

First Supplement to Memorandum 83-75

Subject: Study F-641 - Limitations on Disposition of Community Property
(Additional Comments on Tentative Recommendation)

We have received a number of additional comments on the tentative recommendation relating to disposition of community property. The California Judges Association has informed us by telephone that they approve the tentative recommendation, and in particular the provisions relating to disposition of personal property. We have also received a letter from Judge Joseph B. Harvey (Lassen County--letter not reproduced) indicating that the tentative recommendation would improve the law in this area.

The State Bar Family Law Section (Exhibit 1) also approves the tentative recommendation with two exceptions. They point out a technical wording change, which the staff will make. They also oppose the recommendation to allow a disposition of community real property by only the spouse whose name is on the record title. As the staff noted in the main memorandum we do not believe the Commission should pursue this change. The State Bar suggests it might be useful to permit one spouse to execute a document in the nature of a continuing guarantee as to the legitimacy of deeds executed by the other spouse. This might be convenient, for example, where one spouse deals extensively in real property and the existing joinder requirement would hamper real property transactions. If the Commission is interested in pursuing this concept, the staff will draft language; perhaps this can be done in the context of legislation relating to marital property agreements.

The Los Angeles County Bar Association Family Law Section Executive Committee (Exhibit 2 of the First Supplement to Memorandum 83-65) has studied the tentative recommendation but has not had sufficient time to make a complete analysis or extensive comment. They believe that the tentative recommendation creates the potential for confusion by its wide sweeping changes, and they would like additional time for study and comment. The staff suggests that the Commission proceed with this project, but inform the Los Angeles group that we will consider their comments whenever received and make any changes that appear necessary in light of their comments.

The Los Angeles County Bar Committee also notes one specific problem by way of preliminary comment. They believe that proposed Section 5125.225, which would permit a spouse to add his or her name to real property title, would cloud title and require quiet title litigation to clear. "New statutes should not create additional litigation, or interfere with title to property." The staff believes they are correct in their assessment of one possible impact of this provision. However, the few cases in which a name is falsely or erroneously added to title (amounting to a slander of title) would be far outweighed by the cases in which a spouse properly asserts a community interest of record in the property. The impetus for this provision is to give a spouse protection that the spouse would lose by elimination of the joinder requirement for disposition of community real property. If the joinder requirement is retained, a provision to enable a spouse to add his or her name to the title, while still useful, would not be so important.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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September 14, 1983

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Nat Sterling
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Disposition of Community Property

Dear Mr. Sterling:

This letter is in response to the California Law Revision Commission's tentative recommendation relating to disposition of community property dated May 6, 1983.

On August 16, 1983 Mr. Jan Gabrielson and I met with you in my office and discussed the position of the Family Law Section of the State Bar relating to the tentative recommendation concerning the disposition of community property.

At that time we on behalf of the Family Law Section made the following comments upon the tentative recommendation:

1. The word "incidents" in section 5125.225 is ambiguous and the Section would prefer "effects" be substituted.

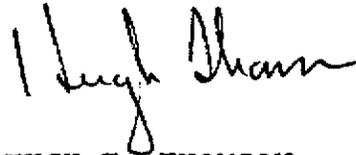
2. The concept in 5125.260 that one spouse can dispose of community property without notifying the other spouse is contrary to the public policy in favor of equal management and control and is opposed by the Section on that ground. We suggest an alternative that if one spouse wishes to dispose of community property, that spouse receive a document in the nature of a continuing guarantee as to the legitimacy of deeds executed by that spouse. We understand the concern of the California Law Revision Commission is to guarantee the security of title and to

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simplify real property transactions, but this section would work a hardship on the spouse not actively engaged in business during the marriage should a divorce ensue.

With those proposed changes, the Family Law Section endorses the tentative recommendation.

Very truly yours,

A handwritten signature in cursive script that reads "Hugh Thomson". The signature is written in dark ink and is positioned above the typed name.

HUGH T. THOMSON

HTT/vk
cc: Jan Gabrielson
Sandra Musser
Connelly Oyler