.

1772. Dissolution, legal separation or judgment of nullity; no minor children; application for an acceptance of transfer; jurisdiction.

1773 to 1799. Repealed.

### § 1760. Jurisdiction

Whenever any controversy exists between spouses, or between parents regardless of their marital status when such controversy relates to child custody or visitation, which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or parents or of either of them whose welfare might be affected thereby, the family conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

The family conciliation court shall also have jurisdiction over the controversy, whether or not there is any minor child of the parties or either of them, where such controversy involves domestic violence. (Added by Stats.1980, c. 48, § 4.)

Former § 1760 was repealed by Stats.1980, c. 48, § 3.

Former § 1760 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 1600, 1601, 2211 to 2216, 2802 to 2808; Gov.C. § 26822.

#### Cross References

Conciliation courts, see § 1740 et seq.  
Custody of children, see Civil Code § 4600 et seq.  
Dissolution of marriage, see Civil Code § 4350 et seq.  
Family law act, see Civil Code § 4000 et seq.  
Husband and wife, see Civil Code § 5100 et seq.  
Judicial determination of void or voidable marriages, see Civil Code § 4400 et seq.  
Judicial power of state; courts, see Const. Art. 6, § 1.  
Superior court, original jurisdiction, see Const. Art. 6, § 10.  
Support of children, see Civil Code §§ 196 et seq., 4700 et seq.

### § 1761. Petition; right to file; purpose

Prior to the filing of any proceeding for determination of custody or visitation rights, dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, either spouse or parent, or both, may file in the family conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses or parents, so as to avoid further litigation over the issue involved. (Added by Stats.1980, c. 48, § 4.)

Former § 1761 was repealed by Stats.1980, c. 48, § 3.

Former § 1761 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 2700 to 2703.

#### Cross References

Effect of filing on other proceedings, see § 1770.

### § 1762. Petition; caption

The petition shall be captioned substantially as follows:

In the Superior Court of the State of California in and for the County of .....

Upon the petition of .....	} Petition for Conciliation (Under the Family Conciliation Court Law)
(Petitioner)	
And concerning .....	
..... and .....	
....., Respondents	

To the Family Conciliation Court:

(Added by Stats.1980, c. 48, § 4.)

Former § 1762 was repealed by Stats.1980, c. 48, § 3.

### § 1763. Petition; contents

The petition shall:

(a) Allege that a controversy exists between the spouses or parents and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse or parent only, the name of the other spouse or parent as a respondent, and state the address of that spouse or parent.

(e) Name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) If the petition arises out of an instance of domestic violence, so state generally and without specific allegations as to the incident.

(g) State such other information as the court may by rule require.

(Added by Stats.1980, c. 48, § 4.)

Former § 1763 was repealed by Stats.1980, c. 48, § 3.

Former § 1763 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1460.

### § 1764. Blank forms; assistance in preparing and presenting petition; references; coextensive jurisdiction

The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attachés and employees of the family conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public

officers in each county shall refer to the family conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the family conciliation court. The jurisdiction of the family conciliation court in respect to controversies arising out of an instance of domestic violence shall not be exclusive, but shall be coextensive with any other remedies either civil or criminal in nature that may be available.

(Added by Stats.1980, c. 48, § 4.)

Former § 1764 was repealed by Stats.1980, c. 48, § 3.

Former § 1764 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. § 1460.

#### Cross References

Probation officers, powers and duties, see §§ 131.3, 131.4, 1746; Penal Code §§ 1203, 1203.5, 1203.10 to 1203.13; Welfare and Institutions Code § 270.

Superior court officers, attachés and employees, see Government Code § 69890 et seq.

#### § 1764a. Repealed by Stats.1931, c. 281, § 1700

#### § 1765. Fees

No fee shall be charged by any officer for filing the petition.

(Added by Stats.1980, c. 48, § 4.)

Former § 1765 was repealed by Stats.1980, c. 48, § 3.

Former § 1765 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 1600, 1601, 2351, 2352, 2401, 2751.

#### § 1766. Hearing; time; place; notice; citation; witnesses

The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(Added by Stats.1980, c. 48, § 4.)

Former § 1766 was repealed by Stats.1980, c. 48, § 3.

Former § 1766 was repealed by Stats.1931, c. 281, § 1700.

#### Cross References

Family Law Act, see Civil Code § 4000 et seq.

Requiring attendance, subpoena, see § 1986 et seq.

#### § 1767. Time and place of holding court; hearings in chambers or otherwise

For the purpose of conducting hearings pursuant to this chapter, the family conciliation court may be convened at any time and place within the county,

and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place. (Added by Stats.1980, c. 48, § 4.)

Former § 1767 was repealed by Stats.1980, c. 48, § 3.

Former § 1767 was repealed by Stats.1931, c. 281, § 1700.

#### Cross References

Extra sessions, see Government Code § 69790 et seq.

Judicial days, see § 133 et seq.

Place of trial of civil actions, see § 392 et seq.

Sessions of court, see Government Code § 69740 et seq.

#### § 1768. Informal hearings; conferences; purpose; aid of specialists or experts

The hearing shall be conducted informally as a conference or a series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues in controversy. To facilitate and promote the purposes of this act the court may, with the consent of both parties to the proceeding, recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county unless the board of supervisors of the county specifically provides and authorizes such aid.

(Added by Stats.1980, c. 48, § 4.)

Former § 1768 was repealed by Stats.1980, c. 48, § 3.

Former § 1768 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 2430, 2451, 2462, 2500 to 2507.

#### Cross References

Husband and wife, rights and obligations, see Civil Code § 5100 et seq.

#### § 1769. Orders, duration; reconciliation agreement; temporary support

(a) At or after hearing, the court may make such orders in respect to the conduct of the spouses or parents and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(b) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(c) During the pendency of any proceeding under this chapter, the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary for the support and maintenance of the wife or husband and for the support, maintenance and education of the minor children, as the case may be. In determining the amount, the superior court may take into consideration the recommendations of a financial referee when such referee is available to the court. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. Any such order may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

(Added by Stats.1980, c. 48, § 4.)

Former § 1769 was repealed by Stats.1980, c. 48, § 3.

Former § 1769 was repealed by Stats.1981, c. 281, § 1700. See, now, Prob.C. §§ 2430, 2451, 2462, 2500 to 2507.

#### Cross References

Custody of children, see Civil Code § 4600 et seq.

#### § 1770. Dissolution, legal separation or judgment of nullity; stay of right to file; effect of pendency of action upon conciliation proceedings

During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any petition for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage.

If, however, after the expiration of such period, the controversy between the spouses, or the parents, has not been terminated, either spouse may institute proceedings for dissolution of marriage, legal separation, or a judgment of nullity of a voidable marriage, or a proceeding to determine custody or visitation of the minor child or children. The pendency of a proceeding for dissolution of marriage, legal separation, or declaration of nullity, or a proceeding to determine custody or visitation of the minor child or children, shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(Added by Stats.1980, c. 48, § 4.)

Former § 1770 was repealed by Stats.1980, c. 48, § 3.

Former § 1770 was repealed by Stats.1981, c. 281, § 1700. See, now, Prob.C. §§ 2401, 2420.

#### Cross References

Dissolution of marriage, see Civil Code § 4350 et seq.

Family law act, see Civil Code § 4000 et seq.

Judicial determination of void or voidable marriages, see Civil Code § 4400 et seq.

Jurisdiction, scope, see Civil Code § 4351.

Legal separation, see Civil Code §§ 4503, 4506 et seq., 4530.

Petition, see § 1761: Civil Code § 4503.

Petition for judgment of nullity, see Civil Code § 4450.

Void and voidable marriages, see Civil Code § 4400 et seq.

#### § 1771. Dissolution, legal separation or judgment of nullity; minor child involved; transfer

Whenever any petition for dissolution of marriage, legal separation, or declaration of nullity of a voidable marriage is filed in the superior court, and it appears to the court at any time during the pendency of the proceeding that there is any minor child of the spouses, or of either of them, whose welfare may be adversely affected by the dissolution of the marriage or the disruption of the household or a controversy involving child custody, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the family conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with the provisions of this chapter.

(Added by Stats.1980, c. 48, § 4.)

Former § 1771 was repealed by Stats.1980, c. 48, § 3.

Former § 1771 was repealed by Stats.1981, c. 281, § 1700. See, now, Prob.C. §§ 2401, 2404, 2420.

#### Cross References

Legal separation, see Civil Code §§ 4503, 4506 et seq., 4530.

Superior court, original jurisdiction, see Const. Art. 6, § 10.

#### § 1772. Dissolution, legal separation or judgment of nullity; no minor children; application for and acceptance of transfer; jurisdiction

Whenever application is made to the family conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested proceeding for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and

dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(Added by Stats.1980, c. 48, § 4.)

Former § 1772 was repealed by Stats.1960, c. 48, § 3.

Former § 1772 was repealed by Stats.1931, c. 281, § 1700. See, now, Prob.C. §§ 1451, 2463, 2506.

#### **Cross References**

Family Law Act, see Civil Code § 4000 et seq.

Jurisdiction, see § 1740.

**§§ 1773 to 1799. Repealed by Stats.1921, c. 111, § 8;  
Stats.1931, c. 281, § 1700**

See, now, Probate Code §§ 1530, 1532, 1534 to 1538, 1550 to 1557, 1570, 1571 to 1574.

## EXHIBIT 4

## CIVIL CODE § 4607

**§ 4607. Contested issues; mediation services and proceedings; powers and duties of mediator; recommendations**

(a) Where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1 or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of such mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

(b) Each superior court shall make available a mediator. Such mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems such interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

(f) The provisions of this section shall become operative on January 1, 1981.

(Added by Stats.1980, c. 48, § 5.)



## MANAGEMENT AND CONTROL OF COMMUNITY PROPERTY

Equal Management and Control

In 1975 California commenced a system of equal management and control of community property by spouses.<sup>1</sup> Under this system, either spouse may manage and control the community property,<sup>2</sup> subject to a duty of good faith to the other spouse<sup>3</sup> and subject to a number of limitations on the ability of the spouse to control specific types of community property<sup>4</sup> or to dispose of specific types of community property.<sup>5</sup>

The 1975 community property reforms offer little statutory guidance for the sorts of problems that arise where two persons are given equal management and control of the same property.<sup>6</sup> This portion of the recommendation proposes clarifications of the community property law to implement the state policy of equal management and control.

Duty of Good Faith

A major limitation on the freedom of either spouse to manage and control community property and on the spouse's absolute power of disposition of community personal property is the duty of each spouse to act in good faith with respect to the other spouse in the management and control of the community property.<sup>1</sup> Prior to adoption in 1975 of equal management and control and the corresponding duty of good faith, California law analogized the management duties between spouses to the law governing the relations of fiduciaries or partners.<sup>2</sup>

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1. 1973 Cal. Stats., ch. 987, 1901, operative January 1, 1975.

2. Civ. Code §§ 5125 (personal property) and 5127 (real property).

3. See discussion under "Duty of Good Faith," below.

4. See discussion under "Limitations on Management and Control," below.

5. See discussion under "Limitations on Disposition of Property," below.

6. See Bruch, Management Powers and Duties Under California's Community Property Laws (1980).

1. Civil Code § 5125(e).

2. See discussion in Bruch, Management Powers and Duties Under California's Community Property Laws 14-15 (1980).

The duty of good faith is more appropriate to California's current scheme of equal management and control than the fiduciary standards applicable before 1975, when the husband had sole management and control of the community property. Since either spouse may now manage and control the community assets, the good faith standard that the spouse have no fraudulent intent supersedes the older standards.<sup>3</sup>

The proposed law continues without change the duty of good faith. This codifies pre-1975 law to the extent the prior law precluded a spouse managing and controlling community property from obtaining an unfair advantage over the other spouse.<sup>4</sup> But it does not impose a fiduciary standard that the spouse be as prudent as a trustee or keep complete and accurate records of income received and disbursed.<sup>5</sup>

#### Duty to Inform Other Spouse of Property and Debts

The management and control of the community property by either spouse 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 each spouse to manage and control the community property is the duty of the spouse to inform the other spouse of the community assets and the debts incurred by the spouse during marriage.<sup>1</sup> This duty is inherent in the obligation of each spouse to act in good faith with

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3. See discussion in Reppy, *Retractivity of the 1975 California Community Property Reforms*, 48 S. Cal. L. Rev. 977, 1013-1022 (1975); Comment, *Toward True Equality: Reforms in California's Community Property Law*, 5 Golden Gate L. Rev. 407 (1975).
  4. See, e.g., *Weinberg v. Weinberg*, 67 Cal.2d 557, 63 Cal. Rptr. 13, 432 P.2d 709 (1967) (duty not to take unfair advantage); *Vai v. Bank of America*, 56 Cal.2d 329, 15 Cal. Rptr. 71, 364 P.2d 247 (1961) (duty to account during property settlement negotiations); *Fields v. Michael*, 91 Cal. App.2d 443, 205 P.2d 402 (1949) (duty not to fraudulently dispose of community property); *Provost v. Provost*, 102 Cal. App. 775, 283 P. 842 (1929) (duty not to appropriate funds for improvement of separate property).
  5. See *Williams v. Williams*, 14 Cal. App.3d 560, 92 Cal. Rptr. 385 (1971) (dictum).
  1. The right to manage and control community property entails a duty to disclose the community property to the other spouse that 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,

respect to the other spouse in the management and control of the community property,<sup>2</sup> but is not expressly stated in the community property law.

Apart from the general principle that a person who owns property should have the right to know the nature and extent of the property the person owns and the liabilities to which the property is subject,<sup>3</sup> the duty of a spouse to inform the other spouse of the community assets and debts serves a number of important functions. The spouses in a marriage ordinarily work out mutually satisfactory arrangements for the management and control of the property. When the arrangements become unsatisfactory, the spouses need to know the assets and liabilities in order to rearrange management and control. Even when arrangements remain satisfactory, a spouse may need information, for example, because the spouse is concerned that the other spouse may become incompetent or die and the spouse needs to do financial or estate planning, or simply because the spouse is concerned about possible mismanagement by the other spouse.

An express statutory statement of the duty of a spouse to inform the other spouse of community assets and liabilities would increase the likelihood that the spouses will be able to work out their property management problems short of legal separation or dissolution of marriage. If one spouse is unwilling to inform the other spouse, a simple statement of the duty in the law may be sufficient to obtain the spouse's compliance. A statement of the duty in the law will also provide a clear basis upon which a family counselor, attorney, or other person or organization can advise or notify the spouse of the duty to inform. In addition, a statutory statement of the duty avoids the need of a spouse to litigate in order to establish the duty.

The proposed law states the right of a spouse to obtain information from the other spouse of the community property and debts. To encourage

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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 11-14 (1980).

2. Civil Code § 5125(e) (duty of good faith).
3. The interests of the spouses in community property are present, existing, and equal. Civ. Code § 5105.

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 any disclosure given in response to a written request inadmissible as evidence for any purpose other than to determine whether the spouse has complied with the duty to inform.<sup>4</sup> If there is a controversy over the duty to inform, the spouses should be permitted to take the controversy to the family conciliation court,<sup>5</sup> where the controversy may be resolved short of separation or dissolution and without the need for lawyers and a lawsuit.<sup>6</sup>

#### Limitations on Disposition of Property

Gifts. Prior to 1891 California followed the Spanish rule that a manager spouse may without consent of the other make reasonable gifts of community property.<sup>1</sup> In 1891 the law was revised to require the written consent of the wife to a gift by the husband. The 1891 anti-gift statute<sup>2</sup> became necessary because at that time the husband was considered the sole owner of community property, the wife's interest in the community property being a mere expectancy, and the wife needed the ability to protect the community property from depletion by gifts of the husband.<sup>3</sup>

The reasoning upon which the anti-gift legislation was based is no longer applicable. Both spouses own the community property in equal shares,<sup>4</sup> and each may protect the property from dissipation by the

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4. See also Evidence Code Section 980 (privilege for confidential marital communications).

5. See Code Civ. Proc. §§ 1730-1772 (Family Conciliation Court Law).

6. The availability of the family conciliation court remedy would not affect the right of a spouse to enforce the duty to inform by court action if necessary.

1. See, e.g., Lord v. Hough, 43 Cal. 581 (1872).

2. The statute is now codified as Civil Code Section 5125(b) and is applicable to gifts by either spouse.

3. See discussion in Reppy, Community Property in California 191 (1980).

4. Civil Code § 5105 (interests of husband and wife during marriage are present, existing, and equal).

other.<sup>5</sup> Moreover, tips given waiters, waitresses, and others, offerings given at church, United Fund contributions, and other gifts are routinely made without thought of written consent by the other spouse. If a case were to arise involving such a gift the courts would undoubtedly find a ground to validate the gift, through ratification, waiver, implied consent, or other means.<sup>6</sup> The law should clearly state the traditional community property rule that a spouse may make a gift of the community property without the written consent of the other spouse if the gift is usual or moderate in the circumstances of the particular marriage.<sup>7</sup>

Family home. Existing law protects a family home that is real property from sale or other disposition without joinder of both spouses.<sup>1</sup> The law also protects the personal property household furniture, furnishings, or fittings from disposition by one spouse without the written consent of the other.<sup>2</sup> However, existing law fails to protect a personal property family home, such as a mobilehome or houseboat.

The policy of protecting the family home and furnishings is important to the security and welfare of the family, and should be extended to a personal property family home as well as to a real property family home. The proposed law precludes sale or other disposition of a community personal property family home by a spouse without the written consent of the other spouse.

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5. Cf. Civil Code § 5125 (either spouse has management and control of community personal property).

6. See discussion in Bruch, Management Powers and Duties Under California's Community Property Laws 18-19 (1980).

7. The requirement of written consent should likewise be inapplicable to a gift of community property between the spouses. For a discussion of the law applicable to such a gift, see \_\_\_\_\_, infra.

1. Civil Code §§ 1242 (homestead) and 5127 (community real property).

2. Civil Code § 5125 (community personal property).

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].

405/798

§ 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). The duty of good faith stated in subdivision (a) codifies the rule of prior law that a spouse managing and controlling community property cannot obtain an unfair advantage from the trust placed in the spouse as a result of the marital relationship. See, e.g., *Weinberg v. Weinberg*, 67 Cal.2d 557, 63 Cal. Rptr. 13, 432 P.2d 709 (1967). The duty of good faith arises out of the confidential relationship between the spouses and thus has some aspects of a fiduciary duty. See, e.g., *Vai v. Bank of America*, 56 Cal.2d 329, 15 Cal. Rptr. 71, 364 P.2d 247 (1961) (duty to account during property settlement negotiations); *Fields v. Michael*, 91 Cal. App.2d 443, 205 P.2d 402 (1949) (duty not to fraudulently dispose of community property); *Provost v. Provost*, 102 Cal. App. 775, 283 P. 842 (1929) (duty not appropriate community funds for improvement of separate property). The duty of good faith requires that a spouse manage and control the property without fraudulent intent, but not that the spouse be as prudent as a trustee or

keep complete and accurate records of income received and disbursed. See *Williams v. Williams*, 14 Cal. App.3d 560, 92 Cal. Rptr. 385 (1971) (dictum); see also discussions in Reppy, *Retractivity of the 1975 California Community Property Reforms*, 48 S. Cal. L. Rev. 977, 1013-1022 (1975) and Comment, *Toward True Equality: Reforms in California's Community Property Law*, 5 Golden Gate L. Rev. 407 (1975) (subjective rather than objective standard of good faith would more appropriately fulfill legislative intent).

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

30162

§ 5125.130. Duty to inform

5125.130. (a) A spouse shall, upon request of the other spouse, make available to the other spouse sufficient information to enable the other spouse to determine the nature and extent of the community property and the debts incurred by the spouse during marriage.

(b) Information made available by a spouse pursuant to this section upon written request of the other spouse is inadmissible as evidence of any matter other than satisfaction of or failure to satisfy the duty of the spouse under this section.

(c) Either spouse may invoke the jurisdiction of the family conciliation court under the Family Conciliation Court Law, Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure, over any controversy that involves the duty of a spouse under this section.

Comment. Section 5125.130 is new. It is a specific application of the duty of good faith stated in Section 5125.120, and does not impair any other disclosure duty a spouse may have under the duty of good faith. 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).

Subdivision (b) precludes use of any information made available by a spouse pursuant to the written request of the other spouse under this section as an admission of the spouse for purposes of characterizing the property or for any other purpose except compliance or noncompliance with the section. The intent of this provision is to encourage full and open communication and exchange of information between the spouses during marriage.

Subdivision (c) provides a forum to enable the spouses to resolve disputes under this section short of legal separation or dissolution or other lawsuit between the spouses. Subdivision (c) is not the exclusive means of enforcing the duty to inform; a spouse may seek other means of enforcement either because there is no conciliation court in the county

or for other reasons. If the jurisdiction of the family conciliation court is invoked, the spouses must pay the costs of the proceedings. See Code Civ. Proc. § 1765.

Article 2. Disposition of Community Property

§ 5125.210. 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.

(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, except in the following situations:

(1) The gift or disposition is to the other spouse.

(2) The gift or disposition is usual or moderate, taking into account the circumstances of the case.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or 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.

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.

Subdivision (b) continues the substance of former Section 5125(b), with the addition of the exceptions for gifts between spouses and usual or moderate gifts. The exception for usual or moderate gifts is drawn from comparable provisions in other jurisdictions and is consistent with the traditional community property rule applicable in California prior to 1891. See, e.g., La. Civ. Code Ann. art. 2349 (usual or customary gifts of value commensurate with economic status of spouses); Lord v. Hough, 43 Cal. 581 (1872) (manager spouse may without consent of the other make reasonable gifts of community property). [See also Uniform Marital Property Act § 9(g) (January 1, 1981, draft).]



Subdivision (c) continues the substance of former Section 5125(c), with the addition of the limitation on disposition of personal property used as the family dwelling, such as a mobilehome. Cf. Code Civ. Proc. § 704.710(a) ("dwelling" defined).

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

37022

§ 5125.220. Disposition of real property

5125.220. (a) As used in this section:

(1) "Real property" includes an interest in real property.

(2) "Transaction" means a conveyance, encumbrance, or lease for more than one year.

(b) Both spouses must join in any transaction affecting community real property, other than a transaction between the spouses.

(c) If both spouses do not join in a transaction affecting community real property, record title to which does not reveal the community character of the real property or the existence of the marriage relation:

(1) No action to avoid the transaction for failure to satisfy the requirements of this section shall be commenced more than one year after recordation of the transaction in the office of the recorder of the county in which the real property is situated.

(2) The transaction is presumed to be valid notwithstanding the requirements of this section if made with a person in good faith without knowledge of the community character of the real property or the existence of the marriage relation.

Comment. Section 5125.220 continues the substance of former Section 5127. Subdivision (a) omits language in the former law that related to execution of an instrument; this codifies case law holding that joinder in the transaction is sufficient. See, e.g., *Rice v. McCarthy*, 73 Cal. App. 655, 239 Pac. 56 (1925). Subdivision (b) omits language in the former law that related to action by a duly authorized agent; this provision duplicated general provisions of law. See, e.g., Civil Code 2305 (agent). Subdivision (c) omits transitional provisions that related to transactions that occurred prior to January 1, 1975; these provisions are no longer necessary.

CONFORMING CHANGES

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 subdivisions (b) and (c) are continued in Section 5125.210(b)-(c) (power of disposition of personal property).

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

Note. Subdivision (d) of Section 5125 has not yet been disposed of.

27939

Civil Code § 5127 (repealed)

SEC. . Section 5127 of the Civil Code is repealed.

5127. Except as provided in Sections 5113.5 and 5128, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both

spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year or is sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975, and the sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situated, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situated, shall be commenced after the expiration of one year from the date on which this act takes effect.

Comment. The substance of the first portion of former Section 5127 is continued in Section 5125.110 (either spouse has management and control). The substance of the remainder is continued in Section 5125.220 (disposition of real property).

30190

Code Civ. Proc. §§ 1730-1733 (Chapter heading)

SEC. . The heading of Chapter 1 (commencing with Section 1730) of Title 11.5 of Part 3 of the Code of Civil Procedure is amended to read:

Chapter 1. Family Conciliation Court Law

Comment. The heading of Chapter 1 (commencing with Section 1730) is amended for consistency with Section 1731 (chapter cited as Family Conciliation Court Law).

27939

Code Civ. Proc. § 1745 (amended)

SEC. . Section 1745 of the Code of Civil Procedure is amended to read:

1745. (a) Any person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have the following minimum qualifications:

(1) A masters degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years' experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community to which clients can be referred for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(7) Knowledge of the general provisions of law governing community and separate property and liability of community and separate property for debts.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) The provisions of this section shall be met by all counselors of conciliation not later than January 1, 1984, provided that this section shall not apply to any supervising counselor of conciliation who is in office on the effective date of this section.

Comment. Paragraph (7) is added to Section 1745(a) in recognition of the fact that counselors of conciliation may deal with controversies involving the duty of a spouse to inform the other spouse of the community property and of the debts. See Section 1760 (jurisdiction of family conciliation court).

31510

Code Civ. Proc. § 1760 (amended)

SEC. . Section 1760 of the Code of Civil Procedure is amended to read:

1760. The family conciliation court has jurisdiction over the following controversies:

(a) Any ~~Whenever any~~ controversy ~~exists~~ between spouses, or between parents regardless of their marital status when ~~such the~~ controversy relates to child custody or visitation, which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or parents or of either of them whose welfare might be affected thereby ; . The jurisdiction of the family conciliation court shall have jurisdiction over the controversy ; and over includes the parties thereto to the controversy and all persons having any relation to the controversy as further provided in this chapter.

~~The family conciliation court shall also have jurisdiction over the~~

(b) Any controversy whether or not there is any minor child of the parties or either of them, where ~~such the~~ controversy involves domestic violence.

(c) Any controversy that involves the duty of a spouse pursuant to Section 5125.130 of the Civil Code to make available to the other spouse sufficient information to enable the other spouse to determine the nature and extent of the community property and the debts incurred by the spouse during marriage.

Comment. Subdivision (c) is added to Section 1760 to implement Civil Code Section 5125.130 (duty to inform).

30968

Code Civ. Proc. § 1765 (amended)

SEC. . Section 1765 of the Code of Civil Procedure is amended to read:

1765. No (a) Except as otherwise provided in this section, no fee shall be charged by any officer for filing the petition.

(b) There shall be charged for filing a petition that invokes the jurisdiction of the court pursuant to subdivision (c) of Section 1760, a fee prescribed by the superior court. The fee shall be the amount estimated by the superior court sufficient to cover all costs and expenses of the family conciliation court in the proceedings under the petition.

Comment. Subdivision (b) is added to Section 1765 to ensure that parties invoking the jurisdiction of the family conciliation court over controversies involving the duty of a spouse to inform the other spouse of the community property and debts will bear the expense of the proceedings.