#F-521 4/10/84

Memorandum 84-36

Subject: Study F-521 - Community Property in Joint Tenancy Form (Comments on Tentative Recommendation)

Background

Attached to this memorandum is a copy of the Commission's tentative recommendation relating to community property in joint tenancy form. The tentative recommendation proceeds from the assumption that when married persons take title to property as joint tenants they generally do not intend thereby to convert their community property to separate property, and they in fact believe the property to be community and treat it as such. The major exception to this generalization is that spouses may understand the property will pass automatically to the surviving spouse free of probate.

It is generally conceded that the law governing marital property in joint tenancy form is unsatisfactory. Joint tenancy title form creates a presumption that the property is separate and not community, but the presumption may be overcome by showing a lack of intent by the spouses to transmute the property or by showing a subsequent transmutation back. Characterization of the property is critical because it affects devolution and taxation of the property, as well as creditors' rights in the property, among other matters.

Legislation enacted last session on Commission recommendation attempts to impose order on the law of joint tenancy and community property as it relates to marriage dissolution. Civil Code Section 4800.1 creates a presumption that property acquired by married persons as joint tenants is community property for purposes of dissolution of marriage; the presumption is rebuttable only by a writing. Civil Code Section 4800.2 provides that such property is divided as community at dissolution, but separate property contributions to its acquisition are reimbursed.

The attached tentative recommendation seeks to deal with the joint tenancy/community property interrelation for purposes other than marriage dissolution. The tentative recommendation presumes that property acquired by married persons as joint tenants is community property for all purposes; the presumption is rebuttable only by a writing. No

tracing of separate property contributions is permitted. The right of testamentary disposition could be exercised only by specific devise.

The purposes of these proposals are:

(1) To clarify and simplify the law governing joint tenancy and community property. The rules would be certain and litigation minimized.

(2) To generally treat the property as community. This is what most people intend, and is consistent with the general policy of the law to prefer a community interest in property of married persons.

(3) To recognize the intent of married persons to limit the right of testamentary disposition by placing property in joint tenancy form.

(4) To facilitate favorable income tax treatment of the property. Under federal law the survivor's share of community property receives a stepped up basis but the survivor's share of joint tenancy property does not.

The tentative recommendation was distributed to persons on our family law and probate mailing lists for comment. The letters received are attached as Exhibits 1 to 11. The comments received on the tentative recommendation were mixed, but were generally favorable. The commentators typically approved the basic concept or intent of the tentative recommendation, but expressed concern with one consequence or another of the proposals. At least one commentator felt that, on balance, the problems that would be created by the tentative recommendation outweigh the problems found in existing law. See Exhibit 9 (Alvin G. Buchignani).

The concerns of the commentators relate to: (1) operation of the presumption, (2) creditors' rights, (3) inter vivos disposition, (4) testamentary limitation, (5) clearing title, (6) tax treatment, and (7) transitional matters. The concerns are analyzed below.

Operation of the Presumption

Draft Section 5110.510 sets up the basic rule that property taken by married persons as joint tenants is presumed to be community property. The presumption is rebuttable only by a writing showing an intent to keep the property separate, and not by tracing to a separate property source. Separate property contributions would be recognized only at dissolution of marriage, by means of a reimbursement right.

Two commentators question the policy prohibiting tracing. The Santa Clara County Bar Association's Estate Planning, Probate, and Trust

Section Executive Committee (Exhibit 11) wonders what policy reasons support this approach. John M. Minnott (Exhibit 10) believes that tracing to a separate property source should be allowed.

In the staff's opinion, a more apt question would be, "What public policy supports tracing?" Taking title as joint tenants is a positive indication that the parties intend equal ownership of the property. Why should anyone be allowed later to question that intent and to show that one party has a greater interest than the other? The title indicates equal interests, the only question being whether the interests are held as separate property or as community property. If a creditor levies on the share of a debtor who is a joint tenant, should the other joint tenant be able to show that the property does not really belong half to the debtor, on tracing principles? Should the creditor be able to show that more than half belongs to the debtor, on tracing principles? After death of a joint tenant, should the heirs of the joint tenant be able to defeat the survivorship right by tracing?

It is true that the new statute on marriage dissolution allows tracing to a separate property source for purposes of reimbursement. But this is because when the spouses take title as joint tenants, their ordinary expectation is that they will share it during life and it will go to the survivor at death; but in case of divorce, they want their own property back. Fairness demands that one spouse not be able to take advantage of the other if the marriage breaks up.

But the policy of the state law for other purposes is to favor a community of property between the spouses. Allowing tracing would not only defeat this policy, but would encourage litigation and questioning title. For these reasons, the community property presumption may be overcome only by a written agreement and not by showing a separate property source. Most of the other commentators recognize and agree with this policy.

Creditors' Rights

Creditors have greater rights against community property than they do against joint tenancy. During the life of the debtor, a creditor can reach only the debtor's share of joint tenancy property, whereas the creditor can reach all of the community property of the debtor and spouse. Upon the death of the debtor, liens on the debtor's share of joint tenancy property are extinguished and the property passes to the

survivor free of liens, whereas liens on community property remain effective.

A number of commentators object to the feature of the tentative recommendation that converts property in joint tenancy form to community because it increases creditors' rights against the property. See Exhibits 6 (Professor Jerome J. Curtis, Jr.), 7 (Professor Benjamin D. Frantz), 9 (Alvin G. Buchignani). The staff has little sympathy with this position. To begin with, most property in joint tenancy form is really community and should be treated as community; treating it in any other fashion will just generate litigation as the creditor seeks to go behind the title to reach the property. In addition, the law that gives the surviving joint tenant a windfall at the expense of a just creditor of the decedent is bad policy and should not be strengthened. Most important, one of the major benefits of the community property system is that it facilitates equal access to credit for both spouses by making community property liable for the debts of either. A move to restrict liability of community property would be unfortunate.

The staff believes that the community property presumption, insofar as it affects creditors' rights, is proper. We would make no changes in this regard.

Inter Vivos Disposition

A joint tenant may dispose of his or her interest in the property without restriction (subject to an agreement between the joint tenants). But one spouse may not dispose of a one-half interest in community real property without the joinder of the other spouse. This is one of the basic protections of the community property system.

Professor Jerome J. Curtis, Jr. (Exhibit 6) takes the position that a spouse should be able unilaterally to convey community property held in joint tenancy form. This would defeat one of the basic purposes of the proposal to make clear that merely taking title as joint tenancy does not affect the community character of the property.

Testamentary Limitation

The tentative recommendation takes a halfway position on the right of testamentary disposition of community property in joint tenancy form. The Commission's theory has been that although the spouses generally believe their property is community, they may also believe that upon the death of one spouse it will pass to the other as joint tenancy. An

earlier Commission recommendation implemented this concept by treatment of community property in joint tenancy form as community property "with right of survivorship."

The earlier recommendation was withdrawn when it became apparent that it was likely this sort of treatment would not qualify the property for a stepped up basis and when it was realized this would limit the ability of the decedent to put the property in an exemption equivalent trust. The current tentative recommendation provides instead that the property passes as community property, but recognizes a limitation resulting from the joint tenancy form--that it may only be willed by specific devise. Specific devise of community property is a counterpart of severance and testamentary disposition of joint tenancy property.

Three commentators had concern about this approach. Luther J. Avery (Exhibit 2) believes there should be no limitation on the right of testamentary disposition; he believes the limitation may require that all wills be rewritten. John M. Minnott (Exhibit 10) and the Santa Clara County Bar group (Exhibit 11) take the opposite position--that there should be no right of testamentary disposition. They believe this will defeat the intention of the parties who took the property as joint tenants and will enable one spouse to secretly defeat the reasonable expectancy of the other.

Whether testamentary disposition should be allowed or precluded is a policy question whose resolution depends in part on the Commission's perception of the intent of the parties in taking joint tenancy title. If the Commission believes the parties have no particular intent, but merely take joint tenancy title with no conception of the consequences, believing all the while the property is community, then no limitation on testamentary disposition would be appropriate. If the Commission believes the parties intend to have the property pass absolutely to the survivor by taking it in joint tenancy form, then the right of testamentary disposition should be precluded. However, if testamentary disposition is precluded, there are serious adverse tax consequences that call into question whether this is what the parties really would have intended if they had adequate information.

The Commission's approach in the tentative recommendation is halfway between these two positions--testamentary disposition is allowed, but only by specific devise. The staff believes this is a not unreason-

able approach that accommodates the most concerns. As to Mr. Avery's point about having to rewrite wills to make a specific devise, we believe this is adequately taken care of by proposed Section 5110.520(b), which provides that the specific devise requirement does not apply where there is a written agreement between the parties that the property is really community property. This will take care of existing wills that purport to dispose of all of the community property pursuant to a written community property agreement, although it will not take care of a situation where there is no written community property agreement or deed changing title. This is really a transitional problem, discussed below in more detail.

Clearing Title

If community property in joint tenancy form is presumed to be community property rather than joint tenancy property, does this mean the ability to clear title simply by filing an affidavit of death is lost? Alvin G. Buchignani (Exhibit 9) believes so, stating that the tentative recommendation would substitute for the convenient affidavit procedure the "more cumbersome procedure of a formal court petition, court approval of the petition, court approval of the attorney's fees charged, and the attendant administration which accompanies any court proceeding."

It was not the Commission's intention to eliminate the ability to record an affidavit to clear title. The Comment to proposed Section 5110.520 states, "Because the names of both spouses appear on the property title in this form of tenure [community property in joint tenancy form], title in the survivor may in the ordinary case be cleared by affidavit in the same manner as joint tenancy, without the need for court confirmation pursuant to Section 650 of the Probate Code." Perhaps this should be added to the statute as well as the Comment.

Of course, stating that the affidavit procedure is available does not guarantee that title companies will be willing to insure title based on the affidavit. In the past we have been uable to get a reading on this from the title companies, but we hope to have an informal response by the time of the Commission meeting. If it appears that title insurers will not insure title because the property does not pass automatically to the survivor, then we will need to address this problem by giving some sort of assurance of title in the surviving spouse.

Tax Treatment

One of the major benefits of the tentative recommendation is that community property in joint tenancy form would receive community property rather than joint tenancy income tax treatment. Two commentators observe that, while this may be true, community property treatment can also be obtained without this tentative recommendation by means of either a community property agreement between the spouses (Alvin G. Buchignani--Exhibit 9) or a Probate Code Section 650 proceeding to confirm the community character of the property (John M. Minnott--Exhibit 10).

Whether a community property agreement alone, without a Section 650 confirmation proceeding, is sufficient to induce the IRS to treat property in joint tenancy form as community, is a question currently under dispute. We have received a copy of extensive correspondence between the IRS and a California financial consultant, wherein the IRS appears to take the position that a community property agreement alone is insufficient to overcome the joint tenancy presumption, absent a court decree. That financial consultant has reviewed the tentative recommendation and believes it is "exactly the clarification needed." See Exhibit 1 (Ruthe P. Gomez).

Of course, as Mr. Minnott points out, a Section 650 court confirmation procedure is sufficient to reserve to the surviving spouse the tax benefits of a federal step-up in basis. But why run up the costs for the surviving spouse and go through an unnecessary court proceeding that could be avoided by a statutory declaration. Simplification and clarification of the law in this area has been one of the Commission's primary objectives.

The Santa Clara County Bar group (Exhibit 11) raises the question whether the tentative recommendation would in fact ensure community property tax treatment. They suggest that the Commission make a direct inquiry of the Internal Revenue Service. The Commission has considered that approach, but rejected it because of the belief that the IRS would not commit itself in advance to an interpretation of a law not yet enacted (as well as to avoid telegraphing the impression that our sole concern in proposing this legislation is to deal with a federal tax problem). Nonetheless, if the Commission so desires, we will direct an appropriate inquiry to the IRS.

In this respect, one way to strengthen the statute that has been informally suggested to the staff is to provide not that community property in joint tenancy form is presumed to be community (rebuttable by a writing); rather, to provide that community property in joint tenancy form is community (unless there is a writing). This is a question of form rather than substance, but it might help with the IRS. The staff would adopt this suggestion.

We have also received a letter addressed to problems in the California law relating to the tax basis of joint tenancy and community property. See Exhibit 8 (Mrs. Kay Trout). This is the subject of recent legislation, and is not something the Commission should become involved in.

Transitional Matters

The new law would apply to property acquired by married persons in joint tenancy form before or after the operative date of the new law. However, a one-year delay is provided for property acquired before the operative date during which old law continues to govern. The one-year delay is intended to allow for changes in title form, agreements, etc., if the parties desire, although it is our belief that the new law will conform to the desires of most parties.

Two commentators object to the delay feature of the operative date provisions. Kenneth D. Robin (Exhibit 3) points out that existing law is confused and causes problems, so that no one really knows what his rights are. "[A]re we not better off simply 'biting the bullet' and mandating that an intelligible and understandable set of rules will be governing across the board?" Charles A. Dunkel (Exhibit 5) states, "I see no reason to delay this legislation for an additional year."

On the other hand, Professor Jerome J. Curtis, Jr. (Exhibit 6), is concerned about making the community property presumption retroactive at all. He believes the spouses may have taken joint tenancy title intentionally; the new law would require the spouses to reconfirm this manner of tenure, a requirement that could be frustrated by a single spouse holding out for community property treatment. He suggests that, if prior law is not to govern property acquired before the operative date, at least the community property presumption should be rebuttable by any relevant evidence, not just a writing. Although the staff believes full retroactivity is desirable, we also believe this last

suggestion is a useful one, and we could adopt it in place of the one-year delay, if necessary.

Conclusion

The staff found the comments on this tentative recommendation to be thoughtful and constructive, though marked by the absence of the perspective of the State Bar Family Law and Probate Sections, which have been interested in this project in the past. Although the reaction to the tentative recommendation was mixed, the staff believes the comments confirm the need for clarification of this area of the law. The comments have also identified a number of matters the Commission might futher address:

(1) The ability to clear title to community property in joint tenancy form by means of an affidavit of death should be strengthened.

(2) Inquiry might be made of the IRS concerning tax treatment of community property in joint tenancy form.

(3) The community property preference might be phrased in terms of a substantive rule rather than a presumption.

(4) The transitional provisions might be revised to permit the community property preference to be overcome by means other than a writing in the case of property acquired before the operative date.

The staff recommends that the Commission proceed with the development of a final recommendation on this matter.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

.... from the desk of

Ruthe P. Gomez, CFP

2-21-84

Dear Mr. Sterling,

In regard to your tentative recommendation relating to community property in joint tenancy form, I am not familiar enough with legal jargon, but it sounds like your recommendation will indeed accomplish clarification of the problem -- that joint ~~property~~ tenancy WROS which is really community property will pass to the surviving spouse free of probate and without election 650 confirmation and still get the "stepped-up" tax basis on both halves of the estate. This is exactly the clarification needed. Thank you. I am flattered that you sought my opinion.

Advisory Financial Consultants, Inc.
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Ruthe P. Gomez

EXHIBIT 2

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EDMOND G. THIEDE
ROBERT L. DUNN
JAMES WISNER
SANDRA J. SHAPIRO
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BOYD A. BLACKBURN, JR.
MICHELE R. McNELLIS
JOHN R. BANCROFT
DENNIS O. LEUER
BARBARA L. STEINER
PHILLIP W. HEGG
CHARLOTTE M. SAXON
JOHN H. DRESSLAR
MORGAN PRICKETT
ROBERT L. MILLER
JOHN S. McCLINTIC
RICHARD HANDEL
REBECCA A. THOMPSON

February 23, 1984

OUR FILE NUMBER

9911.81-35

Nathaniel Sterling, Esq.
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

COMMUNITY PROPERTY IN JOINT TENANCY FORM

Dear Mr. Sterling:

I support the Commission's solution in the January 21, 1984 Tentative Recommendation #4-510 that community property held in joint tenancy form is presumed to be community property. I question, however, the value of proposed Civil Code Section 5110.520 limiting the right to dispose of such community property because it may require that all wills be rewritten. Without Civil Code Section 5110.520, the community property treatments can be used where the property was intended to be community property.

Yours sincerely,

Luther J. Avery

LJA:cet/3046e

EXHIBIT 3

KENNETH D. ROBIN
ATTORNEY AT LAW
2204 UNION STREET
SAN FRANCISCO, CALIFORNIA 94123
(415) 563-2400

February 24, 1984

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

Re: Tentative Recommendation Relating To
Community Property In Joint Tenancy Form

Dear Sir:

I have but one comment regarding this tentative recommendation: I am a little confused about the impact of the proposed section 5110.590(c). I can well understand that the purpose of such a "transitional provision" is to provide an element of fairness for persons who have taken action unaware of the onset of the changes in law predicated upon proposed section 5110.510. But I question whether providing for such situations to the "governed by the law applicable before the operative date" is the answer. Is not the very premise of the proposed change in the substantive provisions that the present situation has resulted in "general confusion and uncertainty . . . , accompanied by frequent litigation and negative critical comment" due to the fact that, aside from knowledge of the fact that joint tenancy involves a right of survivorship, most people truly have no understanding that different legal incidents attach to property rights depending upon whether that property is held in joint tenancy or as community property. If the very basis for the new proposal is a recognition that the present situation is essentially unintelligible, why are we leaving such an unintelligible set of rules to govern situations which fall within the transitional provisions' definition of a period of hiatus? I would submit that if the present law was clear as to the rights and remedies involved, and if the proposed change in the law would markedly change those rights, then such a transitional provision would be appropriate. But where, under the present set of laws, no one really knows what his rights are, are we not better off simply "biting the bullet" and mandating that an intelligible and understandable set of rules will be governing across the board?

Sincerely,

Kenneth D. Robin

KDR:nb

EXHIBIT 4

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

2/15/84

California Law Revision Commission

Re: Community Property in Joint Tenancy Form

I agree with the conclusions, ~~and~~ recommendation and Operative Date the Law Revision Commission proposes regarding the request for comments related to Community Property in Joint Tenancy Form. I have read the proposal and enclosed it. Many thanks for permitting me to make my views known with Study H.

Sincerely

HA

EXHIBIT 5

The Crocker Bank

Charles A. Dunkel
Vice President
Trust Officer

February 27, 1984

The California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Community Property In Joint Tenancy Form, H-510

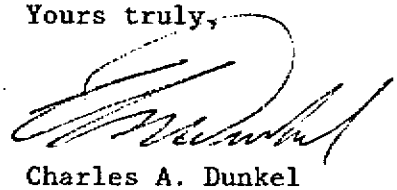
Gentlemen:

I concur in the substance of your tentative recommendation relating to the above subject.

I feel that companion sections should be added to the Probate Code. I suggest that this be done by adding a Part 2 to Division 5 - Non-Probate Transfers.

I further suggest that the "operative date" be January 1, 1985, instead of January 1, 1986. The one year grace period after the operative date would then take us to January 1, 1986. I see no reason to delay this legislation for an additional year.

Yours truly,



Charles A. Dunkel
Vice President and Trust Officer
(415) 477-2756

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Crocker National Bank
San Francisco Private Capital Banking Center
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(415) 477-2756

EXHIBIT 6

McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

February 29, 1984

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

Re: Community Property in Joint Tenancy Form

Dear Ladies and Gentlemen:

Thank you for sending me a copy of the Tentative Recommendations relating to Community Property in Joint Tenancy Form. While I believe the overall objection of the proposal is sound, I also feel that it contains several flaws.

First, under current law, both halves of the community property may be reached by the creditors of either spouse while only the debtor spouse's half of joint tenancy property is reachable by such creditors. If the purpose underlying the recommendation is to effectuate the probable intent of spouses, property held in joint tenancy form should be presumed to be joint tenancy at least where the claims of creditors are in issue. Spouses are hardly likely to intend to subject the interest of a non-debtor spouse to the claims of the debtor spouse's creditors. One way of handling this problem would be to amend Civil Code Section to provide that, except where under normal agency principles one spouse could be held vicariously liable for the acts of the other, creditors can reach only the primary debtor's interest in community property. Where is the justice, for example, in subjecting an innocent wife's interest in community property to claims of her husband's creditors. However, until such a change can be enacted, we should not erode the limited protection available to married persons through the use of joint tenancies. I would, therefore, urge that a subsection (d) be added to proposed Section 5110.510 as follows:

> "(d) For purposes of determining the rights of creditors of a married person, property held by the spouses in joint tenancy form shall be presumed to be joint tenancy."

Another matter that troubles me is the effect, if any, the proposal would have on the ability of spouses holding joint tenancy property to sever it unilaterally and convert it into common tenancy property. If property held in joint tenancy form is presumed to be community, it would follow neither spouse could unilaterally change the incidents of ownership whereas under present law a spouse could do so. For example, today a wife can unilaterally transform joint tenancy property into common tenancy property and then make an inter vivos gift of her half without the consent of her husband. Is it truly intended to destroy this attribute of joint tenancies between spouses? If so, why? If not, a section should be added making it clear that spouses may unilaterally sever community property in joint tenancy form.

Finally, though of lesser significance to me than my other concerns, is the proposal to give full retroactivity to the changes since it would enable one spouse alone to transmit into community property assets which both spouses understood to be joint tenancy property? Thus, although both spouses may have purposefully acquired joint tenancy property in the past, the husband may now refuse to execute the "documentary evidence" contemplated under the proposed Section 5110.510(b). Perhaps, the type of evidence admissible to rebut the presumption of community property should be unrestricted in the cases of pre-1986 property, or perhaps such property should be governed by existing law.

Sincerely,

Jerome J. Curtis, Jr.

JEROME J. CURTIS, JR.
Professor of Law

ka

EXHIBIT 7

McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

March 1, 1984

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Attention: Nathaniel Sterling
Assistant Executive Secretary

Dear Mr. Sterling:

Thank you for your communication of February 14, 1984, referring to the proposed revision in the joint tenancy law insofar as community property is concerned. As requested, I offer my suggestions, which are contrary to the proposal.

At the outset, let me state that I am completely in agreement with the philosophy that people should pay their just debts.

I oppose the proposal which would subject joint tenancy property held by husband and wife to the claims of creditors because the present law permits the surviving joint tenant spouse to perfect his or her title to joint tenancy property without the payment of creditors of the deceased spouse (Zeigler v. Bonnell (1942) 52 Cal.App.2d 217, 220 (126 P.2d 118); King v. King (1951) 107 Cal.App.2d 257, 260 (236 P.2d 912); Goldberg v. Goldberg (1963) 217 Cal.App.2d 623 (32 Cal.Rptr. 93; Tenket v. Boswell (1976) 18 Cal.3d 150 (133 Cal.Rptr. 10; 554 P.2d 330). Rupp v. Kahn (1966) 246 Cal.App.2d 188 (55 Cal.Rptr. 108) is easily distinguished because it merely holds that an insolvent debtor's transfer without consideration cannot defeat the claims of his creditors.

I believe that creditors have responsibility for protecting their rights so that, if they desire recourse against the property acquired by a surviving joint tenant, they should be careful enough to have both joint tenants sign the obligation and any security instruments or at least to secure a financial statement revealing whether there is joint tenancy property which might escape the creditors' grasp.

The proposal is also discriminatory against married persons because it affects only community property so that property held in joint tenancy by persons other than husband and wife would continue to receive the current benefit of joint tenancy survivorship.

Very truly yours,

Benjamin D. Frantz

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

EXHIBIT 8

March 1, 1984

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Room D-2
Palo Alto, CA 94306

RE: Community Property In Joint Tenancy Form
#H-510 dated 1/21/84

Dear Mr Sterling:

Unless Sections 18044 and 18045 (a) through (h) (Basis of property under personal income tax law) are amended to change the treatment of joint tenancy/community property it would appear an individual may have a basis problem.

Joint tenancy ownership carries with it the right of survivorship. At death, the surviving joint tenant acquires his/her share by right of survivorship and not by bequest, devise, or inheritance, or by the decedent's estate.

The decedent's estate does not acquire any portion of joint tenancy assets. With the repeal of the California Inheritance Tax Law, the joint tenancy property will not be required to be included in determining the value of the decedent's estate. For this reason joint tenancy property cannot qualify for a new basis under Section 18045 (h), therefore joint tenancy property will retain the original cost basis.

Under the presumption of joint tenancy being community it would also seem the basis should be treated as community property and entitled to receive a fair market value basis at death of decedent.

I understand proposed amendments were being considered for Sections 18044 and 18045 which should be studied along with the proposed amendments.

Thank you for your courtesy in permitting my opinion in this matter.

Very truly yours,

Mrs Kay Trout

Mrs Kay Trout
315 E Camino Real
Arcadia, CA 91006

EXHIBIT 9

ALVIN G. BUCHIGNANI
ATTORNEY AT LAW

ASSOCIATED WITH
KNIGHT, BOLAND & RIORDAN

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SAN FRANCISCO, CA 94111
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March 2, 1984

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Community Property in Joint Tenancy Form

I have read the tentative recommendation on the above subject with some interest.

I believe the tax advantages of community property should be compared with the considerable disadvantage to the surviving spouse, when the deceased spouse has left a substantial indebtedness, which is in no way due to the fault of the surviving spouse. Present law enables the surviving spouse in such situations to take the property free and clear of the debt. This can be a very salutary benefit, especially for persons of modest means.

Under present law, it is possible to obtain the tax benefits of community property, although held in joint tenancy, merely by having a written agreement that joint tenancy property is in fact intended as community property, whenever that is the case. Thus, present law provides tax benefits to those who will take the trouble to confirm their actual intent, and also provides protection to those who need it, as the result of the activities of the predeceased spouse. The proposal would reverse the priorities, and provide tax benefits automatically, while requiring those who need protection from creditors to obtain it by a written agreement, which is most unlikely, especially in the case of those who need it most.

As a final note, the proposed legislation would greatly increase the burdens of terminating a joint tenancy on the death of the first joint tenant to die. It would seem to

abolish the convenient procedure of a declaration of death, and substitute in its place the more cumbersome procedure of a formal court petition, court approval of the petition, court approval of the attorney's fees charged, and the attendant administration which accompanies any court proceeding.

For the foregoing reasons, I believe the disadvantages of the proposed legislation outweigh its advantages.

Very sincerely

Alvin G. Buchignani

AGB/dg
D77-55

EXHIBIT 10

LAW OFFICES
MILLER, BUSH & MINNOTT

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March 8, 1984

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Community Property in Joint Tenancy Form

Gentlemen:

The following is in response to the Tentative Recommendation regarding community property in joint tenancy form dated January 21, 1984.

I believe that the proposed legislation is over-broad for the following reasons:

1. The contention that property owners do not intend to change the character of their property from community to separate property by a transfer into joint tenancy is true in the vast majority of cases, only because the property owners are totally ignorant of the legal effect of such a transfer. The vast majority of married property owners hold title to property in joint tenancy either because they were told that this is the way they should hold title to the property, or because they desire to avoid the legal costs of court proceedings (either by probate or 650 petition).

2. It appears as if the Commission is attempting to secure for married property owners the benefits of a federal step-up in basis while at the same time allowing property to pass to the survivor without the necessity of court confirmation that the property is in fact community property. In order to effect this result, the statute must then provide that all property, regardless of source, is presumed to be community property. The proposed statute goes on to state that this rebuttable presumption cannot be rebutted by a showing that the source of the property was separate property. The proposed statute need not go that far. All that is necessary is a statute which provides that transfer of ownership into joint tenancy form does not change the character of the property so transferred.

3. The proposed legislation also provides for the right of a deceased joint tenant to make a specific disposition of his or her community property interest in the joint tenancy. Besides being a total contravention of the concept of joint tenancy, I believe it to be totally unnecessary. A long line of precedent has established that a decedent's interest in joint tenancy may not be bequeathed by Will. To change that rule at this point will engender tremendous confusion in the public. Virtually all persons who transfer property into joint tenancy do so with the knowledge that the property will pass to the survivor. Those cases which have adjudicated the inability of a testator to bequeath his or her interest in a joint tenancy have usually involved a "spite Will" in which the testator attempted to change the effect of the joint tenancy without notifying the other joint tenant. While the provision allowing for such disposition by a deceased joint tenant are purportedly included in order to preserve the right to dispose of a community property interest, such an argument is misplaced. No such right exists to dispose of a community interest in property passing by other contractual agreements. A decedent may not dispose by Will of his or her community property interest in life insurance proceeds paid to the surviving spouse.

I again respectfully suggest that the most reasonable means of attaining the desired effect is by merely providing that a transfer of property into joint tenancy ownership between spouses does not alter the character of the property so transferred. A presumption already exists to the effect that property acquired by a husband and wife during marriage and while domiciled in the State of California is community property. Probate Code Section 650 already provides a means by which court confirmation of the community character of the property of a deceased spouse can be made. A court confirmation that joint tenancy property is in fact community property should be sufficient to reserve to the surviving spouse the tax benefits of a federal step-up in basis.

Sincerely,

John M. Minnott

JMM:le

EXHIBIT 11

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FILE NO.

March 30, 1984

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Community Property in Joint Tenancy Form
Tentative Recommendation dated January 21, 1984

Dear Mr. Sterling:

At its meeting of March 28, 1984, the Executive Committee of the Estate Planning, Probate, and Trust Section of the Santa Clara County Bar Association discussed the above-referenced Tentative Recommendation. I have been asked to communicate to you the Committee's preliminary reaction to the proposal. We would appreciate the opportunity to continue to be involved with this Recommendation as matters progress.

In general, it is the Committee's feeling that legislation should be enacted only if it will accomplish its purpose. In this case, it appears that the primary purpose of this proposal is to afford the surviving spouse of a married couple who held title to real property "as joint tenants" the step-up in basis on both halves of the property that is presently available to the survivor of a couple that held title "as community property".

Our chief concern with the proposal is whether or not the Internal Revenue Service would concur with the Commission's conclusion that this legislation "will...ensure favorable tax treatment". (Tenative Recommendation, page 3.) We understand that Nevada has recently enacted similar legislation, and that the Internal Revenue Service has taken an unfavorable position regarding the availability of a stepped-up basis on both halves of the property at death of a spouse. Our Committee believes that the California proposal should advance no further until a careful look

is taken at the Nevada/I.R.S. interactions. Further, we suggest that you contact the Internal Revenue Service in order to ascertain their position on the effect of this legislation on a survivor's income tax basis in his or her appreciated property which was formerly "community property in joint tenancy form".

Should you be unable to obtain favorable assurances from the Internal Revenue Service, our Committee suggests that enactment of this Recommendation may not be justified. In general, it is our view that existing law should remain in place unless a specific, widespread problem can be remedied by legislative action. Furthermore, as regards this particular recommendation, we have some concern about its effect on the rights of spouses in their joint tenancy property. There are two specific concerns:

1. "Secret" Termination Of Right Of Survivorship

We understand that California law currently permits one joint tenant to unilaterally sever a joint tenancy by way of a "phantom" deed. Such a deed is held by the severing tenant until death; if the other tenant dies first, the deed is not recorded and the survivor obtains all of the property. If the severing tenant dies first, his or her heirs record the deed severing the joint tenancy, thus inheriting the decedent's half of the former joint tenancy property. We understand that the Commission has proposed legislation to remedy this practice by requiring that a deed severing a joint tenancy become a matter of public record. It seems inconsistent with the proposed legislation to now provide a joint tenant with another tool for secretly severing the joint tenancy. However, Section 5110.520 provides just such a tool. Specifically, under that section, a spouse can dispose of his or her interest in the joint tenancy property by Will, and the other spouse would have no notice of such disposition until the death of the severing spouse and probate of his or her Will. We would suggest reconsideration of this provision in light of the proposed "phantom deed" legislation.

2. Inability To Trace To Separate Source

We note that Section 5110.520 establishes an unrebuttable presumption of community source, and wonder what public policy reasons support the unrebuttability of this presumption.

Thank you for your consideration of these comments.

Very truly yours,

HOWELL & HALLGRIMSON

By Carla Holt
Carla Holt

CH:tlp
cc: Marsden Blois
Irwin Goldring

#H-510 1/21/84

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

COMMUNITY PROPERTY IN JOINT TENANCY FORM

January 21, 1984

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN MARCH 31, 1984.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

TENTATIVE RECOMMENDATION

relating to

COMMUNITY PROPERTY IN JOINT TENANCY FORM

A husband and wife in California may hold property in joint tenancy or as community property.[1] The two types of tenure, one common law and the other civil law, have different legal incidents--the spouses have different management and control rights and duties, creditors have different rights to reach the property, and the property is treated differently at dissolution of marriage and at death.[2]

In California it is common for husband and wife to take title to property in joint tenancy form even though the property is acquired with community funds. Frequently the joint tenancy title form is selected by the spouses upon the advice of brokers and other persons who are ignorant of the differences in legal treatment between the two types of property tenure. The spouses themselves are ordinarily unaware of the differences between the two types of tenure, other than that joint tenancy involves a right of survivorship.[3]

As a consequence, a person who is adversely affected by the joint tenancy title form may litigate in an effort to prove that the spouses did not intend to transmute the community property into joint tenancy. Because joint tenancy is often disadvantageous to the spouses, particularly the tax consequences of joint tenancy, the courts have been liberal in relaxing evidentiary rules to allow proof either that the spouses did not intend to transmute community property to joint tenancy or, if they did, that they subsequently transmuted it back.[4]

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1. Civil Code § 5104. The spouses may also hold property as tenants in common, although this is relatively infrequent.

2. See, e.g., Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983).

3. See, e.g., Bruch, The Definition and Division of Marital Property in California: Towards Parity and Simplicity, 33 Hastings L.J. 769 828-38 (1982).

4. See, e.g., Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143, 159-68 (1981).

The result has been general confusion and uncertainty in this area of the law, accompanied by frequent litigation[5] and negative critical comment.[6] It is apparent that the interrelation of joint tenancy and community property requires clarification.

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5. See, e.g., Siberell v. Siberell, 214 Cal. 767, 7 P.2d 1003 (1932); Delanoy v. Delanoy, 216 Cal. 23, 13 P.2d 513 (1932); Tomaier v. Tomaier, 23 Cal.2d 754, 146 P.2d 905 (1944). Cases struggling with the issue in the past few years include In re Marriage of Lucas, 27 Cal.3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980); In re Marriage of Camire, 105 Cal. App.3d 859, 164 Cal. Rptr. 667 (1980); In re Marriage of Gonzales, 116 Cal. App.3d 556, 172 Cal. Rptr. 179 (1981); In re Marriage of Cademartori, 119 Cal. App.3d 970, 174 Cal. Rptr. 292 (1981); In re Marriage of Mahone, 123 Cal. App.3d 17, 176 Cal. Rptr. 274 (1981); Badillo v. Badillo, 123 Cal. App.3d 1009, 177 Cal. Rptr. 56 (1981); In re Marriage of Hayden, 124 Cal. App.3d 72, 177 Cal. Rptr. 183 (1981); Estate of Levine, 125 Cal. App.3d 701, 178 Cal. Rptr. 275 (1981); In re Marriage of Miller, 133 Cal. App.3d 988, 184 Cal. Rptr. 408 (1982); Kane v. Huntley Financial, 146 Cal. App.3d 1092, 194 Cal. Rptr. 880 (1983); In re Marriage of Stitt, 147 Cal. App.3d 579, 195 Cal. Rptr. 172 (1983).

6. See, e.g., Comment, 5. S. Cal. L. Rev. 144 (1931); Miller, Joint Tenancy as Related to Community Property, 19 Cal. St. B.J. 61 (1944); Note, 32 Calif. L. Rev. 182 (1944); Lyman, Oral Conversion of Property by Husband and Wife from Joint Tenancy to Community Property, 23 Cal. St. B.J. 146 (1948); Marshall, Joint Tenancy Taxwise and Otherwise, 40 Calif. L. Rev. 501 (1952); Brown & Sherman, Joint Tenancy or Community Property: Evidence, 28 Cal. St. B.J. 163 (1953); Joint Tenancy v. Community Property in California: Possible Effect Upon Federal Income Tax Basis, 3 UCLA L. Rev. 636 (1956); Griffith, Community Property in Joint Tenancy Form, 14 Stan. L. Rev. 87 (1961); Ferrari, Conversion of Community Property into Joint Tenancy Property in California: The Taxpayer's Position, 2 Santa Clara Lawyer 54 (1962); Griffith, Joint Tenancy and Community Property, 37 Wash. L. Rev. 30 (1962); Backus, Supplying or Prescribing Community Property Forms, 39 Cal. St. B.J. 381 (1964); Tax, Legal, and Practical Problems Arising From the Way in Which Title to Property is Held by Husband and Wife, 1966 S. Cal. Tax'n Inst. 35 (1966); Knutson, California Community Property Laws: A Plea for Legislative Study and Reform, 39 S. Cal. L. Rev. 240 (1966); Mills, Community Joint Tenancy--A Paradoxical Problem in Estate Administration, 49 Cal. St. B.J. 38 (1974); Property Owned with Spouse: Joint Tenancy by the Entireties and Community Property, 11 Real Prop. Prob. & Tr. J. 405 (1976); Sims, Consequences of Depositing Separate Property in Joint Bank Accounts, 54 Cal. St. B.J. 452 (1979); Mills, Community/Joint Tenancy Avoid a Tax Doubleplay; Touch the Basis, 1979 S. Cal. Tax'n Inst. 951 (1979); Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143 (1981); Bruch, The Definition and Division of Marital Property in California: Toward Parity and Simplicity, (1981); Comment, 3 Whittier L. Rev. 617 (1981); Comment, 15 U.C.D. L. Rev. 95 (1981); Comment, 15 Loy. L.A. L. Rev. 157 (1981); Thomas, Marriage of Lucas and The Need for Legislative Change, Fam. L. News & Rev., Fall 1982, at 8; Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983).

Legislation enacted in 1965 directly addressed the problem of married persons taking title to property in joint tenancy form without being aware of the consequences and in fact believing the property is community.[7] Civil Code Section 5110 provided that a single-family residence acquired during marriage in joint tenancy form is presumed community property for purposes of dissolution of marriage. This presumption has had a beneficial effect and was expanded in 1983 to apply to all property acquired during marriage in joint tenancy form.[8] The 1983 legislation also made clear that the community property presumption may be rebutted only by a clear writing by the spouses, but that separate property contributions are reimbursable at dissolution of marriage.[9]

This expansion is sound and should be effective to eliminate much of the confusion in this area of the law. However, the presumption is limited to dissolution of marriage. In order to clarify the property rights of the spouses generally, property acquired during marriage in joint tenancy form should be presumed community for all purposes, rebuttable by an express written agreement. This will correspond to the intention of most married persons not to lose basic community property protections merely by taking property in a joint tenancy title form.

If the spouses intend anything when they take title to property in joint tenancy form, it is that the property should pass at death to the surviving spouse without probate. Treating the property as community at death will enable passage at death to the surviving spouse without probate,[10] and will also ensure favorable tax treatment.[11] However, the

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7. Cal. Assem. Int. Comm. on Judic., Final Report relating to Domestic Relations, reprinted in 2 App. J. Assem., Cal. Leg. Reg. Sess. 123-24 (1965).

8. Civ. Code § 4800.1, enacted by 1983 Cal. Stats. ch. 342, § 1. See California Law Revision Commission--Report Concerning Assembly Bill 26, 1983 Senate Journal 4865 (1983).

9. Civ. Code § 4800.2, enacted by 1983 Cal. Stats. ch. 342, § 2.

10. Prob. Code § 202, reenacted as Prob. Code § 649.1, operative January 1, 1985.

11. See Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management and Invalid Marriage, 18 San Diego L. Rev. 143, 238-40 (1981); cf. Parks, Critique of Nevada's New Community Property With Right of Survivorship, 10 Comm. Prop. J. 5 (Winter 1983).

intended survivorship right should also be given some recognition.[12] The right of testamentary disposition over community property in joint tenancy form should be exercisable only by specific devise of the property or by a devise that makes specific reference to community property held in joint tenancy form. This will make clear that the testamentary disposition of the property is intentional, and will ensure that absent such an intentional testamentary disposition the property will pass automatically by intestate succession to the surviving spouse.[13]

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Article 5 (commencing with Section 5110.510) to Title 8 of Part 5 of Division 4 of, and to repeal Section 4800.1 of, the Civil Code, relating to community property.

The people of the State of California do enact as follows:

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12. This is consistent with the recommendation of many commentators who have studied the matter as well as with the law of other community property jurisdictions that permit the spouses to hold community property subject to a right of survivorship. See, e.g., Griffith, Community Property in Joint Tenancy Form, 14 Stan L. Rev. 87 (1961). Idaho, New Mexico, and Washington recognize survivorship agreements between the spouses. Nevada provides for a title form of community property with right of survivorship. Nev. Rev. Stat. § 111.064(2) (1981). It is also analogous to treatment given deposits by married persons in joint accounts in financial institutions under the California Multiple-Party Accounts Law. Prob. Code § 5305, enacted by 1983 Cal. Stats. ch. 92; see Recommendation Relating to Nonprobate Transfers, 16 Cal. L. Revision Comm'n Reports 129 (1982).

13. Prob. Code § 201, reenacted as Prob. Code §§ 6400-6401, operative January 1, 1985.

Civil Code § 4800.1 (repealed)

SECTION 1. Section 4800.1 of the Civil Code is repealed.

~~4800.1. For the purpose of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint tenancy form is presumed to be community property. This presumption is a presumption affecting the burden of proof and may by rebutted by either of the following:~~

~~(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.~~

~~(b) Proof that the parties have made a written agreement that the property is separate property.~~

Comment. The substance of former Section 4800.1 is continued in Section 5110.510 (community property presumption).

31559

Civil Code §§ 5110.510-5110.590 (added)

SEC. 2. Article 5 (commencing with Section 5110.510) is added to to [Chapter 2 of] Title 8 of Part 5 of Division 4 of the Civil Code, to read:

Article 5. Community Property In Joint Tenancy Form

§ 5110.510. Community property presumption

5110.510. (a) Property the title to which is taken in joint tenancy form by married persons during marriage is presumed to be community property.

(b) The presumption established by this section is a presumption affecting the burden of proof and may be rebutted by either of the following:

(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(2) Proof that the married persons have made a written agreement that the property is separate property and not community property.

(c) The presumption established by this section may not be rebutted by tracing the contributions to the acquisition of the property to a separate property source. Nothing in this subdivision limits the right

of a party to reimbursement for separate property contributions pursuant to Section 4800.2.

Comment. Section 5110.510 creates an exception to the presumption of Section 683 that property held in joint tenancy form is joint tenancy. Instead, property taken in joint tenancy form during marriage is presumed to be community property. This reverses case law that treated community property in joint tenancy form as either community property or joint tenancy, depending upon the intent of the parties. See, e.g., discussion in Sterling, Joint Tenancy and Community Property in California, 14 Pac. L.J. 927 (1983). Section 5110.510 is consistent with former Section 4800.1 (for purposes of division, property acquired in joint tenancy form during marriage presumed to be community property), and expands the community property presumption for all purposes of characterization, not just for purposes of division at dissolution of marriage. Section 5110.510 does not distinguish between community property and quasi-community property, since both spouses have a current interest in property held in joint tenancy form.

The presumption of Section 5110.510 may be overcome by contrary evidence of the express intention of the parties in the form of a written statement, in the deed or otherwise, negating the community character and affirming the separate character of the property. Subdivision (b). This will help ensure that any transmutation of community property to separate property by the spouses is in fact intentional.

Ownership of property presumed to be community pursuant to this section is qualified by a reimbursement right at dissolution for separate property contributions to its acquisition. Section 4800.2. In the case of property initially acquired before marriage, the title to which is taken in joint tenancy form during marriage, the measure of the separate property contribution is the value of the property at the time of its conversion to joint tenancy form.

045/127

§ 5110.520. Limitation on testamentary disposition

5110.520. (a) Notwithstanding Section 6101 of the Probate Code, a married person may not make a testamentary disposition of the person's one-half of community property in joint tenancy form except by a specific disposition of the property or by a disposition that makes specific reference to community property in joint tenancy form.

(b) Subdivision (a) does not apply to the extent the right of testamentary disposition of the property is governed by a written agreement between the married persons, including an agreement without limitation that the property is community property.

Comment. Subdivision (a) of Section 5110.520 imposes a limitation on testamentary disposition of community property in joint tenancy form that the property be given by a specific devise or by a specific reference to property of that type in a devise. This is intended to ensure that absent a clear and specific intent to dispose of the property, it passes to the survivor. Apart from this limitation, community property in joint tenancy form is community for all purposes and receives community

property treatment at death, including tax and creditor treatment and passage without probate (unless probate is elected by the surviving spouse). Prob. Code § 649.1. Because the names of both spouses appear on the property title in this form of tenure, title in the survivor may in the ordinary case be cleared by affidavit in the same manner as joint tenancy, without the need for court confirmation pursuant to Section 650 of the Probate Code.

Subdivision (b) makes clear that the limitation on testamentary disposition applies only absent a written agreement of the married persons that is intended to control. Thus a community property agreement entered into by the spouses that makes no reference to testamentary rights should be construed as an agreement that community property in joint tenancy form is community property for all purposes, without limitation on the right of testamentary disposition.

405/901

§ 5110.550. Joint bank accounts

5110.550. This article does not apply to a joint account in a financial institution if Part 1 (commencing with Section 5100) of Division 5 of the Probate Code applies to the account.

Comment. Section 5110.550 makes clear that the Probate Code provisions governing joint accounts prevail over this chapter. See Prob. Code § 5305 (presumption that sums on deposit are community property).

405/793

§ 5110.590. Transitional provisions

5110.590. (a) As used in this section, "operative date" means January 1, 1986.

(b) Subject to subdivisions (c) and (d), this article applies to all property acquired by married persons before, on, or after the operative date.

(c) This article does not apply until one year after the operative date to property acquired in joint tenancy form by married persons before the operative date, regardless whether payments on or additions to the property are made after the operative date. During this period the property is governed by the law applicable before the operative date, and to this extent the law applicable before the operative date is preserved.

(d) This article does not apply to any transaction involving the property that occurred before the operative date, including but not limited to inter vivos or testamentary disposition of the property by a married person and division of the property at dissolution of marriage.

Such a transaction is governed by the law applicable before the operative date.

Comment. Section 5110.590 makes clear the legislative intent to make this article fully retroactive to the extent practical, consistent with protection of the security of transactions involving the spouses or third persons that occurred before the operative date. Retroactive application is supported by the importance of the state interest served by clarification and modernization of the law of joint tenancy and community property, the generally procedural character of the changes in the law, and the lack of a vested right in joint tenancy property due to the severability of the tenure. In addition, Section 5110.590 provides a one-year grace period after the operative date during which persons who acquired property before the operative date may make any necessary title changes or agreements or other arrangements concerning the property.